



Housing Authority of the City and County of San Francisco

# HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN

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## CHAPTER 1: OVERVIEW OF THE PROGRAM AND PLAN

### INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The San Francisco Housing Authority (SFHA). This part includes a description of the SFHA, its jurisdiction, its programs, and its mission and intent.

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

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

## **PART I: THE SAN FRANCISCO HOUSING AUTHORITY (SFHA)**

### **1-I.A. OVERVIEW**

This part explains the origin of the Housing Authority of the City and County of San Francisco's creation and authorization, the general structure of the organization, and the relationship between the Board of Commissioners and staff.

### **1-I.B. ORGANIZATION AND STRUCTURE OF THE SFHA**

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Housing Authority of the City and County of San Francisco (a.k.a. "San Francisco Housing Authority" or "SFHA") for the jurisdiction of the City and County of San Francisco.

The officials of a SFHA are known as commissioners or, collectively, as the Board of Commissioners. Commissioners are appointed in accordance with state housing law and serve in the same capacity as the directors of a corporation, establishing policies under which the SFHA conducts business, ensuring that policies are followed by SFHA staff and ensuring that the SFHA is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

Formal actions of the SFHA are taken through written resolutions, adopted by the Board of Commissioners and entered into the official records of the SFHA.

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

### **1-I.C. SFHA 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 guiding direction for developing strategy, defining critical success factors, searching out key opportunities, making resource allocation choices, satisfying clients and stakeholders, and making decisions.

#### **SFHA Policy**

The mission of the San Francisco Housing Authority is to deliver safe and decent housing for low income households and integrate economic opportunity for residents.



## **1-I.D. THE SFHA'S PROGRAMS**

The following programs are included under this Administrative Plan:

### **SFHA Policy**

The SFHA's Administrative Plan is applicable to the operation of the Housing Choice Voucher program.

## **1-I.E. THE SFHA'S COMMITMENT TO ETHICS AND SERVICE**

As a public service agency, the SFHA is committed to providing excellent service to HCV program participants, owners, and to the community. The SFHA's standards include:

- Administer applicable federal and state laws and regulations to achieve high ratings in performance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing—in compliance with program housing quality standards—for very low income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human service needs.
- Promote fair housing and the equal opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the SFHA'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 SFHA's support systems and a high level of commitment to our employees and their development.

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

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

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

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

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

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

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. Assuming that the housing met certain basic physical standards of quality (“housing quality standards”) and was within certain HUD-established rent limitations (“fair market rents”), the family would be able to receive rental assistance in the housing unit. Family contribution to rent was set at 30 percent of the family’s adjusted income, with the remainder of the rent paid by the program.

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

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

However, the Voucher program permitted families more options in housing selection. Rental housing still had to meet the basic housing quality standards, but there was no fair market rent limitation on rent. In addition, family contribution to rent was not set at a limit of 30 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30 percent of their adjusted income for rent.

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

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

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

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

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

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The SFHA is afforded choices in the operation of the program which are included in the SFHA's administrative plan, a document approved by the Board of Commissioners of the SFHA.

The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in the SFHA's jurisdiction and may also be eligible to move under portability to other PHAs jurisdictions.

When a family is determined to be eligible for the program and funding is available, the PHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the PHA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their respective payment to the owner so that the owner receives full rent.

Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. The PHA continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

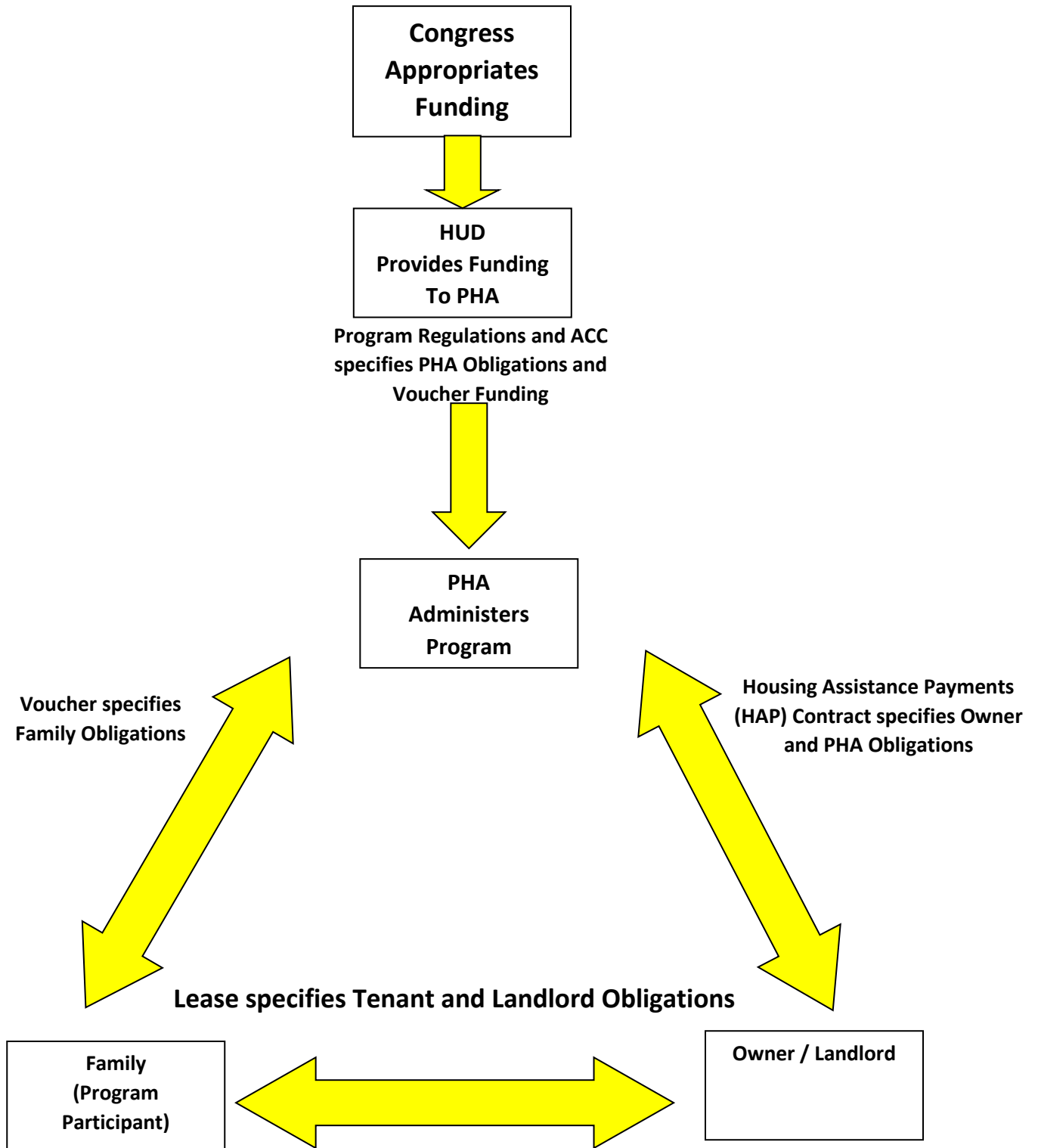
### **1-II.C. THE HCV PARTNERSHIPS**

To administer the HCV program, the PHA enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). The PHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

For the HCV program to work and be successful, all parties involved – HUD, the PHA, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

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

**The HCV Relationships:**



### **What Does HUD Do?**

HUD has the following major responsibilities:

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

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

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

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

### **What Does the Owner Do?**

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine suitability as renters.
- The PHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
- The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the

family is engaging in drug-related criminal activity or other criminal activity that might threaten others.

- Comply with the terms of the Housing Assistance Payments contract executed with the PHA;
- Comply with all applicable fair housing laws and do not discriminate against anyone;
- Maintain the housing unit in accordance with Housing Quality Standards (HQS) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

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

The family has the following responsibilities:

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

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

Applicable regulations include:

- 24 C.F.R. Part 5: General Program Requirements
- 24 C.F.R. Part 8: Nondiscrimination
- 24 C.F.R. Part 35: Lead-Based Paint
- 24 CFR Part 100: The Fair Housing Act

- 24 C.F.R. Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 C.F.R. Part 983: Project-Based Vouchers
- 24 C.F.R. Part 985: The Section 8 Management Assessment Program (SEMAP)

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

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

The administrative plan is required by HUD. The purpose of the administrative plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in the PHA's agency plan. This administrative plan is a supporting document to the PHA agency plan, and is available for public review as required by 24 C.F.R. Part 903.

This administrative plan is set forth to define the PHA's local policies for operation of the housing programs in accordance with federal laws and regulations. All issues related to the HCV program not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices, and other applicable law. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

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

Administration of the HCV program and the functions and responsibilities of PHA staff shall be in compliance with the PHA's personnel policy and HUD regulations as well as all federal, state and local fair housing laws and regulations.

### **1-III.B. CONTENTS OF THE PLAN**

*[24 C.F.R. § 982.54]*

The HUD regulations at 24 C.F.R. § 982.54 define the policies that must be included in the administrative plan. They are as follow:

- Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (Chapter 4);
- Issuing or denying vouchers, including SFHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the SFHA decides to allow extensions or suspensions of the voucher term, this SFHA administrative plan must describe how the SFHA determines whether to grant extensions or suspensions, and how the SFHA determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 24 C.F.R. § 982.553 (Chapters 3 and 12);



- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the PHA of amounts the family owes the PHA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- PHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

### **Mandatory vs. Discretionary Policy**

HUD makes a distinction between:

- Mandatory policies: those driven by legislation, regulations, current handbooks, notices, and legal opinions, and
- Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects PHAs to adopt local policies and procedures that are consistent with mandatory policies in areas where HUD gives the PHA discretion. The PHA's administrative plan is the foundation of those policies and procedures. HUD's directions require PHAs to make policy

choices that provide sufficient guidance to staff and ensure consistency to program applicants and participants.

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

### **1-III.C. ORGANIZATION OF THE PLAN**

The plan is organized to provide information to users in particular areas of operation.

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

The PHA will revise this administrative plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the Board of Commissioners of the agency, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

#### **SFHA Policy**

The SFHA will review and update the plan at least once a year, and more often if needed, to reflect changes in regulations, SFHA operations, or when needed to ensure staff consistency in operation.

## CHAPTER 2: FAIR HOUSING AND EQUAL OPPORTUNITY

### INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs 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 processes. The responsibility to further nondiscrimination pertains to all areas of the PHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and PHA 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 PHA regarding nondiscrimination.

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

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

## **PART I: NONDISCRIMINATION**

### **2-I.A. OVERVIEW**

Federal laws require PHAs to treat all applicants and participants equally, providing the same opportunity to access services, 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, marital status and for victims of domestic violence, dating violence, sexual assault, or stalking. The SFHA 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;
- Violence Against Women Reauthorization Act of 2013 (VAWA); and
- 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.

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

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as PHA policies, can prohibit discrimination based on other factors.

The PHA shall not discriminate because of ancestry, source of income, race, color, sex, religion, national or ethnic origin, familial status or disability to be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the PHA housing programs (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 PHA will not discriminate on the basis of an individual’s status as a victim of domestic violence, dating violence, sexual assault or stalking.

## **SFHA Policy**

In addition to the protected classes above, California Fair Employment and Housing Act (FEHA) offers legal protection based on:

**Sexual orientation:** The LGBT community is protected from housing discrimination in California. [*See also 77 Fed. Reg. 5662 (Feb. 3, 2012) (HUD final rule).*]

**Gender identity and gender expression:** California's Gender Nondiscrimination Act, enacted in 2012, protects transgender and gender non-conforming people from housing and employment discrimination. [*See also 77 Fed. Reg. 5662.*]

**Marital status:** Whether you are single, married or widowed, you are protected under FEHA. [*See also 77 Fed. Reg. 5662.*]

**Medical condition:** Having any medical condition cannot disqualify you from access to housing.

**Ancestry:** Your family's ancestral roots cannot be considered in the housing process.

**Source of income:** Judgement and discrimination about where you are employed and how you make your money cannot factor into a landlord's decision to lease you a property.

**Age:** People over the age of 40 are protected.

**Genetic information:** A landlord cannot discriminate based on information about genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (also known as family medical history).

**Arbitrary discrimination:** You cannot be discriminated against for any other arbitrary reason.

The PHA will not use any of these factors to:

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

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

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

### **Discrimination Complaints**

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

### **SFHA Policy**

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

The SFHA will post information related to the HUD Discrimination Complaint webpage in all of the Agency's public buildings. The link to the HUD discrimination complaint website will also be included in all SFHA briefing packets.

The SFHA will attempt to remedy discrimination complaints made against the SFHA.

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

#### **SFHA Policy**

The SFHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the SFHA, by including a statement similar to:

- “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.”
- The SFHA will display posters and other housing information and signage in locations throughout the SFHA's office in such a manner as to be easily readable from a wheelchair.

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

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

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

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

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

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

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

## **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 PHA 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 PHA's programs and services.

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

### **SFHA Policy**

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

The SFHA will not review Reasonable Accommodations submitted more than 30 calendar days after a voucher has been terminated.

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

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

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

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



Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act (May 17, 2004).]

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

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

Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act (May 17, 2004).]

The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA will not inquire about the nature or extent of any disability.

Medical records will not be accepted or retained in the participant file.

In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information. [Notice PIH 2010-26.]

### **SFHA Policy**

Disability is defined as any physical or mental impairment that limits one or more of their major life activities.

The SFHA will request a third party verification as part of the Reasonable Accommodation process. If verification cannot be obtained by the third party within thirty (30) calendar days, the family must follow-up with the third party. Third party verification can be provided via U.S. Postal Service, fax, e-mail, or a telephone call initiated by the Authority. If the disability is "obvious" or readily apparent then third party verification is not required. For continued consideration, the family may be required to submit a new Reasonable Accommodation Request if the information is not in the tenant file or as otherwise needed to document compliance with HUD verification requirements and will be evaluated in accordance with the policies and regulations in effect at the time of request.

## **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 (May 17, 2004), Notice PIH 2010-26]*

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

1. The request was made by or on behalf of a person with a disability;

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

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the cost of the requested accommodation, the financial resources of the SFHA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

### **SFHA Policy**

After a request for an accommodation is presented, the SFHA will respond, in writing, within a reasonable time. A reasonable time for an SFHA response is 30 calendar days from receipt of the request.

If the request for an accommodation shows:

- No causal relationship, or nexus, between the disability and the requested accommodation;
- Would impose an undue financial and/or administrative burden; or
- Fundamentally alters the nature of the SFHA operations.

Project Based Voucher units are units wherein the subsidy is linked directly to the unit. This subsidy is not mobile or transferable. As a result, the SFHA will not move households in the PBV program except:

Through the RAD Referral Program (see Chapter 18);

A Reasonable Accommodation (See Chapter 2)

If a Reasonable Accommodation is requested, the following will occur:

The SFHA will follow the Reasonable Accommodation process outlined above.

If approved, the SFHA will inform the participant that they need to go back to their property office to determine whether another unit is available within the building. This determination is entirely at the discretion of the property office/landlord and does not involve the SFHA. If a unit is available, the Participant must ask the SFHA for a Request for Transfer Approval (RTA), the SFHA will provide the RTA form and, upon receipt from the Participant, will then inspect the unit. Once the unit passes inspection, the Participant will move in and the RA will be closed.

If approved but a unit is not available within the same building, the Participant may ask the property manager/developer whether another property within their portfolio is available to move to. This determination is entirely at the discretion of the property office/landlord and does not involve the SFHA. If a unit is available, the Participant must ask the SFHA for a Request for Transfer Approval (RTA), the SFHA will provide the RTA form and, upon receipt from the Participant, will then inspect the unit. Once the unit passes inspection, the Participant will move in and the RA will be closed.

If approved but neither 3 or 4 are an option, the Participant may continue looking for other opportunities. The SFHA does not provide assistance in locating additional units for Participants

to transfer to nor does it maintain a separate waitlist for these requests. If denied, the SFHA will inform the Participant of the denial.

The SFHA will not review Reasonable Accommodations where they do not have jurisdiction. In circumstances where the SFHA does not have jurisdiction, the participant will be referred back to their landlord/property manager.

The SFHA may discuss with the family whether an alternative accommodation could address the families' disability related needs.

If the SFHA believes that there is no reasonable alternative to the reasonable accommodation request, the SFHA will deny the request and notify the family, in writing, of its determination. The notice will inform the family of the right to appeal the SFHA's decision through the hearing process (see Chapter 16).

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

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

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

### **SFHA 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 PHA 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 in accordance with the LEP Plan (see Appendix A).

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

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

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

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

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

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

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

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

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

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

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

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

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

### **2-III.A. SFHA LIMITED ENGLISH PROFICIENCY PLAN**

- 1.0 Date of Implementation, Approval Authority, Policy Number**
- 2.0 Purpose of the Policy and Plan Statement**
- 3.0 Detailed Policy Statement**
- 4.0 Applicability**
- 5.0 Implementation Procedures**
- 6.0 Interested Interpreters**

#### **1.0 Date of Implementation; Approval Authority; Policy Number**

Policy Number 2: Approved October 28, 2016; Effective January 1, 2017  
Policy Number 1: Effective May 24, 2010

#### **2.0 Purpose of the Policy & Plan Statement**

The San Francisco Housing Authority (SFHA) has adopted this plan to provide meaningful access to its programs and activities by persons with Limited English Proficiency (LEP). It is the official policy of the San Francisco Housing Authority to comply with the letter and spirit of Title VI of the Civil Rights Act to provide access to the Authority's programs by persons who are Limited English Proficient, using whatever means necessary and reasonable. In accordance with Federal guidelines, the SFHA will make reasonable efforts to provide or arrange for free language assistance for its LEP clients, including applicants, recipients and/or persons eligible for public housing, Section 8/Housing Choice Vouchers, homeownership and other SFHA programs.

#### **3.0 Detailed Policy Statement**

##### **3.1 Meaningful Access: Four Factor Analysis**

Meaningful access is free language assistance in accordance with Federal guidelines. No less than every five (5) years, The SFHA will assess and update the following four-factor analysis, including but not limited to:

- 1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the SFHA;

- 2) The frequency persons using a particular language come into contact with the SFHA;
- 3) The nature and importance of the SFHA program, activity or service to the person's life;
- 4) The SFHA's resources and the cost of providing meaningful access. Reasonable steps may cease to be reasonable where the costs imposed substantially exceed the benefits.

**3.1.1** Factor One

*The number or proportion of LEP persons eligible to be served or likely to be encountered by the SFHA:*

RACE	Total	Percentage
WHITE	420,823	52.3%
BLACK	57,810	7.2%
AMERICAN INDIAN	10,873	1.4%
ASIAN	288,529	35.8%
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	6,173	.8%
OTHER	62, 482	7.8%

This determination will be made based on U.S. Census Bureau data and language preference data compiled by the SFHA. The U.S. Census Bureau's American Fact Finder for the City and County of San Francisco (City) provided the following 2014 statistics for the total population (805, 235):

The SFHA language preference data compiled by reports generated from the SFHA ELITE software client file computer system produced the following statistics on clients we currently serve:

LANGUAGE	TOTAL	PERCENTAGE
Cantonese	12780	22.91%
Russian	2958	5.30%
Spanish	3715	6.66%
Vietnamese	3283	5.88%

A determination as to whether five (5) percent of the SFHA clientele speaks a specific language will trigger consideration of vital document translation.

### **3.1.2** Factor Two

*The frequency with which LEP persons using a particular language come into contact with the SFHA.*

This determination will be made by analyzing the data in our ELITE software system to project the anticipated number of contact points a client may have with the SFHA. The SFHA will also retain copies of sign in sheets for reference and analysis as well on an as needed basis.

### **3.1.3** Factor Three

*The nature and importance of the SFHA program, activity or service to the person's life.*

The SFHA adheres to the philosophy that housing is essential and extremely important. Thus, when a staff member engages a client in a discussion involving the client's rights to benefits, programs or services offered by the SFHA, the staff member must determine whether failure to provide language assistance would result in a substantial delay that would adversely affect the client's rights.

### **3.1.4** Factor Four

*The SFHA's resources and the cost of providing meaningful access.*

The SFHA will utilize a combination of procured vendors and the SFHA verified multi-lingual staff members as professional, competent translators and interpreters. The SFHA will procure qualified vendors to provide written translations of vital documents, as well as oral interpretation for languages not spoken by SFHA staff members. SFHA staff members who agree to serve as oral interpreters will receive additional compensation for demonstrating proficiency in multiple languages, participating in interpreter/cultural competency training, and serving as oral interpreters.

Additionally, the SFHA will establish partnerships with City departments/agencies and community organizations to provide volunteer interpreter services for our clients, as alternative when professional interpreters (procured vendors and SFHA staff

members) are unavailable. The SFHA will allow clients to waive their right to professional and/or volunteer language services, so that clients may utilize friends or family members (who are not minors) as oral interpreters.

### **3.2 Language Assistance**

A person who does not speak English as their primary language and/or who has a limited ability to read, write, speak or understand English may be a Limited English Proficient (LEP) person and is therefore entitled to language assistance with respect to SFHA programs and activities.

SFHA staff will take reasonable steps to provide the opportunity for meaningful access to LEP clients who have difficulty communicating in English. The staff will use the LEP Language Chart to identify the languages spoken/written by the applicants/participants. Staff will also use the Personal Declaration form at every admission and re-certification to update the translation/interpretation services needed for each household.

The SFHA will assess client needs for language assistance based on requests for interpreters and/or translation, as well as the literacy skills of clients.

The SFHA will distinguish between language assistance provided in the form of 1) written translations, and 2) oral interpretations.

#### **3.2.1 Written Translations**

The SFHA will weigh the costs and benefits of translating documents for potential LEP groups, considering the expense of translating the documents, the barriers to meaningful translation or interpretation of technical housing information, the likelihood of frequent changes in documents, the existence of multiple dialects within a single language group, and other relevant factors. The SFHA will undertake this examination when an eligible LEP group constitutes five percent of an eligible client group.

Based on the Four-Factor analysis, SFHA translates vital documents to Chinese (Cantonese), Russian, Spanish and Vietnamese. Vital documents are listed in the LEP Plan Procedure.



A client may request oral interpretations of the above documents into languages not listed above. A client may also request oral interpretations of documents not translated.

As opportunities arise, the SFHA may work with other housing authorities to share the costs of translating common documents, which may include language groups, which currently do not reach the threshold level in the SFHA's client population.

The SFHA will require a client to certify that the client understood the document translated with the Translation Certification Document.

The SFHA staff member will also explain to the client that any written translations of SFHA or HUD forms are not the official/legal version of the form. Vital document translations are used for the sole purpose of helping the LEP client understand the contents of the document. When a staff member uses a vital document translation to help a client understand a document, the client will only sign documents and forms in the English version.

### **3.2.2 Oral Interpretations**

The SFHA will provide interpreters, including multi-lingual staff and procured vendors in accordance with this plan. Written translation and verbal interpretation services will be provided consistent with the four-factor analysis detailed above and in accordance with the “Vital Document(s) List”.

In cases of Formal/Informal Hearings an SFHA staff interpreter may not be a subordinate to the SFHA staff member rendering a decision on the client’s hearing.

The SFHA will monitor LEP in accordance with the LEP Procedures.

After the SFHA has offered free interpretation services, an LEP client may prefer to use an informal interpreter, such as a friend or family member (who is not a minor), and the informal interpreter may interpret. In these cases the client and interpreter of choice will sign a waiver of free interpreter services.

## **4.0 *Applicability***

This policy applies to all regular management and staff of the SFHA. Failure to comply with this policy can result in disciplinary action up to termination of

employment. SFHA staff will receive training on the LEP Plan and Procedure every two (2) years and within six (6) months of hire.

**5.0 *Implementation Procedures***

The implementation procedures for this Plan are attached herein.

**6.0 *Interested Interpreters:***

Residents who are interested in interpreting or providing translation services are invited to call 415-715-5200 and provide their contact information. The SFHA will create a list of resident interpreters that may be contacted when their services are needed. The list will be maintained by the SFHA and is not accessible to the public. Resident interpreters will not be used for individual client matters to protect their privacy. A stipend, to be determined by the SFHA, will be provided when the services are utilized.

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

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

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

The phrase “physical or mental impairment” includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

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

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving

the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

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

## CHAPTER 3: ELIGIBILITY

### INTRODUCTION

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

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

- Qualify as a family as defined by HUD and the PHA.
- Have income at or below HUD-specified income limits.
- Qualify on the basis of citizenship or the eligible immigrant status of family members.
- Provide social security number information for household members as required.
- Consent to the PHA's collection and use of family information as provided for in PHA-provided consent forms.

The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

This chapter contains three parts:

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

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

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

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

### **3-I.A. OVERVIEW**

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 assisted unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

### **3-I.B. FAMILY AND HOUSEHOLD**

*[24 C.F.R. § 982.201(c), 77 Fed. Reg. 5662, Notice PIH 2014-20]*

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

#### **Family**

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless 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 PHA 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.

#### **SFHA 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 notify the SFHA if the family's composition changes.

After the family has been admitted into the program, additions may be made in the following circumstances at the sole discretion of the SFHA::

1. **Birth** of a child to a current family member.
2. **Adoption** of a child by a current family member.
3. **Court-awarded** custody of a child to a current family member.

4. **Legal guardianship** of a minor granted to a current family member.
5. As result of **marriage** by a current family member.
6. As result of a **civil union** created under any state law by a current family member.
7. As a result of a registered **domestic partnership** under any state law by a current family member.
8. As a result of a **reasonable accommodation** for current disabled family member.
9. As a result of a returning family member from **active military service**.
10. As a result of a returning and now **disabled family member**.
11. As a result of a returning **child under the age of 24**.
12. As a result of returning or placement of a **parent to an existing minor** in the family.
13. As a result of returning or placement of **elderly parents or grandparents** to be cared by current family members as certified by a medical professional.
14. As a result of returning or placement of a **foster child(ren) or foster adult(s)** if their presence would not result in a violation of HQS space standards according to 24 C.F.R. § 982.401.

As a result of returning or placement of a **foster child(ren) or foster adult(s)** if their presence would not result in a violation of HQS space standards according to 24 C.F.R. § 982.401.

Married couples claiming to be separated must present evidence of such and will be evaluated on a case-by-case basis. The SFHA may require, but is not limited to, the following information:

- Court Filing of divorce.
- Statement from attorney preparing the divorce.
- Tax-returns with filing status.
- Notarized statements and/or Authority certification(s).
- Bank statements.

Victims of domestic violence, dating violence, sexual assault or stalking claiming to be separated from their spouse do not need to provide the above documentation if it is not safe.

### **Household**

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

### ***Add Requests After the Death of the Sole Family Member***

The SFHA must immediately terminate program assistance for a deceased single member family. The SFHA will continue to respond to pending add requests that have been submitted to the SFHA prior to or on the date of death. The pending request must be date stamped by the SFHA. Any requests submitted after death or without a date stamp will receive an automatic denial.

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

#### **Family Breakup [24 C.F.R. § 982.315]**

The PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, if a court determines the disposition of property between members of the assisted family, the SFHA is bound by the court's determination of which family members continue to receive assistance. If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D of this plan.)

#### **SFHA 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 make 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 receiving assistance, only one of the new families will continue to be assisted.

If a court determines the disposition of property between members of the applicant or resident family, the SFHA will abide by the court's determination. This includes cooperating with law enforcement authorities to enforce civil protection orders issued for the protection of victims and addressing the distribution of personal property among household members in cases where a family breaks up.

In the absence of a judicial decision or an agreement among the original family members, the SFHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the SFHA 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 the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals. If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 C.F.R. part 5, subpart L, the SFHA must ensure that the victim retain assistance.

In all instances, the household must notify the property office, in writing, within 15 calendar days of the action causing the household to split and request a determination of the assignment of the voucher.

**In no case will the SFHA provide an additional voucher to the household member(s) who are removed from the original household voucher.** The household members who



are removed from the original household unit may apply for assistance on a separate application and may be entitled to full preferences, as applicable.

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

### **Remaining Member of a Tenant Family [24 C.F.R. § 5.403]**

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of an assisted family who remains in the unit when other members of the family have left the unit. 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.”

### **3-I.D. HEAD OF HOUSEHOLD**

*[24 C.F.R. § 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 co-head or spouse.

#### **SFHA 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, CO-HEAD, AND OTHER ADULT**

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

*Spouse* means the marriage partner of the head of household.

#### **SFHA 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 or domestic partners. A minor who is emancipated under state law may be designated as a spouse.

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

### **SFHA Policy**

Minors who are emancipated under state law may be designated as a co-head.

*Other adult* means a domestic partner or family member, other than the head, spouse, or co-head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

### **3-I.F. DEPENDENT**

*[24 C.F.R. § 5.603]*

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

#### **SFHA Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the time. When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the SFHA will make the determination based on available documents such as court orders, or an IRS 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 C.F.R. § 5.603; HCV GB, p. 5-29]*

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

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

### **3-I.H. FULL-TIME COLLEGE STUDENTS OF NON-PARENTAL/GUARDIAN HOUSEHOLDS**

Full-time college students of non-parental/guardian households are not eligible for admission to the Housing Choice Voucher, Project-based Voucher, Public Housing and Housing Choice Voucher Rehabilitation Programs unless students meet the following eligibility standards:

1. The student must be 18 and/or be an emancipated minor under state law.
2. The student must be income-eligible for admission.

The Housing Authority is required to verify and include the following source of income for full-time college students of non-parental/guardian household:

1. Financial support such as money, food, clothing, personal items and entertainment. The financial support must come from an outside source such as parents or guardians in the form of “periodic and determinable allowance” or “regular contributions or gifts.”

### **3-I.I. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY**

*[24 C.F.R. § 5.100, 5.403, 77 Fed. Reg. 5662]*

#### **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, co-head, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family deduction and the medical deduction as described in Chapter 6.

### **3-I.J. PERSONS WITH DISABILITIES AND DISABLED FAMILY**

*[24 C.F.R. § 5.403, 77 Fed. Reg. 5662]*

#### **Persons with Disabilities**

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, the PHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person’s disability.

### **Disabled Family**

A *disabled family* is one in which the head, spouse, or co-head is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance as described in Chapter 6.

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

### **3-I.K. GUESTS**

[24 C.F.R. § 5.100]

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

#### **SFHA Policy**

A guest cannot remain in the assisted unit longer than 30 consecutive days or a total of 90 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 is expected to last 40 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 or in the case of foster, a letter from the SF Human Services Agency/Child Welfare Agency certifying the status of any minors placed in the household temporarily.

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

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

*Foster adults* are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 C.F.R. § 5.609].

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

Foster children and foster adults who are living with an applicant or who have been approved by the PHA to live with a participant 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 C.F.R. § 5.603; HUD-50058 IB, p. 13].

### **SFHA 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.

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 C.F.R. § 982.401.

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

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

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

#### **Definitions of Temporarily and Permanently Absent**

### **SFHA Policy**

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. 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**

### **SFHA Policy**

A dormitory-style living arrangement is not considered as establishing a separate household.

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 SFHA 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 C.F.R. § 5.403]**

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

### **SFHA Policy**

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

**A foster child or foster adult may be included in the HCV application or renewal of the foster family. Absent Head, Spouse, or Co-head**

**SFHA Policy**

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

**Deployment of Military Personnel**

A head or co-head who is absent from the unit due to military service for more than 180 days may be removed from the household composition and added back to the household once their military service is completed as long as there is at least one remaining family member in the assisted unit. The Military Personnel or any member of their household must inform the Property Office within 15 days of their return to the unit.

The SFHA will also allow a suitable guardian to move into the assisted unit on a temporary basis to care for any dependents that the military person leaves in the unit. Income of the guardian temporarily living in the unit solely for this purpose is not to be counted in determining family income and the amount of rent the family pays based on family income. The temporary suitable guardian to assist with the dependent care must move out within 15 days of the Military Personnel returning home. Members of the military family cannot be absent for more than 180 consecutive days.

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

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

**SFHA Policy**

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

**Return of Permanently Absent Family Members**

**SFHA Policy**

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

### **3-I.N. LIVE-IN AIDE**

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

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

A live-in aide is considered a household member but not a family member. The income of a live-in aide is not counted in the calculation of annual income for the family [24 C.F.R. § 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Because live-in aides are not *family* members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family. Under VAWA, live-in aides are not considered affiliated individuals, and are not afforded VAWA protections that are only available to tenants and participants. As a reasonable accommodation, a tenant/participant can request VAWA protections based on the grounds that the live-in aid is a victim of domestic violence, dating violence, sexual assault or stalking. In addition, other reasonable accommodations may be needed on a case-by-case basis. In cases where a guest or unassisted member is a victim of domestic violence, dating violence, sexual assault or stalking, a tenant/participant cannot be evicted or have assistance terminated on the basis of the domestic violence, dating violence, sexual assault or stalking of the guest or unassisted member.

#### **SFHA Policy**

A family's request for a live-in aide must be made in writing. The SFHA will verify the need for a live-in aide from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. For continued approval, the family must submit a new, written request-subject to SFHA 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 SFHA has the discretion not to approve a particular person as a live-in aide, and may withdraw such approval if [24 C.F.R. § 982.316(b)]:
- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or

- The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act and refuses to enter into a repayment agreement with another PHA or pay the entire debt with the SFHA.

The SFHA will notify the family of its decision in writing within 30 calendar days of receiving a request for a live-in aide. The 30 calendar days begins from the date that the completed live-in aid packet was submitted to the SFHA. The completed packet includes all required documentation related to the request.

Once added as a live-in aide, the person may not be changed to a family member.

A live-in aide has no rights to the voucher. Generally, a live-in aide cannot become a family member. Any requests for a live-in aide to become a family member will be reviewed on a case by case basis. A live-in aide cannot be the owner of the subsidized unit.

An existing family member cannot become a live-in aide

Any person that has been part of the household for the past 12 months cannot be added as a live-in aide.



## PART II: BASIC ELIGIBILITY CRITERIA

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

#### **Income Limits**

HUD establishes income limits for all areas of the country and publishes them annually in the *Federal Register*. They are based upon estimates of median family income with adjustments for family size. The income limits are used to determine eligibility for the program and for income targeting purposes as discussed in this section.

#### **Definitions of the Income Limits [24 C.F.R. § 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.

#### **Using Income Limits for Eligibility [24 C.F.R. § 982.201]**

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

- A *very low-income* family
- A *low-income* family that has been “continuously assisted” under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 C.F.R. § 982.4]

#### **SFHA Policy**

The SFHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were selected from the SFHA’s waiting list.

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

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

### **HOPE SF SFHA Policy**

Families who are residents of the HOPE SF developments will be subject to the Relocation Plan for their particular development. All families of HOPE SF sites must be in Good Standing in order to move into the revitalized units. Good Standing requires that the SFHA did not file a Summons and Complaint against any member of the household or been evicted. (Board Resolution #5390) Notwithstanding the above, a family will be eligible to move if the family has an active Unlawful Detainer action against them, and they are in a repayment agreement and current on the repayment agreement.

### **Using Income Limits for Targeting [24 C.F.R. § 982.201]**

At least 75 percent of the families admitted to the PHA's program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families. If admissions of extremely low-income families to the PHA's housing choice voucher program during a PHA fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the PHA's public housing basic targeting requirement for the same fiscal year.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not counted for income targeting purposes.

### **3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS**

#### ***[24 C.F.R. Part 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 PHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

#### **Declaration [24 C.F.R. § 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, co-head, 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 as verification of their status. However, HUD regulations permit the PHA to request additional documentation of their status, such as a passport.

#### **SFHA Policy**

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

### **Eligible Noncitizens and VAWA Self-Petitioners**

In addition to providing a signed declaration, those declaring eligible noncitizen status or VAWA self-petitioner must sign a verification consent form and cooperate with PHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen or VAWA self-petitioner status varies depending upon factors such as the, the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

### **Ineligible Noncitizens**

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

Providing housing assistance to noncitizen students is prohibited. [24 C.F.R. § 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 assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice 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 16 for a discussion of informal hearing procedures.

### **Ineligible Families [24 C.F.R. § 5.514(d)-(f)]**

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

#### **SFHA Policy**

The SFHA 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 SFHA 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 30 calendar days of the determination.

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

Informal Review procedures are contained in Chapter 16.

### **Timeframe for Determination of Citizenship Status [24 C.F.R. § 5.508(g)]**

For new occupants joining the assisted family, the PHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, the PHA must grant such an extension for no more than 30 days. [24 C.F.R. 5.508(h).]

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

#### **SFHA Policy**

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

### **3-II.C. SOCIAL SECURITY NUMBERS**

*[24 C.F.R. § 5.216, 5.218, Notice PIH 2012-10]*

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 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. 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 PHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 C.F.R. § 5.216.

### **3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION**

*[24 C.F.R. § 5.230; HCV GB, p. 5-13]*

HUD requires each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, 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 PHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms which allow the PHA to obtain information that the PHA has determined necessary in administration of the HCV programming accordance with 24 C.F.R. Part 5, Subparts B and F. [24 C.F.R. § 982.552(b)(3).]

### **3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION**

*[24 C.F.R. § 5.612, 81 Fed. Reg. 64,932]*

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

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

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

### **Definitions**

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions. [71 Fed. Reg. 18,146 (HUD Apr. 10, 2006) (notice), 81 Fed. Reg. 64,932 (HUD Sept. 21, 2016) (notice).]

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

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

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

##### **SFHA Policy**

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

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

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

- The individual is at least 24 years old by December 31 of the award year for which aid is sought.
- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older.

- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence.
- The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes.
- The individual is a graduate or professional student.
- The individual is married.
- The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent).
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting, by:
  - A local educational agency homeless liaison;
  - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director; or
  - A financial aid administrator.
- The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.
- The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.
- The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

If the SFHA determines that an individual meets the definition of a *vulnerable youth*, such a determination is all that is necessary to determine that the person is an *independent student* for the purposes of using only the student's income for determining eligibility for assistance.

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

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

The PHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an *institution of higher education* (see Exhibit 3-2).

### ***Parents***

#### **SFHA Policy**

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

## ***Person with Disabilities***

### **SFHA Policy**

The SFHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

## ***Veteran***

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

## ***Vulnerable Youth***

### **SFHA Policy**

A *vulnerable youth* is an individual who meets the U.S. Department of Education's definition of *independent student* in paragraphs (b), (c), or (h), as adopted in Section II of 81 Federal Register 64,932 (HUD Sept. 21, 2016):

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

## **Determining Student Eligibility**

If a student is applying for assistance on his/her own, apart from his/her parents, the PHA must determine whether the student is subject to the eligibility restrictions contained in 24 C.F.R. § 5.612. If the student is subject to those restrictions, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

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

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program;
- Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section; and



- Follow the policies below, if applicable, in determining whether the student’s parents are income eligible for the program.

If the PHA determines that the student, the student’s parents (if applicable), or the student’s “family” is not eligible, the PHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.

### **Determining Parental Income Eligibility**

For any student who is subject to the 5.612 restrictions and who does not satisfy the definition of *independent student* in this section, the PHA will determine the income eligibility of the student’s parents as follows:

- If the student’s parents are married and living together, the PHA will obtain a joint income declaration and certification of joint income from the parents.
- If the student’s parent is widowed or single, the PHA will obtain an income declaration and certification of income from that parent.
- If the student’s parents are divorced or separated, the PHA will obtain an income declaration and certification of income from each parent.

If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, the PHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. The PHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

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

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

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

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the PHA, and those in which denial of assistance is optional for the PHA.

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

Denial of not placing the family's name on the waiting list.

Denying or withdrawing a voucher.

Not approving a request for tenancy or refusing to enter into a HAP contract.

Refusing to process a request for or to provide assistance under portability procedures  
assistance includes any of the following:

#### **Prohibited Reasons for Denial of Program Assistance [24 C.F.R. § 982.202(b), 24 C.F.R. § 5.2005(b)]**

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

- Age, disability, race, color, religion, sex, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program.
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA's jurisdiction under portability. (See Chapter 10.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock.
- Whether the family includes children.
- Whether a family decides to participate in a family self-sufficiency program.
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance. (See section 3-III.G.)

### **3-III.B. DENIAL OF ASSISTANCE**

*[24 C.F.R. § 982.553(a)]*

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

Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug

rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

*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 C.F.R. 5.100].

### **SFHA Policy**

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

The PHA 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.]

### **SFHA Policy**

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

The PHA 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.

### **SFHA Policy**

In determining reasonable cause, the SFHA 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 record of arrest(s) will not be used as the basis for the denial or proof that the applicant engaged in disqualifying criminal activity. An arrest must be substantiated by a supporting document of criminal activity.

Arrest records or police reports will not be used as the sole basis for denying admission. A conviction will be given more weight than an arrest. The PHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

Any household member has ever been convicted 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 sex offender registration program.

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

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

#### **SFHA Policy**

Discretionary reasons for denial of assistance outlined in 24 CFR 982.552 and 24 CFR 982.553 and further defined through policy in this Plan may not be applied to families referred for targeted assistance under the Veterans Assistance and Supportive Housing (VASH) program or the Family Unification Program (FUP).

#### **Criminal Activity [24 C.F.R. § 982.553]**

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

#### **SFHA Policy**

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three (3) years, the family will be denied assistance.

- *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 C.F.R. § 5.100.]
- Illegal possession and/or use of a firearm or aggravated assault weapon in violation of federal, state, or local criminal or civil laws.
- Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity. *Immediate vicinity* is defined by a quarter-mile radius of the premises.
- Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.
- Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the SFHA (including a SFHA employee or a SFHA contractor, subcontractor, or agent).
- Criminal sexual conduct, child molestation, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.
- Convicted of arson.  
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 three (3) years. A conviction for such activity will be given more weight than an arrest or an eviction.

In making its decision to deny assistance, the SFHA will consider the factors discussed in Section 3-III.E and 3-III.G (VAWA Prohibitions). Upon consideration of such factors, the SFHA has the discretion not to deny assistance.

An arrest must be substantiated by a supporting document of criminal activity. Arrest records or police reports will not be used as the sole basis for denying admission.

### **Previous Behavior in Assisted Housing [24 C.F.R. § 982.552(c)]**

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

In the event of the receipt of unfavorable information with respect to an applicant, the PHA 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 PHA 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.

Per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [FR Notice 12/29/14].

### **SFHA Policy**

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

- The family does not provide information that the SFHA or HUD determines is necessary in the administration of the program.
- Any PHA has ever involuntarily terminated assistance under the program for any member of the family.  
*Involuntarily terminated* means the family was removed from the program against their will. A family who voluntarily withdraws from the program by submitting a written request to the SFHA is not considered to have involuntarily removed from the program.
- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list(s).
- The family has a pattern of eviction from housing or termination from residential programs within the past three (3) years (considering relevant circumstances).
- The family owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program per SFHA records or as indicated in the HUD EIV Debts Owed module. This will include breach of the terms of a repayment agreement entered into with the PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list(s).

- Exception: Households subsidized through the SFHA that are converting from the traditional Low Income Public Housing (LIPH) subsidy to the Housing Choice Voucher (HCV) Program through Section 18 or the Rental Assistance Demonstration (RAD) Program through December 2021 will not be required to repay the full amount of debt owed to the SFHA prior to conversion.
- The family does not provide complete and true information to the SFHA. This includes if the family misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent.
- The family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program
- The family has engaged in or threatened violent or abusive behavior toward SFHA personnel:
- Abusive or violent behavior towards SFHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
- Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.
- In making its decision to deny assistance, the SFHA will consider the factors discussed in Section 3-III.E and 3-III.G. (VAWA Prohibitions).

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

#### **Screening for Eligibility**

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

#### **SFHA Policy**

The SFHA will perform criminal background checks through third party services for every adult household member. The SFHA may use the criminal records system of the City and County of San Francisco, the State of California, the NCIC, and other states and/or municipalities as well as local law enforcement to check for criminal history 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 SFHA may request a fingerprint card and will request information from the National Crime Information Center (NCIC) or the SFHA may obtain the information for a similar agency.

Fingerprint data results are to be accessed only by individuals with appropriate clearance, access approval or in a clearly identified need-to-know situation. The user of said information is to practice extreme discipline in handling and disclosing only the information necessary to execute the assignment. Rank, title and/or position do not qualify individuals as having “need-to know” status.

**SFHA Policy: RAD/PBV Programs**

The SFHA will perform or confirm criminal background checks through third party services for every adult household member.

PHAs 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 C.F.R. § 982.553(a)(2)(i)].

**SFHA Policy**

The SFHA 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.]

Additionally, the SFHA will 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.]

Should the SFHA’s screening process reveal that an applicant’s household includes an individual subject to state lifetime registered sex offender registration, the SFHA 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 within 90 calendar days of the SFHA’s request, the SFHA must deny admission to the family [Notice PIH 2012-28].

Where the PHA learns that a lifetime registered sex offender was admitted after June 25, 2001, the PHA must immediately pursue termination of assistance. [Notice PIH 2012-28.] If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the 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 C.F.R. § 5.903(f) and 5.905(d).]

**Screening for Suitability as a Tenant by Landlord [24 C.F.R. § 982.307]**

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

### **SFHA Policy**

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

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

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

The PHA may not disclose to the owner any confidential information provided to the PHA by the family as part of VAWA documentation, or in relation to any other VAWA related matter, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking unless the disclosure is requested or consented to in writing by the individual that provided the information in a time limited release. [24 C.F.R. § 5.2007(c)(2).]

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

### **Evidence [24 C.F.R. § 982.553(c)]**

#### **SFHA Policy**

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

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

### **Consideration of Circumstances [24 C.F.R. § 982.552(c)(2)]**

HUD authorizes the PHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandatory (see Section 3-III.B). Where the PHA has been made aware of a domestic violence, dating violence, sexual assault or stalking accusation, HUD requires the PHA to consider whether the relevant circumstances are based on, or a direct result of, the fact that the



applicant is the victim of domestic violence, dating violence, sexual assault, or stalking (see Section 3-III.G).

### **SFHA Policy**

The SFHA will consider the following facts and circumstances prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property.
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure to act.
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault, or stalking;
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future.
- While a record of arrest(s) will not be used as the basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the SFHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The SFHA 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 rehabilitation including but not limited to satisfying parole/probation, receiving education/training, participating in alcohol/drug treatment programs, letters of recommendation
- Evidence of applicant family's participation in social services or other appropriate counseling service programs and the availability of such 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 SFHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

### **Removal of a Family Member's Name from the Application**

The PHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 C.F.R. § 982.552(c)(2)(ii).]

#### **SFHA 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, stay as a guest, or reside in the assisted unit.

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

### **Reasonable Accommodation [24 C.F.R. § 982.552(c)(2)(iv)]**

If the family includes a person with disabilities, the PHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 C.F.R. Part 8. See Chapter 2 for a discussion of reasonable accommodation.

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

If the family is eligible for assistance, the PHA will notify the family in writing and schedule a tenant briefing, as discussed in Chapter 5.

If the PHA determines that a family is not eligible for the program for any reason, the family must be notified promptly. The notice must describe: (1) the reasons for which assistance has been denied, (2) the family's right to an informal review, and (3) the process for obtaining the informal review. [24 C.F.R. § 982.554 (a).] See Chapter 16, for informal review policies and procedures.

#### **SFHA Policy**

The family will be notified of a decision to deny assistance in writing within 30 calendar days of the determination.

If a PHA uses a criminal record or sex offender registration information obtained under 24 C.F.R. Part 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the PHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record. [24 C.F.R. §§ 5.903(f), 5.905(d).] The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements. [24 C.F.R. § 982.553(d).]

### **SFHA Policy**

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible, the SFHA 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 15 calendar days to dispute the accuracy and relevance of the information. If the family does not contact the SFHA to dispute the information within that 15 calendar day period, the SFHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

Notice requirements related to denying assistance 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.G.

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

The Violence against Women Act of 2013 (VAWA) and the HUD regulation at 24 C.F.R. § 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program “on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission.”

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

### **Examples of When Adverse Factors Might Be Direct Results of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking**

On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship. The following examples are provided to give PHAs and owners a sense of the many instances in which adverse factors might be the “direct result” of domestic violence, dating violence, sexual assault, or stalking. Please note that this list is neither exhaustive nor definitive.

**Poor credit history.** Depending on the circumstances, poor credit history may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to obtain credit, including credit cards for the perpetrator’s use.

- Using a victim's credit or debit card without permission, or forcing them to do so.
- Selling victims' personally identifying information to identity thieves.
- Running up debt on joint accounts.
- Obtaining loans/mortgages in a victim's name.
- Preventing a victim from obtaining and/or maintaining employment.
- Sabotaging work or employment opportunities by stalking or harassing a victim at the workplace, or causing a victim to lose their job by physically battering the victim prior to important meetings or interviews.
- Placing utilities or other bills in a victim's name and then refusing to pay.
- Forcing a victim to work without pay in a family business, or forcing them to turn their earnings over to the abuser.
- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking.
- Job loss or lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime.
- Hospitalization and medical bills the victim cannot pay or cannot pay along with other bills.

**Poor rental history.** Depending on the circumstances, poor rental history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Property damage;
- Noise complaints;
- Harassment;
- Trespassing;
- Threats;
- Criminal activity;
- Missed or late utility payments(s);
- Missed or late rental payment(s);
- Writing bad checks to the landlord; or
- Early lease termination and/or short lease terms.

**Criminal record.** Depending on the circumstances, a criminal record may be a direct result of domestic violence, dating violence, sexual assault, or stalking when the domestic violence, dating violence, sexual assault, or stalking results in, for example:

- Forcing a victim to write bad checks, misuse credit, or file fraudulent tax returns;
- Property damage;
- Theft;
- Disorderly conduct;
- Threats;

- Trespassing;
- Noise complaints;
- Family disturbance/trouble;
- 911 abuse;
- Public drunkenness;
- Drug activity (drug use and the selling of drugs);
- Crimes related to sex work;
- “Failure to protect” a child from a batterer’s violence and/or abuse;
- Crimes committed by a victim to defend themselves or in defense of third parties from domestic violence, dating violence, sexual assault, or stalking; or
- Human trafficking.

**Failure to pay rent.** Depending on the circumstances, temporary failure to pay rent may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when domestic violence, dating violence, sexual assault, or stalking results in, for example:

- The victim’s injury or temporary incapacitation;
- The arrest of the only wage-earning member of the household;
- Preventing the victim from obtaining and/or maintaining employment;
- Sabotaging work or employment opportunities by stalking or harassing the victim at the workplace;
- Causing the victim to lose the victim’s job by physically battering prior to important meetings or interviews;
- Placing utilities or other bills in the victim’s name and then refusing to pay;
- Forcing the victim to turn their earnings over to the abuser;
- Forcing the victim to work without pay in a family business;
- Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
- Losing wages or a job due to missing work to attend court hearings, seek counseling or medical care, or deal with other consequences of the crime can result in loss wages and unemployment; or
- Inability to pay bills after significant medical expenses resulting from the victim’s hospitalization.

## **Notification**

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

### **SFHA Policy**

When the SFHA makes a determination to deny admission to an applicant family, the SFHA will include in its notice of denial:

- A statement of the protection against denial provided by VAWA;
- A description of SFHA confidentiality requirements; and
- A request that an applicant wishing to claim this protection submit to the SFHA documentation meeting the specifications below with her or his request for an informal review. (See section 16-III.D.)

VAWA 2013 requires that the SFHA provide SFHA-specific form HUD-5380 notice of VAWA rights and certification form HUD-5382 to applicants upon denial of admission, admissions, and of termination of assistance. This notice must be translated in accordance with Executive Order 13166 and HUD guidelines.

### **Documentation**

#### ***Victim Documentation [24 C.F.R. § 5.2007]***

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking may be required to provide documentation demonstrating the connection between the abuse and the unfavorable history. The documentation may consist of any of the following:

- A statement signed by the victim using the HUD – approved certification form certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, sexual assault, or stalking. A victim must include the name of the perpetrator only if the name is known and safe to provide.
- A police, court or administrative record documenting the domestic violence, dating violence, sexual assault, or stalking
- 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; mental health professional or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under this subpart, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 C.F.R. 5.2003 (See [www.hud.gov](http://www.hud.gov) to find form 5382 in 14 languages.)

#### ***Time Frame for Submitting Documentation [42 U.S.C. § 14043e-11(c)(2)(A); 24 CFR 5.2007(a)(2)(i)]***

An individual who claims protection against adverse action based on an incident or incidents of

actual or threatened domestic violence, dating violence, sexual assault or stalking, and who is required by the PHA, or a S8 HCV owner or manager to provide verification, must provide such verification within 14 business days (i.e., 14 calendar days, excluding Saturdays, Sundays and federally-recognized holidays) after receipt of the request for verification. Failure to provide verification, in proper form within such time will result in loss of protection under VAWA and this policy against a proposed adverse action. [42 U.S.C. § 14043e-11(c)(2)(A).]

The applicant must submit the required documentation with her or his request for an informal review (see section 16-III.D) or must request an extension in writing at that time. If the applicant so requests, the SFHA will grant an extension of 15 calendar days or longer in special circumstances as reviewed by the SFHA, and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant the SFHA determines that the family is eligible for assistance, no informal review will be scheduled and the SFHA will proceed with admission of the applicant family.

### ***Conflicting Certification***

If the SFHA or S8 HCV owner or manager receives documentation with conflicting information, the SFHA, S8 HCV owner or manager may require an applicant or tenant to submit any of the above-mentioned third-party documentation. [42 U.S.C. § 14043e-11(c)(7).]

### **SFHA Confidentiality Requirements [24 C.F.R. § 5.2007(a)(1)(v)]**

All information provided to the SFHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such abuse, must be retained in strict confidence. This means that the SFHA (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 by the SFHA for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law 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 a written time-limited release; (b) required for use in an eviction proceeding; or (c) otherwise required by applicable law.

Disclosure may be used in an eviction procedure if it is related to whether the incident or incidents in question qualify as a serious or repeated violation of the lease, good cause to terminate assistance or tenancy or criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking; disclosure is otherwise required by law. [42 U.S.C. § 14043e-11(c)(4).]

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the SFHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

### ***Perpetrator Documentation***

### **SFHA 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 absent a custody order or visitation right being in place or certifying that the perpetrator will not be staying as a guest in the assisted unit.
- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

### **VAWA - VASH [PIH 2017-8]**

In HUD-Veterans Affairs Supportive Housing (HUD-VASH), when a veteran's family member is receiving protection as a victim of domestic violence, dating violence, sexual assault, or stalking, and the veteran is the perpetrator of such violence, the victim must continue to be assisted.

Upon termination of the perpetrator's HUD-VASH voucher due to the perpetrator's acts of domestic violence, dating violence, sexual assault, or stalking, the victim receiving protections under 24 CFR part 5, subpart L should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible veteran family. If a regular HCV is not available for the victim, the perpetrator must be terminated from assistance, and the victim will continue to utilize the HUD-VASH voucher. In the case of the victim utilizing the HUD-VASH voucher upon termination of the perpetrator, this HUD-VASH voucher must be issued to another eligible veteran family upon the voucher's turnover.

### **3-III.H. ADD HOUSEHOLD/FAMILY**

A family that has a pending add request at the time of the sole family members death or conversion from one program to another (RAD), will not be added to the family or household. The add request must have been processed and approved at the time of the sole family members death in order for the add applicant(s) to remain in the unit. The SFHA will consider requests where approval or processing is delayed due to SFHA error or delay.



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

### Person with Disabilities [24 C.F.R. § 5.403]

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

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

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

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. § 15002(8)], which defines developmental disability in functional terms as follows:

- **In General**

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

  - is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - is manifested before the individual attains age 22;
  - is likely to continue indefinitely;
  - 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
  - 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.
- **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.

- 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 C.F.R. § 8.3]**

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

1. Physical or mental impairment includes:
  - a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
  - b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
2. *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
3. Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
4. *Is regarded as having an impairment* means:
5. 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;
6. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
7. Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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

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

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

*Definition of “Institution of Higher Education” From 20 U.S.C. § 1001*

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

- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

*Definition of “Institution of Higher Education” From 20 U.S.C. § 1002*

- (a) Definition of institution of higher education for purposes of student assistance programs
  - (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
    - (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
    - (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
    - (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
  - (2) Institutions outside the United States
    - (A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—
      - (i) In the case of a graduate medical school located outside the United States—
        - (I) (aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

- (bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
- (II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or
  - (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.
- (B) Advisory panel
  - (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
  - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
  - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
    - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
- (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
- (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution’s courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution’s students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
  - (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree, or an associate’s degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor’s degree or an associate’s degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution’s management or

policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

- (B) The institution, the institution’s owner, or the institution’s chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution’s qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.
  - (b) Proprietary institution of higher education
- (1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—
  - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
  - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
  - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
  - (E) Has been in existence for at least 2 years; and
  - (F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.
- (2) Additional institutions. The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who

are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

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

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

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

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

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



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

### **INTRODUCTION**

When a family wishes to receive assistance under the HCV program, the family must submit an application that provides the PHA with the information needed to determine the family's eligibility. HUD requires the PHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the PHA must select families from the waiting list in accordance with HUD requirements and PHA policies as stated in the administrative plan and the annual plan.

The PHA is required to adopt clear policies and procedures for accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow these policies and procedures 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 PHA that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the PHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

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

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

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

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

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

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

This part describes the PHA policies for making applications available, accepting applications making preliminary determinations of eligibility, and the placement of applicants on the waiting list. This part also describes the PHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with Limited English Proficiency (LEP).

### **4-I.B. APPLYING FOR ASSISTANCE**

*[HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]*

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the PHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the PHA. The PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing and Debts Owed Form HUD – 52675 (signed by all adults), as part of the PHA's application.

#### **SFHA Policy**

Any family that wishes to receive HCV assist must apply for admission to the program. At the time of the application, the family must provide all of the information necessary to establish family eligibility.

The SFHA initially will require families to provide only the information needed to determine the family's placement on the waiting list(s). For families claiming a preference, the SFHA will verify the family's preference status by U.S. Post Office mail. If the family cannot verify their preference status, they will be returned to the waiting list(s) in a non-preference category. If the preference verification request letter is returned by the U.S. Post Office, the family will be removed from the waiting list(s).

Once the preference is verified, or if the SFHA is pulling families in a non-preference category from the waiting list(s), the family will be required to provide all of the information necessary to establish eligibility of assistance during a scheduled eligibility interview waiting list(s)

Except for HUD special admissions, targeted funding, and preference categories, the SFHA will only accept applications when the waiting list(s) is open. After the SFHA announces the opening of the waiting list(s), families may apply for assistance under the HCV program.

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

#### **Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13]**

The PHA must take steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with Limited

English Proficiency (LEP). The PHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the PHA must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

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

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

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

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

###### **SFHA Policy**

If the SFHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list(s). Where a family is determined to be ineligible, the SFHA will send written notification of the ineligibility determination within 120 calendar days of receiving a complete application or the closing date of the waiting list(s), whichever comes later. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

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

###### **SFHA Policy**

The SFHA will send written notification of the placement or non-placement of the application on the waiting list(s) within 120 calendar days of receiving the application or the closing of the waiting list(s), whichever comes later.

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

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

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

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

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

### **4-II.B. ORGANIZATION OF THE WAITING LIST**

*[24 CFR 982.204 and 205]*

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

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

- Applicant name;
- Family unit size;
- Date and time of application;
- Qualification for any local preference;
- Racial or ethnic designation of the head of household;
- Annual (gross) family income;
- Targeted program qualifications.

HUD requires the PHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality.

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program the PHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify.

#### **SFHA Policy**

The SFHA may merge the HCV waiting list with the Public Housing waiting list(s) in the event that the HCV waiting list is exhausted.

### **Project-Based/RAD Housing Assistance Waiting List(s):**

The San Francisco Housing Authority will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV/RAD/HOPE SF assistance.

In the event that a waiting list does not have a sufficient number of names to support filling vacancies, the SFHA may utilize the Public Housing waiting list to augment the PBV/RAD/HOPE SF waiting lists until such time that the list is replenished.

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

*[24 CFR 982.206]*

### **Closing the Waiting List**

A PHA is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance. Alternatively, the PHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

### **SFHA Policy**

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

The SFHA waiting list(s) will remain open to accept referrals/applications for the following while closed to general public:

- VASH referrals from the Veterans Administration
- San Francisco District Attorney referrals
- Public Housing Emergency Transfers as approved by the Executive Director or their designee
- RAD resident emergency referral provided by the Mayor's Office of Housing and Community Development
- Permanent Supportive Housing/Shelter referrals provided by the Department of Homelessness and Supportive Housing
- Residential Care Facilities for the Chronically Ill (RCFCI)/ Plus Housing referrals provided by Mayor's Office of Housing and Community Development
- San Francisco Human Services Agency Resource Family Program referrals provided by the Human Services Agency
- Mixed Families currently residing at SFHA managed HOPE SF sites: Sunnydale, Potrero or Alice Griffith
- Family Unification Program (FUP) referrals by the Human Services Agency

- Placement of Families that Require Relocation as Part of HOPE SF Revitalization
- Families with minor children living in SRO's
- Terminated due to insufficient funding
- Individual/Family on the Public Housing Waitlist
- City Garden Referrals

Where the SFHA has particular preferences or funding criteria that require a specific category of family, the SFHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

## **Reopening the Waiting List**

### **SFHA Policy**

The SFHA may open the waitlist for specific unit sizes when the list has been exhausted for that particular need. Under these circumstances, the Authority may open the waiting list for applicants on certain dates and times as described in this Policy or facilitate an application by lottery.

## **Noticing of Waitlist Opening**

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

### **SFHA Policy**

The SFHA will announce the reopening of the waiting list(s) at least 15 calendar 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 SFHA will give public notice by:

- Publishing the relevant information on the SFHA website
- Publishing a notice in The San Francisco Chronicle
- Publishing a notice in one or more minority-owned and foreign language newspapers
- Posting in the lobby of the SFHA office at 1815 Egbert Avenue, San Francisco, CA

In addition the SFHA may also provide public notice by doing the following:

- Radio and television stations in order to inform the visually impaired
- Notices circulated for posting at social service agencies, community centers and the Bay Area public housing agencies
- Posting at the RAD property and the offices of the agencies managing and providing services for the property

#### **4-II.D. FAMILY OUTREACH**

*[HCV GB, pp. 4-2 to 4-4]*

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

Because HUD requires the PHA to admit a specified percentage of extremely low-income families to the program (see Chapter 4, Part III), the SFHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

SFHA 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

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

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

##### **SFHA Policy**

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

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

##### **SFHA Policy**

While the family is on the waiting list(s), the family must immediately inform the PHA within 15 calendar 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 to the SFHA. The SFHA may accept Applicant Portal updates.

#### **4-II.F. UPDATING THE WAITING LIST**

*[24 CFR 982.204]*

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

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

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a PHA request for information or updates, and the PHA determines that the family did not respond because of the family member's disability, the PHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

##### **SFHA Policy**

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

To update the waiting list(s), the SFHA will send an update request via first class mail to each family on the waiting list(s) 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 SFHA 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(s) without further notice.

The family's response must be in writing to the SFHA and must be postmarked by the deadline stated on the update request form. The SFHA may also accept the family's response through the Applicant Portal at its discretion.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from all SFHA waiting list(s) without further notice. ( Applicable to the waitlist update notice only).

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 calendar 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(s) without further notice.

The family may request to be reinstated to the waiting list(s) within one year of the withdraw date in response to a reasonable accommodation request, or if the lack of response by the applicant was a result of SFHA error.

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

##### **SFHA Policy**

SFHA will remove applicants from the waiting list(s) upon request by the applicant. In such cases, no informal review is required.



If at any time an applicant family is on the waiting list, the SFHA determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list.

If a family is removed from the waiting list because the SFHA has determined the family is not eligible for assistance, 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 review regarding the SFHA's decision (see Chapter 16) [24 CFR 982.201(f)].

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

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

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

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

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

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

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

At its sole discretion, the SFHA may offer a HUD-VASH family that the Veterans Affairs Medical Center (VAMC) certifies no longer needs case management services continued housing choice voucher (HCV) assistance through one of its regular Housing Choice Vouchers (HCV) in order to free up the HUD-VASH voucher for another HUD-VASH eligible family. Under limited circumstances and when an HCV voucher is available, families leased up under a FUP family voucher may be transferred to the regular HCV program. FUP families may be transferred to the regular HCV program when there are no longer children in the household (e.g. children who turn 18 years old or are permanently removed from the home).

The SFHA may open its waitlist for:

- the victim of sexual violence;
- is a senior that has become disabled as a result of the physical and sexual assault and;
- has vacated or will have to vacate their housing as a result of the physical and sexual assault;
- the request is submitted not later than (6) months from the date of the crime;
- the victim is working with a third party service provider or the City and County of San Francisco to identify housing options; and

- a copy of the police report is provided to the SFHA.

In extenuating circumstances, after all of the above conditions have been met, the SFHA may, in its sole discretion, determine whether a tenant based voucher or PBV assistance will be issued.

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

HUD may award a PHA funding for a specified category of families on the waiting list. The PHA must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the PHA may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

#### **Regular HCV Funding**

Regular HCV funding may be used to assist any eligible family on the waiting list(s). Families are selected from the waiting list according to the policies provided in Section 4-III.C.

#### **Project-Based Sites**

Project-Based Waiting list(s) will be used to assist families interested in living in units assisted by a Project-Based Voucher (PBV) Housing Assistance Payments Contract. Families are selected in accordance with the policies provided in Section 4.III.C.

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

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

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

PHAs 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 PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by accepted data sources.

#### **SFHA Policy**

The SFHA has adopted local preferences. All preferences must be verified at the time of intake. If an applicant is unable to provide verification of their preference at the time of intake, the applicant will be placed back on the waiting list(s). All preferences are mutually exclusive except for the Veteran/Surviving Spouse of Veteran, which may be combined with any other preference. Applicants with an equal preference value will be selected based on the position number. The definitions of all preferences below are located in Exhibit 4-1.

### **4-III.C.2 PREFERENCES AND ORDER OF SELECTION**

The SFHA system of preferences will select families based on local preferences according to the date and time of application.[24 CFR 982.207(c)].

Families will be selected from the waiting list(s) based on the highest point preference followed by position of applications within the preference category. After all preferences have been exhausted, the SFHA will select current applicants based on their date and time of application.

If the SFHA does not have enough funding to assist the family at the top of the waiting list, it is not permitted to skip down the waiting list(s) to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list(s) [24 CFR 982.204(d) and (e)].

Families will be selected from the waiting list(s) based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the SFHA's hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the SFHA. Documentation will be maintained by the SFHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list(s) is not qualified or not interested in targeted funding, there will be a notation maintained so that the SFHA does not have to ask higher placed families each time targeted selections are made.

### **SFHA Policy**

The SFHA initially will require families to provide only the information needed to determine the family's placement on the waiting list(s). For families claiming a preference, the SFHA will verify the family's preference status by U.S. Post Office mail. If the family cannot verify their preference status, they will be returned to the waiting list(s) in a non-preference category. If the preference verification request letter is returned by the U.S. Post Office, the family will be removed from the waiting list(s).

Once the preference is verified, or if the SFHA is pulling families in a non-preference category from the waiting list(s), the family will be required to provide all of the information necessary to establish eligibility of assistance during a scheduled eligibility interview waiting list(s)

### **4-III.C.2.a HOUSING CHOICE VOUCHER WAITING LIST(S)**

The order of selection based on preferences from the Housing Choice Voucher Waiting list(s) is as follows:

#### ***Preferences for the Tenant Based HCV Waitlist:***

- Veteran/Surviving Spouse of Veteran (+1 point)
- Mainstream Voucher Preference (+ 7 points)
- Individual/Family on the Public Housing Waitlist (+8 points)
- FUP Targeted Funding (+6 points)
- Involuntary Displacement (5 points)

#### **4-III.C.2.b TENANT BASED HCV TARGETED FUNDING**

##### **SFHA Policy**

##### **Homeless Veterans Referred by the Department of Veterans Affairs – (VASH)**

This preference is specific to vouchers or units available at properties assisted by the Veterans Affairs Supportive Housing (HUD-VASH) funding. To qualify for this preference, the family must be referred as a homeless veteran by the Department of Veterans Affairs

##### **Families Referred by the San Francisco Human Services Agency – (FUP)**

This preference is specific to vouchers available based on funding received by HUD for the Family Unification Program (FUP). To qualify for this preference, the family must be referred as a qualified family by the San Francisco Human Services Agency.

##### **Families Referred by the San Francisco Human Services Agency – Non-Elderly Disabled (NED)**

This preference is specific to vouchers available based on funding received by HUD for Non-Elderly Disabled (NED) families who meet specified medical criteria. To qualify for this preference, the family must be referred by a designated partner agency and determined eligible for referral by the San Francisco Human Services Agency.

**Mainstream Voucher Preference:** This preference is specific for non-elderly persons with disabilities who are homeless per 24 C.F.R. 576.2 or transitioning out of institutional and other segregated settings or are at serious risk of institutionalization.

#### **4-III.C.2.c RAD PBV SITE BASED WAITING LIST(S)**

##### **SFHA Policy**

After all households with a Right-of-Return preference followed by those with an approved RAD Emergency Referral have been placed, applicants will be selected from site-based waiting list(s) based on the highest point preference allowed for that property followed by position of applications within the preference category. After all preferences have been exhausted, the SFHA will select current applicants based on their date and time of application.

The following represents the preference order of selection for each RAD PBV site based waiting list(s). (See Chapter 18 for details on RAD Applications, Waiting Lists, and the Tenant section for Referral):

Under certain circumstances for PBV/RAD/HOPE SF/Public Housing Replacement Units, the SFHA will select families according to the preferences set forth in the property's Tenant Selection Plan (TSP). If the property does not have a TSP or if the TSP is silent on selection preferences, the SFHA will select families in order of preference as described for the tenant-based voucher program in Section 4-III.C.

Where occupancy of PBV/RAD/HOPE SF properties or units is limited to the homeless, seniors, families with persons with disabilities, families needing supportive services, veterans, HOPWA or families needing assisted living, the SFHA will give preference to families that meet the specific requirements for occupancy.

Where the SFHA has determined that there are not enough applicants to fill anticipated vacancies in the RAD/PBV program, the SFHA will re-open the waiting list for specified bedroom sizes. Applicants will be placed on the waiting list by utilizing a random selection lottery process. SFHA will publicly announce the accepting of lottery applications and how many applications will be accepted. During this time, any family asking to be placed on the waiting list for the RAD/PBV program will be given the opportunity to complete a lottery application. Only one lottery ticket/application will be allowed per family and duplicate applications will be discarded. Applicants will also be given the procedure for submitting the lottery applications as well as the deadline for returning them. Applicants will be informed that lottery applications received postmarked after the deadline date will not be included in the lottery. The “drawing” will take place no later than 30 days from the closing of the lottery. SFHA will select the number of lottery applications that were specified in the advertisement from the “drawing.” The “drawing” will be monitored by an individual, organization or agency designated by SFHA.

Applicants whose names were drawn in the lottery will be notified by regular mail informing them of their placement on the waitlist. They will be organized on the waiting list by existing preference category for the RAD/PBV program followed by the date and time the lottery was drawn. Applicants whose names were not drawn will be notified by regular mail that they were not placed on the waitlist for which they intended to be placed through their application.

The SFHA will utilize the Coordinated Entry System via referral from the Department of Homelessness and Supportive Housing (DHS) for (1) Units converted from the Moderate Rehabilitation Program to the Rental Assistance Demonstration Program and (2) units formerly subsidized by the local operating Subsidy Program (LOSP) that are now under the Project Based Voucher (PBV) program. Once the SFHA has exhausted its site based waiting lists for HOPWA units, the SFHA will fill units from the Plus Housing list as referred by the Mayor's Office of Housing and Community Development (MOHCD) or DHS Coordinated Entry System.

***Local Rental Assistance Demonstration (RAD) Program Site-Based Preferences:***

- Veteran/ Surviving Spouse of Veteran (+1)
- Families with a Right to Return (16 points)
- RAD Emergency Referral (15 points)
- Residents of Residential Care Facilities for the Chronically Ill (RCFCI)/ Transitional Residential Care Facilities (TRCF) (14 points)
- Mixed Families currently residing at non-RAD units at HOPE SF sites (13 points)
- Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)
- Department of Homeless and Supportive Housing Referral (HSH) (7 points)
- Families with minor children living in SRO's with a referral from DBI (7 points)
- Involuntarily Displaced from San Francisco residence (5 points)

#### ***4-III.C.2.d PBV SITE BASED WAITING LIST(S)***

##### **SFHA Policy**

Families will be selected from site based waiting list(s) based on the highest point preference allowed for that property followed by position of applications within the preference category. After all preferences have been exhausted, the SFHA will select current applicants based on their date and time of application.

Where the SFHA has determined that there are not enough applicants to fill anticipated vacancies in the PBV program, the SFHA will re-open the waiting list for specified bedroom sizes. Applicants will be placed on the waiting list by utilizing a random selection lottery process. SFHA will publicly announce the accepting of lottery applications and how many applications will be accepted. During this time, any family asking to be placed on the waiting list for the PBV program will be given the opportunity to complete a lottery application. Only one lottery ticket/application will be allowed per family and duplicate applications will be discarded. Applicants will also be given the procedure for submitting the lottery applications as well as the deadline for returning them. Applicants will be informed that lottery applications received postmarked after the deadline date will not be included in the lottery. The “drawing” will take place no later than 30 days from the closing of the lottery. SFHA will select the number of lottery applications that were specified in the advertisement from the “drawing.” The “drawing” will be monitored by an individual, organization or agency designated by SFHA.

Applicants whose names were drawn in the lottery will be notified by regular mail informing them of their placement on the waitlist. They will be organized on the waiting list by existing preference category for the PBV program followed by the date and time the lottery was drawn. Applicants whose names were not drawn will be notified by regular mail that they were not placed on the waitlist for which they intended to be placed through their application.

Under certain circumstances for PBV/RAD/HOPE SF/Public Housing Replacement Units, the SFHA will select families according to the preferences set forth in the property’s Tenant Selection Plan (TSP). If the property does not have a TSP or if the TSP is silent on selection preferences, the SFHA will select families in order of preference as described for the project-based voucher program in Section 4-III.C.

Where occupancy of PBV/RAD/HOPE SF properties or units is limited to the homeless, seniors, families with persons with disabilities, families needing supportive services, veterans, HOPEWA or families needing assisted living, the SFHA will limit admission to families that meet the specific requirements for occupancy.

The SFHA will utilize the Coordinated Entry System via referral from the Department of Homelessness and Supportive Housing (DHS) for (1) Units converted from the Moderate Rehabilitation Program to the Rental Assistance Demonstration Program and (2) units formerly subsidized by the local operating Subsidy Program (LOSP) that are now under the Project Based Voucher (PBV) program. Once the SFHA has exhausted its

site based waiting lists for HOPWA units, the SFHA will fill units from the Plus Housing list as referred by the Mayor's Office of Housing and Community Development (MOHCD) or DSHS Coordinated Entry System.

The PBV preferences are listed below:

***Project Based Voucher Site-Based Preferences:***

Veteran/ Surviving Spouse of Veteran (+1)Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Involuntarily Displaced from San Francisco Residence (5 points)

***Dr. George W. Davis-Elderly 97 units Site-Based Preferences***

Veteran/Surviving Spouse (+1)  
Elderly aged 62+ Residents (First Right of Return) of Alice Griffith (16 points)  
Involuntarily Displaced from Hunters Point with Residential Certificate of Preference (COP) (11 points)  
Involuntarily Displaced from Western Addition with Residential Certificate of Preference (COP) (11 points)  
Rent Burdened or Assisted Housing Residents (8 points)  
Involuntarily Displaced (5 points)

***Dr. George W. Davis-Elderly/DPH 23 units Site-Based Preferences***

Veteran/Surviving Spouse (+1)  
Homeless Families Referred by the Department of Public Health (15 points)  
Involuntarily Displaced from Bayview with Residential Certificate of Preference (COP) (14 points)  
Involuntarily Displaced from Western Addition with Residential Certificate of Preference (COP) (13 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (12 points)  
Rent Burdened or Assisted Housing Residents (8 points)  
Involuntarily Displaced (5 points)

In accordance with the rules associated with the opening and closing of waitlists outlined above, the Authority will open the waitlist for the Dr. Davis Center for a total of up to 30 applicants with a COP preference issued by the Mayor's Office of Housing and Community Development.

***City Gardens***

Veteran/Surviving Spouse (+1)  
Families with minor children referred by the Authority to the San Francisco DSHS (15)  
Families with minor children referred to the Authority by DSHS after matches between SFHA and DSHS is exhausted (13)

In accordance with the rules associated with the opening and closing of waitlists outlined above, the Authority will first identify matches between the Authority’s waitlist and DSHS’s waitlist for referrals to City Gardens. After exhausting matches, the Authority will open the waitlist for City Gardens and accept referrals from the Coordinated Entry system of DSHS until the PBV units are fully occupied. Referrals after initial lease up of the building will prioritize those families with minor children who are both on the SFHA waiting list and DSHS Coordinated Entry List followed by referrals from the Coordinated Entry system of DSHS in instances where there is no match between the two lists.

*All HOPE SF Sites-On/Off Site*

***Hunters View (HOPE SF) Site-Based Preferences***

- Veteran/Surviving Spouse (+1)
- Families with a Right-to-Return (17 points)
- HOPE SF Construction (16 points)
- Families with a Right-to-Return [Expanded] preference (15 points)
- Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)
- Families with minor children living in a SRO (7 points)
- Involuntarily Displaced from San Francisco Residence (5 points)
- Families with a Right-to-Return [Expanded] preference (15 points)

***Alice Griffith (HOPE SF) Site-Based Preferences***

- Veteran/Surviving Spouse (+1)
- Families with a Right-to-Return (17 points)
- HOPE SF Construction (16 points)
- Families with a Right-to-Return [Expanded] preference (15 points)
- Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)
- Families with minor children living in a SRO (7 points)
- Involuntarily Displaced from San Francisco Residence (5 points)
- Families with a Right-to-Return [Expanded] preference (15 points)

***Potrero, Potrero Annex & Block X (HOPE SF) Site-Based Preferences***

- Veteran/Surviving Spouse (+1)
- Families with a Right-to-Return (17 points)
- HOPE SF Construction (16 points)
- Families with a Right-to-Return [Expanded] preference (15 points)
  
- Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)
- Families with minor children living in a SRO (7 points)
- Involuntarily Displaced from San Francisco Residence (5 points)
- Families with a Right-to-Return [Expanded] preference (15 points)



***Casala (Sunnydale, Block Q) (HOPE SF) Site-Based Preferences***

Veteran/Surviving Spouse (+1)  
Families with a Right-to-Return (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***Natalie Gubb Commons (Transbay 7 Site) -Based Preferences***

Veteran/Surviving Spouse (+1)  
Families (First Right-to-Return) of Sunnydale (17 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced from Hunters Point with Residential Certificate of Preference (11 points)  
Involuntarily Displaced from Western Addition with Residential Certificate of Preference (11 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***290 Malosi (Sunnydale, Block 6 (HOPE SF) Site-Based Preferences***

Veteran/Surviving Spouse (+1)  
Families with a Right-to-Return to Sunnydale (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***88 Broadway Site-Based Preferences***

Veteran/Surviving Spouse (+1)  
Families with a Right-to-Return of Potrero Terrace & Annex (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***2828 16<sup>th</sup> Street (Formerly 1990 Folsom)***

Veteran/Surviving Spouse (+1)

Families with a Right-to-Return of Potrero Terrace & Annex (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***490 South Van Ness Site-Based Preferences***

Veteran/Surviving Spouse (+1)  
Families with a Right-to-Return of Potrero Terrace & Annex (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***555 Larkin (Formerly 500 Turk) Site-Based Preferences***

Veteran/Surviving Spouse (+1)  
Families with a Right-to-Return of Potrero Terrace & Annex (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***Mission Bay South 6 West Site (691 China Basin)-Based Preferences***

Veteran/Surviving Spouse (+1)  
Families with a Right-to-Return of Sunnydale (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

***Sister Lillian Murphy Community***

Veteran/Surviving Spouse (+1)  
Families with a Right-to-Return of Sunnydale (17 points)  
HOPE SF Construction (16 points)  
Families with a Right-to-Return [Expanded] preference (15 points)  
Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)  
Families with minor children living in a SRO (7 points)  
Involuntarily Displaced from San Francisco Residence (5 points)  
Families with a Right-to-Return [Expanded] preference (15 points)

### **Balboa Upper Yard**

Veteran/Surviving Spouse (+1)

Families with a Right-to-Return of Potrero Terrace & Annex (17 points)

HOPE SF Construction (16 points)

Families with a Right-to-Return [Expanded] preference (15 points)

Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)

Families with minor children living in a SRO (7 points)

Involuntarily Displaced from San Francisco Residence (5 points)

Families with a Right-to-Return [Expanded] preference (15 points)

### **4840 Mission Street**

Veteran/Surviving Spouse (+1)

Families with a Right-to-Return of Potrero Terrace & Annex (17 points)

HOPE SF Construction (16 points)

Families with a Right-to-Return [Expanded] preference (15 points)

Involuntarily Displaced with Residential Certificate of Preference (COP) (11 points)

Families with minor children living in a SRO (7 points)

Involuntarily Displaced from San Francisco Residence (5 points)

Families with a Right-to-Return [Expanded] preference (15 points)

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

HUD requires that extremely low-income (ELI) families make up at least 75 percent of the families admitted to the HCV program during the PHA'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. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low-income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

### **SFHA Policy**

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

### **4-III.D. NOTIFICATION OF SELECTION**

When a family has been selected from the waiting list, the PHA must notify the family. [24 CFR 982.554(a)].

### **SFHA Policy**

The SFHA 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
- All documents that must be provided at the interview, including information about what constitutes acceptable documentation.
- Documents that must be provided at the interview to document eligibility for a preference, if applicable. Families who reported a preference must verify the preference. Verification methods include verification of family status from homeless service agencies and verification of family status from non-profit agencies.

If the appointment notice is returned by the post office with no forwarding address, the applicant will be withdrawn from the waitlist for which the notice was sent. A notice of withdrawal (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address. The family may request an informal review resulting from the removal of the waiting list(s). 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 may request to be reinstated to the waiting list(s) within one year of the withdraw date in response to a reasonable accommodation request, or if the lack of response by the applicant was a result of SFHA error

### **SELECTION FROM PBV/RAD/HOPE SF WAITLISTS**

If an appointment letter is returned to the SFHA with no forwarding address, the family will be removed from the waiting list.

If the applicant is selected from another PBV/RAD/ HOPE SF waitlist(s) and the SFHA has not received a Pre-application Update Form or other form of notification of a new/alternate address, the applicant will be sent a Notice of Proposed Withdrawal and request to update their contact information within 15 calendar days of the date of the notice. Failure to provide new contact information or respond to the notice will result in the applicant being withdrawn from all waitlist within the same program.

If the applicant responds to the Notice of Proposed Withdrawal within 15 days, the SFHA will not remove the applicant from the proposed waitlist (s). The applicant will be the waitlist for future selection.

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

HUD recommends that the PHA obtain the information and documentation needed to make an eligibility determination through a face-to-face interview with a PHA representative [HCV GB, pg. 4-16]. 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 PHA 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 PHA [Notice PIH 2012-10].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

### **SFHA Policy**

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

If the family is claiming a waiting list preference, the family must provide documentation to verify their eligibility for a preference. If the family is verified as eligible for the preference, SFHA will proceed with the interview. If SFHA 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 their updated preference ranking.

The head of household and all adult members must attend the interview.

The interview will be conducted only if the head of household and all adult members provide 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.

Household members not previously declared on the application, may be added in accordance with section 3-I.B. of this Administrative Plan.

Verification of information pertaining to adult members will not begin until all release forms are submitted to the SFHA.

The head of household and all adult members must provide 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 at the time of the interview, they will be required to provide it within 10 calendar days.

Pending disclosure and documentation of social security numbers, the SFHA will allow the family to retain its place on the waiting list(s) for 90 days. If not all household members have disclosed their SSNs at the next time the SFHA is issuing vouchers, the SFHA will issue a voucher to the next eligible applicant family on the waiting list(s).

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, the SFHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 15 calendar days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of 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 SFHA will provide translation services in accordance with the SFHA's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact the SFHA in advance of the interview to schedule a new appointment. A notice of denial will be issued in accordance with policies contained in Chapter 3.

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

The PHA must verify all information provided by the family (see Chapter 7). Based on verified information, the PHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted funding admission, or selection preference that affected the order in which the family was selected from the waiting list.

##### **SFHA Policy**

If the SFHA determines that the family is ineligible, the SFHA will send written notification of the ineligibility determination within 15 calendar days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list(s) (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list(s) ('original' for purposes of the waiting list(s) is defined as the place the participant would have been had s/he not had any preferences or advantages at the time of eligibility determination). The SFHA will notify the family in writing that it has been returned to the waiting list(s), and will specify the reasons for it.

If the SFHA determines that the family is eligible to receive assistance, the SFHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

**EXHIBIT 4-I - Definitions of Preferences in alphabetical order:**

**Displaced Tenant Housing Preference:** In 2013, the Ellis Act Displacement Emergency Assistance Ordinance created a new preference in all City funded affordable housing programs for tenants who are displaced by an Ellis Act eviction. In 2015, the Board of Supervisors expanded the program to include tenants displaced by Owner Move In (OMI) evictions. In 2016, the program expanded further to include tenants displaced by fire. The Mayor's Office of Housing and Community Development's Displaced Tenant Housing Preference (DTHP) Program implements this legislation.

**District Attorney Referrals (Witness Relocation Preference):** Subject to availability of funding, up to 20 vouchers will be set-aside for issuance to participants in the Witness Relocation and Protection (WRAP) Program. The SFHA in cooperation with the San Francisco District Attorney's Office (DA) and the San Francisco Police Department (SFPD) has established a set-aside in the Housing Choice Voucher Program to assist witnesses of violent crimes who are being assisted by the Witness Relocation and Assistance Program (WRAP) in exchange for testimony leading to the conviction of the violent criminal(s) arrested in connection with the witnessed crime.

Strict guidelines must be met to ensure continued assistance for WRAP participants. In order for WRAP families to be eligible for assistance, the following conditions must be met: (1) The witness MUST testify in all trials held for the alleged crime. Eligibility for the WRAP must be initiated by the SFDA's Office who must present credible evidence, of the danger or of retaliatory violence to the family, to the SFHA; (2) All family members MUST NOT violate any conditions or responsibilities of the WRAP; (3) All household members MUST agree to move out of the City and County of San Francisco; (4) The Relocating family must be in good standing with the SFHA and not owe any balance for rent or unpaid tenant damages within the last three years per SFHA records or as indicated in the HUD EIV Debts Owed module; (5) All family members MUST NOT return to the City and County of San Francisco while assisted under the Voucher Program as a participant of the WRAP unless required by the SFDA's office or the SFPD; (6) The family MUST cooperate with all requirements of the Section 8 Program and the —receiving housing authority's policies and procedures; and (7) If the family reveals the location of its new unit or their status in the California WRAP, the Voucher, at the discretion of the initial or the receiving Public Housing Agency (—PHA) may be forfeited. Circumstances will be reviewed on a case by case basis.

**Families with a Right-of-Return:** Families temporarily relocated by the SFHA due to RAD or HOPE SF or exercising their right-to-return to their property and have the highest priority and preference over any family on the site-based waiting list(s). [Board Resolution #5390]

**Families with a Right-to Return [Expanded]:** After Families with a Right of Return have exercised their right to return to their property, Families with a Right-to-Return [Expanded] have the next highest priority and preference over any family on the site-based waiting list(s). Families with a Right-to-Return [Expanded] formerly lived at the specific HOPE SF site to which they are applying and can document their former residency, as qualified and referred by the Mayor's Office of Housing and Community Development. [SF Administrative Code section 39.2]

**Families with minor children living in a Single Room Occupancy Unit referred by the Department of Building Inspection:** Families with minor children living in a Single Room Occupancy Unit referred by the Department of Building Inspection is a preference listed in all four HOPE SF site based waiting lists.

**Families Referred by the San Francisco Human Services Agency – (FUP):** Families who have been separated and cannot be united because of housing barriers will also receive a preference. This preference is specific to vouchers available based on funding received by HUD for the Family Unification Program (FUP) or subject to tenant based voucher availability. To qualify for this preference, the family must be referred as a qualified family by the San Francisco Human Services Agency.

**Families with minor children referred by the Authority to the San Francisco Department of Homelessness and Supportive Services (DHS):** The SFHA and DHS will fill the HOMEKEY PBV units at "City Gardens" in accordance with the DHS current plan for buildings with apartments with multiple bedrooms, which prioritizes families with minor children under 18 years old who are currently homeless in shelters, sleeping in cars or places not meant for human habitation. At initial lease up of the building, the SFHA and DHS will first occupy PBV units at City Gardens with families with minor children who are both on the SFHA waiting list and DHS Coordinated Entry List. After matches are identified and referred to with units remaining vacant, the Authority will then accept referrals from the Coordinated Entry system of DHS until the PBV units are fully occupied. Referrals after initial lease up of the building will prioritize those families with minor children who are both on the SFHA waiting list and DHS Coordinated Entry List followed by referrals from the Coordinated Entry system of DHS in instances where there is no match between the two lists.

**HOPE SF Construction-Placement of Families that Require Relocation as Part of HOPE SF Construction:** The SFHA will offer a preference to any eligible household in good standing that voluntarily chooses permanent relocation to a Replacement Unit as defined by Chapter 39 of the City of San Francisco Administrative Code, at another HOPE SF property where the household does not presently reside. The HOPE SF properties are Hunters View, Alice Griffith, Potrero and Potrero Annex, Sunnyside and Velasco or new construction projects with HOPE SF approved services. The household family must be legally living at a HOPE SF Project in Good Standing (see definition in Chapter 3) and their unit must be scheduled for demolition and/or construction.

**Involuntarily Displaced with Residential Certificate of Preference (COP):** Certificate of Preference is a document issued by the former San Francisco Redevelopment Agency, now the Office of Community Investment (OCI) to displaced residents and businesses in the 1960s, when the Agency was implementing its federally-funded urban renewal program. MOHCD now administers this program. This Certificate gives such households preferential consideration for MOHCD-funded housing developments and former San Francisco Redevelopment Agency funded housing developments. Certificates of Preference were issued to households that were displaced by Redevelopment Agency activity in the 1960's and early 1970's, specifically in the Western Addition and in Hunters Point. A maximum of 30 COP preferences will be set aside in an effort fill vacancy's in the Dr. Davis building. This is distinct from the other preferences listed above within this section.



**Involuntary Displacement:** An applicant is or will be considered involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions: (1) *Natural Disaster:* A disaster such as a fire, flood or earthquake that resulted in the inhabitability of the applicant's unit; (2) *Domestic Violence, Dating Violence, Sexual Assault, and Stalking:* An applicant who has vacated due to actual or threatened domestic violence, dating violence, sexual assault or stalking directed against the applicant or one or more members of the applicant's family by a spouse or other household member, who lives in housing with an individual who engages in such violence; (3) *Victim of Hate Crime/Violent Crime:* Actual or threatened physical violence or intimidation directed against an applicant and his/her property that is based on the person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, that is documented by law enforcement agency stating that the applicant is in an immediate life-threatening situation and that an immediate transfer would minimize the problem; (4) *Government Action:* An action of a government agency related to code enforcement or public improvement or development; (5) *Landlord Action:* An action by a housing owner that results in an applicant's having to vacate his or her unit, where the reason for the owner's action was beyond the applicant's ability to control or prevent, and despite the applicant having met all previously imposed conditions of occupancy, and the action is other than a rent increase.

**Mainstream Voucher Preference:** This preference is specific for non-elderly persons with disabilities who are homeless per 24 C.F.R. 576.2 or transitioning out of institutional and other segregated settings or are at serious risk of institutionalization.

**Mixed Family:** A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. A mixed family who currently resides in Sunnydale, Potrero or Alice Griffith may accept a unit at a RAD site dependent on availability.

**Placement of Families that Require Relocation as Part of RAD Construction:** The SFHA will offer a preference to any family that must be relocated due to construction of any RAD property. The family must be living in a RAD Placement Project and their unit must be scheduled for rehabilitation and/or construction.

**RAD Emergency Referral:** This preference is specific and limited to Project-Based Voucher Assistance at a RAD property. To qualify for this preference, a family must be referred by the Mayor's Office of Housing and Community Development (MOHCD) or the SFHA Executive Director or their designee as a current RAD participant in a qualifying emergency situation as defined below:

*Personal Safety Emergency:* (1) A RAD participant and/or household member is a target of any physical harassment and/or extreme or repeated verbal harassment, intimidation, or coercion, which places the household member(s) in imminent danger; (2) A RAD participant and/or household member is a participant in a witness protection program; or (3) A RAD participant and/or household member is or has been a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse and reasonably believes there is a threat of imminent danger if not relocated.

*Uninhabitable Conditions:* The RAD participant's unit, building, or RAD property pose an immediate, verifiable threat to the life, health, or safety of the tenant or family members and cannot be remedied by internal transfer or temporary relocation of the tenant. Examples include: Destruction by fire or other disaster including, but not limited to, a flood, earthquake, or other natural or man-made disaster; or the existence of a major maintenance or defect problem that constitutes a serious danger to health and safety.

*Reasonable Accommodation:* (1) A RAD participant has a verifiable medical condition that requires an accommodation that cannot be reasonably provided in their existing development.

**Rent Burdened:** Households paying more than 50% of their income in rent.

**VAWA:** See Exhibit 4-2

**Veteran/Surviving Spouse of Veteran:** California Health and Safety Code section 34322.2(b) states that "priority shall be given with each preference category to families of veterans and servicemen." A veteran is someone who is recognized by a local, state or federal government agency as a veteran, and they receive or qualify for veteran's benefits. Therefore, veterans and families of veterans shall receive one (1) additional preference within each of SFHA's preference categories.

## **Exhibit 4-2 – VAWA Transfer Plan Set Aside**

Subject to availability of funding, 20 vouchers will be set-aside for participants who are victims of domestic violence, dating violence, sexual assault, or stalking as provided in HUD's regulations at 24 CFR part 5, subpart L. The SFHA 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), the SFHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to take their tenant based voucher and move to another location. For those tenants who are part of the Rental Assistance Demonstration Program, a participant may be referred pursuant to the RAD Referral Policy (see above). For participants who are in a project based unit and have not yet completed 13 months in the program, a tenant based voucher may be requested.

**Eligibility for Set Aside** 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 referral. (see Exhibit 16-3 of this Plan)..

A tenant requesting a voucher must expressly request the transfer in accordance with the procedures described in this plan. See section 16-IX for more information on VAWA.

### **SFHA Policy**

Tenants who are not in good standing may qualify for an emergency transfer if they meet the eligibility requirements in this section. A tenant is not in good standing if they owe a debt to the SFHA, are not current on a repayment agreement, have been served with a legal notice within the previous 60 days or have an Unlawful Detainer action that has been filed against their household. A tenant who has a debt with the SFHA and requires an immediate move due to safety reasons must enter into a repayment agreement with the SFHA prior to moving.

### **Emergency Move**

To request an emergency move, the Participant must notify their Landlord and the SFHA of their intention to move. The tenant shall submit a written notice of the move to both parties. The SFHA will provide reasonable accommodations to this policy for individuals with disabilities pursuant to Chapter 2. The tenant's written request for an emergency transfer shall 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 SFHA'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.

**Contact:** San Francisco victim advocacy group: La Casa de las Madres Safe Housing Project: 1815 Egbert Avenue, San Francisco CA 94124. (415) 715-3129 and (415) 715-3225

For the policy on making VAWA emergency transfer requests see Exhibit 16-3 of this Plan.

### **Confidentiality**

The SFHA will keep strictly confidential any information that the tenant submits in requesting an emergency transfer, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, and all information about the emergency transfer, unless the tenant gives the SFHA 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 strictly confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See Exhibit 16-1. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so by the PHA for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law 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 a written time-limited release, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

See the *Notice of Occupancy Rights under the Violence Against Women Act For All Tenants*, for more information about the SFHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

### **Emergency Move Timing and Availability**

All qualified families and individuals that qualify for an emergency referral under VAWA are guaranteed some form of assistance from the SFHA. For full details on the SFHA VAWA emergency referral process, see Exhibit 16-3.

The SFHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. If the SFHA is unable to immediately assist the Participant, the SFHA will assist the Participant in identifying other housing providers or programs who can assist. At the tenant's request, the SFHA 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. See Exhibit 16-3 for more on Emergency moves.

### **Safety and Security of Tenants**

Participant is urged to take all reasonable precautions to be safe.

Participants 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).

Participants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Participants 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>.

## CHAPTER 5: BRIEFINGS AND VOUCHER ISSUANCE

### INTRODUCTION

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

This chapter describes HUD regulations and PHA policies related to these topics in two parts:

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

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

## **PART I: BRIEFINGS AND FAMILY OBLIGATIONS**

### **5-I.A. OVERVIEW**

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

### **5-I.B. BRIEFING**

*[24 C.F.R. § 982.301]*

The SFHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, the SFHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

#### **SFHA Policy**

Briefings will be conducted in group meetings or individually with the family.

The head of household is required to attend the briefing. If the head of household is unable to attend, the SFHA may approve another adult family member to attend the briefing.

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

Briefings will be conducted in English. For limited English proficient (LEP) applicants, the SFHA will provide translation services in accordance with the SFHA's LEP plan (See Chapter 2).

### **Notification and Attendance**

#### **SFHA Policy**

Families determined to be eligible for assistance will be invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the location, date and time of the scheduled briefing.

If the notice is returned by the post office with no forwarding address, the applicant will be withdrawn and will not be placed back on the waiting list(s). If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. If the notice is again returned by the post office, the applicant will be withdrawn and will not be placed back on the waiting list(s).

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. The SFHA will notify the family of the date and time of the second

scheduled briefing. Applicants who fail to attend two scheduled briefings, without prior SFHA approval, will be denied assistance (see Chapter 3).

**Oral Briefing [24 C.F.R. § 982.301(a)]**

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the SFHA's jurisdiction;
- For families eligible under portability, an explanation of portability. The SFHA cannot discourage eligible families from moving under portability;
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

**Briefing Packet [24 C.F.R. § 982.301(b)]**

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

- The term of the voucher, and the SFHA's policies on any extensions or suspensions of the term. If the SFHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how the SFHA determines the payment standard for a family and how the SFHA determines total tenant payment for a family.
- An explanation of how the SFHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside the SFHA jurisdiction under portability procedures, the information must include an explanation of how portability works.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the SFHA Policy on providing information about families to prospective owners.
- The SFHA subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.



- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the SFHA.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which the SFHA may terminate assistance for a participant family because of family action or failure to act.
- SFHA informal hearing procedures including when the SFHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
- The advantages of areas that do not have a high concentration of low-income families.
- SFHA specific form HUD 5380 and the certification form HUD-5382

If the PHA is located in a metropolitan area, the following additional information must be included in the briefing packet in order to receive full points under SEMAP Indicator 7, Expanding Housing Opportunities [24 C.F.R. § 985.3(g)]:

- Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction
- Information about the characteristics of these areas including job opportunities, schools, transportation, and other services
- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs with names, addresses, and telephone numbers

### **Additional Items to Be Included in the Briefing Packet**

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2010-19].

#### **SFHA Policy**

The SFHA will provide the following additional materials in the briefing packet:

- Fair Market Rates and Payment Standards for City and County of San Francisco
- Utility Allowances Schedule
- Record of Family's Search for Housing
- 17 Facts You Should Know About Section 8 (optional)
- Portability Information (Contact Information, Instructions, Request Form)
- SFHA Informal Hearing Procedure
- Brochure: 'A Good Place to Live'

- Emergency Funds for Housing
- Available Housing Listings
- Expanding Housing Opportunities Information

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

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

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

#### **SFHA Policy**

Unless otherwise noted below, when family obligations require the family to respond to a request or notify the SFHA of a change, family must notify the SFHA of the request or change within 15 calendar days.

When a family is required to provide notice to the SFHA, the notice must be in writing.

### **Family Obligations [24 C.F.R. § 982.551]**

The family obligations of the voucher are listed as follows:

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

#### **SFHA Policy**

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

- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

### **SFHA Policy**

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

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, and destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. The criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated lease violations by the victim [24 C.F.R. § 5.2005(c)(1)].

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

### **SFHA Policy**

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

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

### **SFHA Policy**

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The PHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the PHA in writing if any family member no longer lives in the unit.
- If the PHA has given approval, a foster child or a live-in aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (sections I.K and I.M), and Chapter 11 (section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

### **SFHA Policy**

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the PHA when the family is absent from the unit.

### **SFHA Policy**

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the SFHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

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

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

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

### **5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE**

*[24 C.F.R. § 982.402]*

For each family, the SFHA determines the appropriate number of bedrooms under the SFHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when the SFHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman must be treated as a two-person family.
- Any live-in aide (approved by the SFHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the SFHA subsidy standards.

#### **SFHA Policy**

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

One (1) bedroom will be provided for the head-of-household and spouse or domestic partner or co-head and an additional bedroom for each two (2) persons within the household. Live-in aides may be allocated a separate bedroom (depending on the above subsidy standard).

Single person families will be issued a zero (0) bedroom “studio” voucher. However, should the family locate a one-bedroom unit, the SFHA reserves the right to upgrade to the family’s voucher to a one-bedroom subsidy.

Foster children will be included in determining unit size.

Children of the opposite sex, other than those under five (5) years old, may not be required to occupy the same bedroom or living/sleeping room. Children of opposite gender identification will be identified for subsidy/room determinations with the gender identified by the Head of Household.

The SFHA will reference the following chart in determining the appropriate voucher size for a family:

<b>Voucher Size</b>	<b>Persons in Household (Minimum – Maximum)</b>
SRO	1-1
Studio	1-2
1 Bedroom	1-4
2 Bedrooms	2-6
3 Bedrooms	3-8
4 Bedrooms	4-10
5 Bedrooms	5-12

### **5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS**

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

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

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

#### **SFHA Policy**

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

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source (e.g., doctor or health professional), unless the

disability and the disability-related request for accommodation is readily apparent or otherwise known. The family's continued need for an additional bedroom due to special medical equipment must be re-verified at annual reexamination.

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

## **5-II.D. VOUCHER ISSUANCE**

*[24 C.F.R. § 982.302]*

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, the PHA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

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

A voucher can be issued to an applicant family only after the PHA has determined that the family is eligible for the program based on verification of information received within the 60 days prior to issuance [24 C.F.R. § 982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

### **SFHA Policy**

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

The PHA should have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family at the top of the waiting list, the PHA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

### **SFHA Policy**

Prior to issuing any vouchers, the SFHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16. If funds are insufficient to house the family at the top of the waiting list(s), the SFHA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10]. Further, the SFHA may rescind the voucher and place the affected family back on the waiting list(s) based on their original date and time of application. Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

The SFHA will rotate voucher issuance as follows:

For every ten (10) tenant-based vouchers that are issued from the HCV waitlist, three (3) additional tenant-based vouchers will be issued to applicants off of the Project Based Voucher (PBV)/RAD to tenant-based voucher waitlist.

The SFHA maintains the discretion to issue vouchers in highly escalated emergency situations where there is an imminent threat to health and safety and as reviewed on a case-by-case basis wherein the request has been escalated to the Chief Executive Officer (CEO) or their designee for a final decision in accordance with the waitlist rules in the Administrative Plan.

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

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

### **Voucher Term [24 C.F.R. § 982.303]**

The initial term must be stated on the voucher [24 C.F.R. § 982.303(a)].

#### SFHA Policy

The initial voucher term will be 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the SFHA grants an extension.

### **Extensions of Voucher Term [24 C.F.R. § 982.303(b)]**

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

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

The family must be notified in writing of the PHA's decision to approve or deny an extension. The PHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 C.F.R. § 982.554(c)(4)].

#### SFHA Policy

The SFHA may grant one or more extensions upon written request from the family, but the initial term plus any SFHA-approved extension may never exceed 180 calendar days from the initial date of issuance except for a Reasonable Accommodation request.

Written requests for extensions must be received by the SFHA prior to the expiration date of the voucher. Extension requests of the initial voucher term (120 days) received prior to the expiration date will receive an automatic 60-day extension. Extension requests



receive to further extend the voucher term (beyond 180 days) will require a detailed statement of the family's efforts to locate a unit.

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

The SFHA will decide whether to approve or deny an extension request within 30 calendar days of the date the request is received, and will provide the family written notice of its decision.

### **Suspensions of Voucher Term [24 C.F.R. § 982.303(c)]**

The SFHA will suspend the term of the voucher upon the receipt of the Request for Tenancy Approval (RTA).

### **Expiration of Voucher Term**

Once a family's housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the PHA may require that the family reapply, or may place the family on the waiting list with a new application date but without requiring reapplication. Such a family does not become ineligible for the program on the grounds that it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

### **SFHA Policy**

If an applicant family's voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RTA), the SFHA will require the family to reapply for assistance.

Within 30 calendar days after the expiration of the voucher term or any extension, the SFHA may notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list(s).

## CHAPTER 6: INCOME AND SUBSIDY DETERMINATIONS

[24 C.F.R. Part 5, Subparts E and F; 24 C.F.R. § 982]

### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the PHA's subsidy. The PHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and PHA 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 PHA policies for calculating annual income are found in Part I.
- Part II: Adjusted Income. Once annual income has been established HUD regulations require the PHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and PHA policies for calculating adjusted income are found in Part II.
- Part III: Calculating Family Share and PHA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining PHA subsidy and required family payment.

## PART I: ANNUAL INCOME

### 6-I.A. OVERVIEW

The general regulatory definition of *annual income* shown below is from 24 C.F.R. § 5.609.

5.609 Annual income.

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

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph [5.609(c)].

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

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

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

### 6-I.B. HOUSEHOLD COMPOSITION AND INCOME

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

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

**SFHA 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***

**SFHA 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 PHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

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

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

**SFHA Policy**

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

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

#### **SFHA Policy**

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

Refer to 3-I.M. for definitions of Temporarily Absent Family Members

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

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

#### **SFHA Policy**

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

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualifies as an elderly person or a person with disabilities. Determination of family members as permanent or temporary will be made by the PHA once the absence exceeds 180 days and no family or medical verification of the status has been provided.

### ***Joint Custody of Dependents***

#### **SFHA Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the time.

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

### ***Caretakers for a Child***

#### **SFHA Policy**

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

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a caretaker has assumed responsibility for a child with the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 180 days. After the 180 days has elapsed, the caretaker must provide documentation that exhibits they have assumed the responsibility for the minors remaining in the unit. Documentation includes school enrollment forms, Cal Works documentation, custody forms, etc. Absence of third-party documentation within 180 days will result in voucher termination.
- (3) If a caretaker has assumed responsibility for a child without the involvement of a third party/responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. The caretaker has to provide documentation that exhibits that they have assumed responsibility for the remaining minors in the unit. If no documentation is provided in the initial 90 days, the voucher will be terminated.

Upon submission of documentation confirming to the caretakers role within the first 90 days, the caretaker will be screened for admissions. Upon approval of all screening criteria, and confirmation that the head of household has not returned, the caretaker will become a family member at or after the 180<sup>th</sup> day.

In the event the sole head of household is deceased, the caretaker may be added as a household member as soon as documentation assuming responsibility for the remaining minors remain in the unit has been provided and approved by the SFHA. A visitor is defined as someone temporarily visiting the unit up to 180 consecutive calendar days due to the death and abandonment of the unit and the remaining minor children. The definition of “visitor” within this paragraph is limited to this paragraphs circumstances.

Any debt owed by the head of household to the SFHA will be reviewed on a case by case basis. Debt to the SFHA will require full payment or entering into a repayment agreement at the discretion of the PHA prior to admissions.

- (4) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
- (5) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

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

The PHA 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 C.F.R. § 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

## **Basis of Annual Income Projection**

The PHA will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the PHA 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 C.F.R. § 5.609(d)]
- The PHA believes that past income is the best available indicator of expected future income [24 C.F.R. 5.609(d)]

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

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

### **SFHA Policy**

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

The SFHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If the PHA determines additional information is needed.

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

## **Known Changes in Income**

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

**Example:** An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows:  
( $\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}$ ) + ( $\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks}$ ).

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the PHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the PHA's policy 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 PHAs are not to use EIV quarterly wages to project annual income.

## **6-I.D. EARNED INCOME**

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

#### ***Wages and Related Compensation***

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 [24 C.F.R. § 5.609(b)(1)].

#### **SFHA Policy**

For persons who regularly receive bonuses or commissions, the SFHA will verify and then average amounts received for up to two years preceding admission or reexamination. If only a one-year history is available, the SFHA will use the prior year amounts. In either case the family may provide, and the SFHA 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 SFHA 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 C.F.R. § 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 C.F.R. § 5.609(c)(7)].

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

#### ***Temporary, Nonrecurring, or Sporadic Income [24 C.F.R. § 5.609(c)(9)]***

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

#### **SFHA 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.



### ***Earned Income of Minors***

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

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

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted [24 C.F.R. § 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 C.F.R. § 5.403], is not included in annual income [24 C.F.R. § 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

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

Income from some federal programs is specifically excluded from consideration as income [24 C.F.R. § 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. § 5044(g), 5058)
- Awards under the federal work-study program (20 U.S.C. § 1087uu)
- 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)

### ***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 C.F.R. § 5.609(c)(8)(v)].

### **SFHA Policy**

The SFHA defines *training program* as “a learning process with goals and objectives, 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 SFHA 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 SFHA 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 SFHA's interim reporting requirements.

### ***HUD-Funded Training Programs***

Amounts received under training programs funded in whole or in part by HUD [24 C.F.R. § 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.

### **SFHA 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 C.F.R. § 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee’s payroll check.

### ***Earned Income Disallowance***

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

## **6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES**

[24 C.F.R. § 5.617; Streamlining Final Rule (SFR), 81 Fed. Reg. 12,354 (Mar. 8, 2016)]

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 C.F.R. § 5.617 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 HCV program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

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

### **Calculation of the Disallowance**

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

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

### **Original Calculation Method (Prior to May 9, 2016)**

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is participating in the EID.

### ***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.

### **SFHA 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.

### ***Third 12 Month Phase-In***

During the third 12-month period, the tenant does not receive an exclusion and 100% of their employment income is counted towards household income.

### ***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.

### **SFHA Policy**

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

## **Revised Calculation Method (On or after May 9, 2016)**

### ***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.

### **SFHA 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***

### **SFHA Policy**

During the second 12-month exclusion period, the SFHA 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 begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

## **6-I.F. BUSINESS INCOME**

*[24 C.F.R. § 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 C.F.R. § 5.609(b)(2)].

### ***Business Expenses***

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

#### **SFHA Policy**

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

### ***Business Expansion***

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

#### **SFHA Policy**

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

### ***Capital Indebtedness***

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

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

#### **SFHA Policy**

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

#### **SFHA Policy**

If a business is co-owned with someone outside the subsidized household, the subsidized household 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 subsidized household must document the reasons for the difference.

## **6-I.G. ASSETS**

*[24 C.F.R. § 5.609(b)(3); 24 C.F.R. § 5.603(b)]*

### **Overview**

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

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

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

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

### **General Policies**

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

The PHA 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 PHA

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 PHA 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 PHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

### **SFHA Policy**

Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the SFHA to show why the asset income determination does not represent the family's anticipated asset income.

### ***Asset Valuation***

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

- The market value of an asset is its worth 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.

### **SFHA Policy**

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

### ***Lump-Sum Receipts***

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are 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 C.F.R. § 5.609(b)(3), Notice PIH 2012-29]***

When the family has net family assets in excess of \$5,000, the PHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income.

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

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

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

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement 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 C.F.R. § 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.”

#### **SFHA Policy**

If an asset is owned by more than one person and any household member has unrestricted access to the asset, the SFHA will count the full value of the asset. A household 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 SFHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the SFHA will prorate the asset evenly among all owners.

### ***Assets Disposed Of for Less than Fair Market Value [24 C.F.R. § 5.603(b)]***

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

#### ***Minimum Threshold***

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

#### **SFHA Policy**

The PHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$1,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual 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.de

### ***Separation or Divorce***



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.

### **SFHA Policy**

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***

### **SFHA Policy**

Families must sign a declaration form at initial certification and each 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 SFHA may verify the value of the assets disposed of if other information available to the SFHA does not appear to agree with the information reported by the family.

## **Types of Assets**

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

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

### **SFHA Policy**

In determining the value of a non-interest bearing account, the PHA will use the current balances from a bank statement dated within 60 days of the PHA's request.

### ***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.

### **SFHA Policy**

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

### ***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].

#### **SFHA Policy**

In determining the equity, the SFHA 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 SFHA 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 SFHA 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 C.F.R. § 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 C.F.R. § 5.603(b), Notice PIH 2012-3]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- 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 C.F.R. § 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

The PHA 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].

#### **SFHA Policy**

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

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 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.

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.

### **SFHA 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 SFHA 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 regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

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

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

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

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

### ***Retirement Accounts***

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

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

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

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

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

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

### ***Personal Property***

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

#### **SFHA Policy**

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

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 C.F.R. § 5.603(b)].

#### **SFHA Policy**

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

### **Life Insurance**

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

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

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in 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 C.F.R. § 5.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 C.F.R. § 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 C.F.R. § 5.609(c)(14)].

### **SFHA Policy**

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

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

The PHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

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

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 C.F.R. § 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].

### **SFHA Policy**

The SFHA 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 C.F.R. § 5.609(c)(16)].

### **SFHA Policy**

The Authority will exclude income of an individual who is an IHSS worker for an individual in the same household who is developmentally disabled. The household must provide a verification of the developmental disability from:

- A doctor;

- The Golden Gate Regional Center;
  - Any third party that exclusively serves clientele with developmental disabilities; or
  - Documentation from the school for children in a k-12 school.
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 C.F.R. § 5.609(c)(17)].
  - Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. § 9858q) [24 C.F.R. § 5.609(c)(17)].
  - Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 C.F.R. § 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 C.F.R. § 5.609(c)(14)].
  - Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 C.F.R. § 5.609(c)(14)].

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

Payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation, and severance pay, are counted as income [24 C.F.R. § 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 C.F.R. § 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.)

### **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 C.F.R. § 5.603(b)].

#### **Sanctions Resulting in the Reduction of Welfare Benefits [24 C.F.R. § 5.615]**

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

#### ***Covered Families***

The families covered by 24 C.F.R. § 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 C.F.R. § 5.615(b)].

### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the PHA must include in annual income "imputed" welfare income. The PHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

### ***Offsets***

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

## **6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES**

*[24 C.F.R. § 5.609(b)(7)]*

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

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

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

### **SFHA Policy**

The SFHA will count the full court-awarded amounts for alimony and child support unless the SFHA 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].

*Payment are not being made* is defined by a family not receiving any payment for more than 60 days. Partial payments received from the child enforcement agency during the last 60 days will be considered as alimony or child support being received and the average payments received will be considered.

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.

Independent arrangements for child support or alimony must be reported and will be counted based on actual amounts being received.

### ***Regular Contributions or Gifts***

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

### **SFHA Policy**

Examples of regular contributions include, but are not limited to: (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, beauty services, 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 SFHA. The SFHA will make every effort to seek three (3) current quotes from reliable internet sources for the cost of purchasing the item or service and counting the average.

For contributions that may vary from month to month (e.g., utility payments), the SFHA will include an average amount based upon past history of 2-12 months.

## **6-I.L. STUDENT FINANCIAL ASSISTANCE**

*[24 C.F.R. § 5.609(b)(9); Notice PIH 2015-21]*

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

### **Student Financial Assistance Included in Annual Income [24 C.F.R. § 5.609(b)(9); 71 Fed. Reg. 18,146 (Apr. 10, 2006); Notice PIH 2015-21]**

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

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

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 1965 HEA, (2) from a private source,



or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the PHA will use the definitions of *dependent child*, *institution of higher education*, and *parents* in section 3-II.E, along with the following definitions [71 Fed. Reg. 18,146, 18,148-50 (Apr. 10, 2006)]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].
  - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
  - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
  - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
  - Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
  - Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.

**Student Financial Assistance Excluded from Annual Income [24 C.F.R. § 5.609(c)(6)]**

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

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

## 6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 C.F.R. § 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 C.F.R. § 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 C.F.R. § 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 C.F.R. § 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 C.F.R. § 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 C.F.R. § 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 C.F.R. § 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 C.F.R. § 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 C.F.R. § 5.609(c)(17), 79 Fed. Reg. 28,938 (May 20, 2014) (notice)]. 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 sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. § 459e).
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. § 8624(f)).
  - (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. § 2931).
  - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts.

- (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04).
- (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. § 1774(b)).
- (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010.
- (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. §§ 1407-1408).
- (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs).
- (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. § 3056(f)).
- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.).
- (p) Payments received under 38 U.S.C. § 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida.
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. § 1721).
- (r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. § 9858q).
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. § 32(j)).
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. § 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 C.F.R. § 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. § 1437a(b)(3)(E) (Pub. L. 109–249) (see Section 6-I.L. for exceptions).

- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. § 12637(d)).
- (w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. § 10602).
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002.
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. § 117b(a)).
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations.

## PART II: ADJUSTED INCOME

### 6-II.A. OVERVIEW

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

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

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

### Anticipating Expenses

#### SFHA Policy

The SFHA 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 non-school periods and cyclical medical expenses), the SFHA 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 SFHA 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 SFHA may require the family to provide documentation of payments made in the preceding year.

### 6-II.B. DEPENDENT DEDUCTION

A deduction of \$480 is deducted from annual income for each dependent [24 C.F.R. § 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time

student. Foster children, foster adults, and live-in aides are never considered dependents [24 C.F.R. § 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 C.F.R. § 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 C.F.R. § 5.403].

**6-II.D. MEDICAL EXPENSES DEDUCTION**

[24 C.F.R. § 5.611(a)(3)(i)]

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

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

***Definition of Medical Expenses***

HUD regulations define *medical expenses* at 24 C.F.R. § 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.”

**SFHA 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.

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

	Medical insurance premiums or the cost of a health maintenance organization (HMO)
<p><b>Note:</b> This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.</p>	

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

**SFHA Policy**

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

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

**6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION**

*[24 C.F.R. § 5.603(b) and 24 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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.

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

### ***Eligible Disability Expenses***

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

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

### ***Eligible Auxiliary Apparatus***

#### **SFHA 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.

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

### ***Payments to Family Members***

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



### ***Necessary and Reasonable Expenses***

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

#### **SFHA Policy**

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

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

#### **SFHA Policy**

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

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

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

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

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

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, 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 [HCV GB, p. 5-29].

### **Qualifying for the Deduction**

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

#### **SFHA 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 SFHA 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***

#### **SFHA 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 SFHA.

### ***Furthering Education***

#### **SFHA 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***

#### **SFHA 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.

### ***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 C.F.R. § 5.603(b)].

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

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, 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 PHA 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].

### **SFHA 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 PHA 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.

### **Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. The PHA may not refuse to give a family the 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***

#### **SFHA 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 PHA 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.

**SFHA 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 PHA will use the schedule of child care costs from the local welfare agency. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

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

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

#### **TTP Formula [24 C.F.R. § 5.628]**

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

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

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

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

#### ***Welfare Rent [24 C.F.R. § 5.628]***

##### **SFHA Policy**

Welfare rent does not apply in this locality.

#### ***Minimum Rent [24 C.F.R. § 5.630]***

##### **SFHA Policy**

The minimum rent for this locality is \$25.

#### **Family Share [24 C.F.R. § 982.305(a)(5)]**

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the PHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the PHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

#### **PHA Subsidy [24 C.F.R. § 982.505(b)]**

The PHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section 6-III.C.)

### **Utility Reimbursement [24 C.F.R. § 982.514(b)-(c)]**

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

#### **SFHA Policy**

The SFHA will make all utility reimbursements to the family.

### **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT**

*[24 C.F.R. § 5.630]*

#### **SFHA Policy**

The SFHA will comply with the financial hardship rules described below.

#### **Overview**

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

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

#### **HUD-Defined Financial Hardship**

Financial hardship includes the following situations:

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

#### **SFHA 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.

#### **SFHA Policy**

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

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.

**SFHA 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 PHA.

**SFHA Policy**

The SFHA has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

***Determination of Hardship***

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

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

**SFHA Policy**

The SFHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

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

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

### **SFHA 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 PHA will make the determination of hardship within 30 calendar days.

### ***No Financial Hardship***

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

### **SFHA Policy**

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

### ***Temporary Hardship***

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

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

### **SFHA Policy**

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

### ***Long-Term Hardship***

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

### **SFHA 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.

### **6-III.C. APPLYING PAYMENT STANDARDS**

*[24 C.F.R. § 982.505; 24 C.F.R. § 982.503(b)]*

#### **Overview**

The PHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the PHA's payment standards. The establishment and revision of the PHA's payment standard schedule are covered in Chapter 16.

*Payment standard* is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 C.F.R. § 982.4(b)].

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

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

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

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

#### **Changes in Payment Standards**

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

#### ***Decreases***

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard. The PHA will determine the payment standard for the family as follows:

**Step 1:** At the first regular reexamination following the decrease in the payment standard, the PHA will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.

**Step 2:** The PHA will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by the PHA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The PHA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

**Step 3:** At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

### ***Increases***

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

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

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

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

### **Reasonable Accommodation**

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

## **6-III.D. APPLYING UTILITY ALLOWANCES**

*[24 C.F.R. § 982.517]*

### **Overview**

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using PHA subsidy standards, whichever is the lower of the two. See Chapter 5 for information on the PHA's subsidy standards.

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

### **Reasonable Accommodation**

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

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

### **Utility Allowance Revisions**

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

#### **SFHA Policy**

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

### **6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES**

[24 C.F.R. § 5.520]

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

## EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

### 24 C.F.R. § 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 C.F.R. 260.31 and

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

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

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

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

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

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

(9) For section 8 programs only and as provided in 24 C.F.R. 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 C.F.R.: 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) Non-recurrent, short-term benefits that:

- (i) Are designed to deal with a specific crisis situation or episode of need;
  - (ii) Are not intended to meet recurrent or ongoing needs; and
  - (iii) Will not extend beyond four months.
- (2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- (3) Supportive services such as child care and transportation provided to families who are employed;
- (4) Refundable earned income tax credits;
- (5) Contributions to, and distributions from, Individual Development Accounts;
- (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
- (7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

## EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

### 24 C.F.R. § 5.609

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

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8)
  - (i) Amounts received under training programs funded by HUD;
  - (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
  - (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
  - (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 C.F.R. 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See Section 6-I.M. for a list of benefits that qualify for this exclusion.]



<b>EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS</b>
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**24 C.F.R. § 5.603(b) Net Family Assets**

- (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.
- (3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- (4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

## EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

### 24 C.F.R. § 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) *Applicable programs.* The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 C.F.R. part 92); Housing Opportunities for Persons with AIDS (24 C.F.R. part 574); Supportive Housing Program (24 C.F.R. part 583); and the Housing Choice Voucher Program (24 C.F.R. part 982).

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

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

*Disallowance.* Exclusion from annual income.

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

*Qualified family.* A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

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

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

(c) *Disallowance of increase in annual income—*

(1) *Initial twelve month exclusion.* During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified

family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

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

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

(4) *Effect of changes on currently participating families.* Families eligible for and participating in the disallowance of earned income under this section prior to *May 9, 2016* will continue to be governed by this section in effect as it existed immediately prior to that date (see 24 C.F.R. parts 0 to 199, revised as of April 1, 2016).

*(d) Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

## EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

### 24 C.F.R. § 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

*(a) Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

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

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

*(c) Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

*(d) Review of PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the

welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

## **CHAPTER 7: VERIFICATION**

**[24 C.F.R. § 982.516, 24 C.F.R. § 982.551, 24 C.F.R. § 5.230, Notice PIH 2010-19]**

### **INTRODUCTION**

The PHA 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 PHA must not pass on the cost of verification to the family.

The PHA will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA 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 of the PHA.

## **PART I: GENERAL VERIFICATION REQUIREMENTS**

### **7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION**

*[24 C.F.R. §§ 982.516, 982.551; 24 C.F.R. § 5.230]*

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 C.F.R. § 982.551].

#### **Consent Forms**

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the PHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

#### **Penalties for Failing to Consent [24 C.F.R. § 5.232]**

If any family member who is required to sign a consent form fails to do so, the PHA will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with PHA procedures.

### **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

#### **HUD's Verification Hierarchy [Notice PIH 2010-19]**

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

In order of priority, the forms of verification that the PHA 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 participant).
- 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 Participant-Provided Documents**

### **SFHA Policy**

Any documents used for verification must be the original (not photocopies) and must be dated within 60 days of the date they are provided to the PHA. The documents must not be damaged, altered or in any way illegible.

The SFHA will accept documents dated up to 6 months before the date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the SFHA would accept the most recent report.

Print-outs from Web pages are considered original documents and must include the date printed

The SFHA reserves the right to reject any documentation provided the family and request information directly from third-party source. Any family self-certifications must be made in a format acceptable to the SFHA. The SFHA reserves the right to require certain statement or forms to be signed in the presence of an SFHA representative or a notary public.

### **File Documentation**

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

### **SFHA Policy**

The SFHA will document, in the family file, the following:

- Reported family annual income.
- Value of assets.
- Expenses related to deductions from annual income.
- Other factors influencing adjusted income.

When the PHA is unable to obtain third-party verification, the PHA will document in the family file the reason that third-party verification was not available [24 C.F.R. § 982.516(a)(2); Notice PIH 2010-19].

The HUD 50058 is considered the official rent calculation document.

### **7-I.C. UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the PHA.

See Chapter 6 for the PHA's policy on the use of UIV/EIV to project annual income.

### **Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)**

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertification of family composition and income in accordance with 24 C.F.R. § 5.236 and administrative guidance issued by HUD. The EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. The following policies apply to the use of HUD's EIV system.

#### ***EIV Income Reports***

The data shown on income reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

#### **SFHA Policy**

The SFHA will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6-I.C. and in this chapter.

Income 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 and calculate earned income, 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 reports will be retained in participant files with the applicable annual or interim reexamination documents.

When the SFHA determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

#### ***EIV Identity Verification***

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2012-10].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

### **SFHA Policy**

The SFHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The SFHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the SFHA determines that discrepancies exist due to SFHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

### **Upfront Income Verification Using Non-HUD Systems (Optional)**

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

### **SFHA Policy**

The SFHA will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:

- HUD's EIV System.
- The Work Number.

### **Using Up-Front Income Verification (UIV) to Calculate Income**

HUD strongly recommends the use of up-front income verification. UIV is "the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals" [Notice PIH 2004-01 Verification Guidance ("VG"), p. 7].

HUD allows PHAs to use UIV information in conjunction with family-provided documents to anticipate income [UIV]. SFHA procedures for determining annual income will include the use of UIV methods approved by HUD. If the UIV information is not available, SFHA will use with family-provided documents dated within the last 60 days of SFHA interview date.

SFHA will follow "HUD Guidelines for Projecting Annual Income When Up-Front Income

Verification (UIV) Data Is Available" in handling differences between UIV and family-provided income data. The guidelines depend on whether a difference is substantial or not. HUD defines *substantial difference* as a difference of \$200 or more per month.

**No Substantial Difference.** If UIV information for a particular income source differs from the information provided by a family by less than \$200 per month, SFHA will follow these guidelines:

If the UIV figure is less than the family's figure, SFHA will use the family's information.

If the UIV figure is more than the family's figure, SFHA will use the UIV data unless the family provides documentation of a change in circumstances to explain the discrepancy (e.g., a reduction in

work hours). Upon receipt of acceptable family-provided documentation of a change in circumstances, SFHA will use the family-provided information.

***Substantial Difference.*** If UIV information for a particular income source differs from the information provided by a family by \$200 or more per month, SFHA will follow these guidelines:

SFHA will request written third-party verification from the discrepant income source in accordance with 24 C.F.R. § 5.236(b)(3)(i).

When SFHA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), SFHA will review historical income data for patterns of employment, paid benefits, and receipt of other income.

SFHA will analyze all UIV, third-party, and family-provided data and attempt to resolve the income discrepancy.

SFHA will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

## **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 PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

### **Written Third-Party Verification [Notice PIH 2010-19]**

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

- Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.
- The PHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.
- The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

### **SFHA Policy**

Third-party documents provided by the family must be dated within 60 days of the SFHA request date.

If the SFHA determines that third-party documents provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation. The SFHA 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.

As verification of earned income, the SFHA will require the family to provide the two most current, consecutive pay stubs dated within 60 calendar days of the SFHA's request.

### **Written Third-Party Verification Form**

When upfront verification is not available and the family is unable to provide written third-party documents, the PHA 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.

- PHAs may mail, fax, or e-mail third-party written verification form requests to third-party sources.

#### **SFHA Policy**

The SFHA 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 SFHA.

### **Oral Third-Party Verification [Notice PIH 2010-19]**

- For third-party oral verification, PHAs 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., 15 calendar days.
- PHAs 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.

#### **SFHA Policy**

In collecting third-party oral verification, SFHA 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 SFHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

### **When Third-Party Verification is Not Required [Notice PIH 2010-19]**

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.

### **SFHA Policy**

If the family cannot provide original documents, the PHA 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***

HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

### **SFHA Policy**

The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

### ***Value of Assets and Asset Income [24 C.F.R. § 982.516(a)]***

For families with net assets totaling \$5,000 or less, the PHA may accept the family's declaration of asset value and anticipated asset income. However, the PHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter.

### **SFHA Policy**

For families with net assets totaling \$5,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration.

The PHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

## **7-I.E. SELF-CERTIFICATION**

When HUD requires third-party verification, self-certification or "tenant declaration," is used as a last resort when the PHA 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 PHA has adopted a policy to accept self-certification at annual recertification, when applicable.

- The PHA has adopted a policy to implement streamlined annual re-certifications for fixed sources of income (see Chapter 11).

When the PHA 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.

### **SFHA 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 SFHA.

The SFHA 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 SFHA 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 SFHA representative or SFHA notary public.

## Part II: VERIFYING FAMILY INFORMATION

### 7-II.A. VERIFICATION OF LEGAL IDENTITY

#### SFHA Policy

The SFHA 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 Vehicles 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, at the SFHA’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 SFHA and be signed in the presence of a SFHA representative or SFHA notary public.

If a family is unable to provide original verification of legal identity due to domestic violence, dating violence, sexual assault or stalking, the SFHA will grant the family an extension of at least 30 days in order to permit the family to obtain replacement identification and document the nexus between the Domestic Violence and the inability to comply with this requirement.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the SFHA has reason to doubt the identity of a person representing him or herself to be a participant.



## **7-II.B. SOCIAL SECURITY NUMBERS**

*[24 C.F.R. § 5.216, Notice PIH 2012-10]*

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN. If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

The PHA 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 PHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

### **SFHA Policy**

The SFHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the SFHA within 90 days.

If a family is unable to provide documentation of a valid SSN for any of the household members due to domestic violence, dating violence, sexual assault or stalking, the SFHA will grant the family an extension of at least 30 days in order to permit the family to obtain a replacement social security card and document the nexus between the Domestic Violence and the inability to comply with this requirement.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. The PHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

### **SFHA Policy**

The SFHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the PHA will terminate the individual's assistance.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

### **SFHA Policy**

The SFHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

### **SFHA Policy**

The SFHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously-assisted occupancy.

### **SFHA Policy**

The SFHA will verify each disclosed SSN by:

Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers and

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 SFHA will retain the documents in the Participant file. **VAWA Self-Petitioners**

VAWA self-petitioners are considered eligible for federal housing programs from the time they file a VAWA petition until a final determination is made by the Department of Homeland Security, including any appeal of a determination on the self-petition or legal permanent resident status. A VAWA self-petitioner's housing application and housing assistance cannot be delayed, denied, reduced, or terminated on the basis of his or her inability to produce a SSN. A VAWA self-petitioner that applies for housing assistance on his or her own or with household members who do not have SSNs can get a nonwork SSN from the Social Security Administration. To obtain the nonwork SSN, the VAWA self-petitioner will need a letter from the SFHA documenting a valid nonwork reason for the SSN and verifying specific information, including that the survivor meets all the requirements to receive the benefit or service, except for the SSN (see Exhibit 7-1 for acceptable VAWA self-petitioner documentation).

### **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.

#### **SFHA Policy**

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

If a family is unable to provide documentation for age for any of the household members due to domestic violence, dating violence, sexual assault or stalking, the SFHA will grant the family an extension of at least 30 days in order to permit the family to obtain a replacement documentation and document the nexus between the Domestic Violence and the inability to comply with this requirement.

Age must be verified only once during continuously-assisted occupancy.

### **7-II.D. FAMILY RELATIONSHIPS**

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

#### **SFHA 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***

### **SFHA Policy**

Certification by the head of household is normally sufficient verification. If the SFHA has reasonable doubts about a marital relationship, the SFHA will require the family to document the marriage.

A marriage certificate is required to verify that a couple is married.

### ***Separation or Divorce***

#### **SFHA Policy**

Certification by the head of household is normally sufficient verification. If the SFHA has reasonable doubts about a separation or divorce, the SFHA will require the family to provide documentation of the divorce or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

### ***Absence of Adult Member***

#### **SFHA 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).

If the adult member is absent from the household due to domestic violence, dating violence, sexual assault or stalking, the remaining family member can certify this through self-certification or form HUD – 5382.

### ***Foster Children and Foster Adults***

#### **SFHA 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**

### **General Requirements**

#### **SFHA Policy**

The SFHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co-head;

- The family reports child care expenses to enable a family member to further his or her education; or
- The family includes a student enrolled in an *institution of higher education*.

### **Restrictions on Assistance to Students Enrolled in Institutions of Higher Education**

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

#### **SFHA Policy**

In accordance with the verification hierarchy described in section 7-1.B, the SFHA will determine whether the student is exempt from the restrictions in 24 C.F.R. § 5.612 by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see section Exhibit 3-2).
- The student is at least 24 years old.
- The student is a veteran, as defined in section 3-II.E.
- The student is married.
- The student has at least one dependent child, as defined in section 3-II.E.
- The student is a person with disabilities, as defined in section 3-II.E, and was receiving assistance prior to November 30, 2005.

If the SFHA cannot verify at least one of these exemption criteria, the SFHA will conclude that the student is subject to the restrictions on assistance at 24 C.F.R. § 5.612. In addition to verifying the student's income eligibility, the SFHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from his/her parents (see below).

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

#### **SFHA Policy**

The SFHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- Either, reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E).
- Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent.

- Requesting and obtaining written certification directly from the student’s parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0.

## **7-II.F. DOCUMENTATION OF DISABILITY**

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person’s disability [24 C.F.R. § 100.202(c)]. The PHA may not inquire about a person’s diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the tenant file. Under no circumstances will the PHA request a participant’s medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services’ website at <http://www.hhs.gov/ocr/privacy/>.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

Inquiry into an applicant’s ability to meet the requirements of ownership or tenancy

Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability

Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability

Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance

Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

### **Family Members Receiving SSA Disability Benefits**

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

#### **SFHA Policy**

For family members claiming disability who receive disability benefits from the SSA, the SFHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD’s EIV System is not available, the SFHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the SFHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to the SFHA.

## **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 C.F.R. § 5.403.

### **SFHA Policy**

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## **7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS**

*[24 C.F.R. § 5.508]*

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants or VAWA self-petitioners (see 3-II.B). Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or a VAWA self-petitioner, 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 C.F.R. § 5.508(g)(5)].

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

### **SFHA Policy**

Family members will be required to provide a U.S. birth certificate, United States passport, Employment Authorization card, Temporary resident card, or other appropriate documentation, as provided by Section 214 of the Housing and Community Development Act of 1980, as amended.

If a family is unable to provide documentation of immigration status for any of the household members due to domestic violence, dating violence, sexual assault or stalking, the SFHA will grant the family an extension of at least 90 days in order to permit the family to obtain replacement documentation.

## **Eligible Immigrants and VAWA Self-Petitioners**

### ***Documents Required***

All family members claiming status as an eligible immigrant or VAWA self-petitioner must declare their status in the same manner as U.S. citizens and nationals.

PHAs must obtain verification of the declaration by requiring presentation of appropriate documentation, as provided by Section 214 of the Housing and Community Development Act of 1980, as amended.

### **SFHA Policy**

Family members who claim status as an eligible immigrant or VAWA self-petitioner will be required to provide Section 214 documents listed in 24 CFR Section 5.508(b)(1) and referred to in Section 5.510. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

### ***PHA 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 plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

The PHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

### **SFHA Policy**

The SFHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The SFHA will verify this preference using the SFHA's termination records.



## **PART III: VERIFYING INCOME AND ASSETS**

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

### **7-III.A. EARNED INCOME**

#### *Tips*

##### **SFHA 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*

##### **SFHA 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**

##### **SFHA 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 SFHA 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 SFHA 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 SFHA 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 SFHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

#### ***Social Security/SSI Benefits***

##### **SFHA Policy**

To verify the SS/SSI benefits of applicants, the SFHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the SFHA will help the applicant request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter they will be required to provide it to the SFHA.

To verify the SS/SSI benefits of participants, the SFHA will obtain information about social security/SSI benefits through the HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the SFHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the SFHA will help the participant request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter they will be required to provide it to the SFHA.

#### **Social Security/SSI Benefits Elderly Families and Disabled Families on Fixed Income**

##### **SFHA Policy**

1. SFHA may conduct a streamlined re-examination of income for elderly families and disabled families when 100 percent of the family's income consists of fixed income. The Agency will recalculate family incomes by applying any published cost of living adjustments to the previously verified income amount.
2. For purposes of this streamlined process, the term "fixed income" includes income from:
  - a. Social Security payments to include Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI);
  - b. Federal, State, local, and private pension plans; and
  - c. Other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic receipts that are of substantially the same amounts from year to year.

## 7-III.D. ALIMONY OR CHILD SUPPORT

### **SFHA Policy**

The methods the SFHA 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:

- 1) Copies of the receipts and/or payment stubs for the 60 days prior to SFHA request.
- 2) Third-party verification form from the state or local child support enforcement agency.
- 3) Third-party verification form from the person paying the support.
- 4) 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:

- 1) A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts.
- 2) 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.

## 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 PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

### **SFHA Policy**

The SFHA will verify the value of assets disposed of only if:

- The SFHA does not already have a reasonable estimation of its value from previously collected information; or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, 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 PHA will verify the value of this asset.

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

#### **SFHA 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 SFHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

### **7-III.G. RETIREMENT ACCOUNTS**

#### **SFHA Policy**

The SFHA 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 SFHA 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 SFHA 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 SFHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

### **7-III.H. INCOME FROM EXCLUDED SOURCES**

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 PHA 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].

PHAs 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, PHAs have the option of requiring additional verification.

For partially excluded income, the PHA **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).

#### **SFHA Policy**

The SFHA will accept the family's self-certification as verification of fully excluded income. The SFHA may request additional documentation if necessary to document the income source.

The SFHA 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**

#### **SFHA Policy**

The SFHA 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, and earnings are not being received by families claiming to have zero annual income.

### **7-III.J. STUDENT FINANCIAL ASSISTANCE**

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 C.F.R. § 5.609(b)(9); 71 Fed. Reg. 18,146 (Apr. 10, 2006) (notice)].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 C.F.R. § 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the PHA would not be able to determine whether or to what extent the income is to be excluded (see section 7-III.H).

### **SFHA Policy**

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 C.F.R. § 5.609(b)(9), the SFHA will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, the SFHA will request written verification of the student's tuition amount.

If the SFHA is unable to obtain third-party written verification of the requested information, the SFHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

### **7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with PHA policy [24 C.F.R. § 5.612; 71 Fed. Reg. 18,146 (Apr. 10, 2006)].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

### **SFHA Policy**

If the SFHA is required to determine the income eligibility of a student's parents, the SFHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The SFHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the SFHA. The required information must be submitted (postmarked) within 10 business days of the date of the SFHA's request or within any extended timeframe approved by the SFHA.

The SFHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the PHA 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 PHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person 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 Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The PHA must verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **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***

##### **SFHA Policy**

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

The SFHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The SFHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms, if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.

- Costs incurred in past years are counted only once.

### ***Eligible Household***

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The PHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility 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 PHA'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.

### **SFHA 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***

#### **SFHA Policy**

When anticipated costs are related to on-going payment of medical bills incurred in past years, the SFHA 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

### ***Expenses Paid by Credit Card***

#### **SFHA Policy**

Any charges made on a Credit Card will not be credited until the payment to the card has been made. Proof of payment may be provided by the bank.

## **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***

#### **SFHA Policy**

The SFHA will accept written third-party documents provided by the family.

If family-provided documents are not available, the SFHA 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***

#### **SFHA 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 verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the PHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

#### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### **Family Member(s) Permitted to Work**

The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

#### **SFHA Policy**

The SFHA 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.

#### **SFHA 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.

### **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 of this chapter. In addition, the PHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to 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 PHA 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.

### **SFHA Policy**

The family (and the care provider) will be required to certify that the child care expenses are not paid or reimbursed to the family from any source.

#### ***Pursuing an Eligible Activity***

The PHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

### **SFHA Policy**

#### ***Information to be Gathered***

The PHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

#### ***Seeking Work***

Whenever possible, the SFHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the SFHA 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 SFHA any reports provided to the other agency.

In the event third-party verification is not available, the SFHA will provide the family with a form on which the family member must record job search efforts. The SFHA will review this information at each subsequent reexamination for which this deduction is claimed.

#### ***Furthering Education***

The SFHA 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 SFHA 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.

### ***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.

#### **SFHA Policy**

The SFHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The SFHA 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 SFHA 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.

#### **SFHA Policy**

The actual costs the family incurs will be compared with the SFHA'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 SFHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS  
FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

**Elderly Noncitizens**

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

**All other Noncitizens**

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - “Admitted as a Refugee Pursuant to Section 207”
  - “Section 208” or “Asylum”
  - “Section 243(h)” or “Deportation stayed by Attorney General”
  - “Paroled Pursuant to Section 221 (d)(5) of the USCIS”

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.

- Form I-688B Employment Authorization Card annotated “Provision of Law 274a.12(11)” or “Provision of Law 274a.12”.

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

## **CHAPTER 8: HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS**

*[24 C.F.R. 982 Subpart I and 24 C.F.R. § 982.507]*

### **INTRODUCTION**

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the SFHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and SFHA-established requirements. All units must pass an HQS inspection prior to the approval of a lease and at least annually during the term of the contract.

HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and SFHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the SFHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the SFHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

## **PART I: PHYSICAL STANDARDS**

### **8-I.A. GENERAL HUD REQUIREMENTS**

#### **HUD Performance and Acceptability Standards**

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 C.F.R. § 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

#### **Tenant Preference Items**

HUD requires the SFHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the SFHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

#### **Modifications to Provide Accessibility**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit.

Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 C.F.R. § 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 C.F.R. §35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

### **SFHA Policy**

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the SFHA for review.

## **8-I.B. ADDITIONAL LOCAL REQUIREMENTS**

The SFHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 C.F.R. § 982.401(a)(4)].

### **Thermal Environment [HCV GB p.10-7]**

The SFHA must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

### **SFHA Policy**

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

## **Clarifications of HUD Requirements**

### **SFHA Policy**

As permitted by HUD, the SFHA has adopted the following specific requirements that elaborate on HUD standards.

#### ***Inspector Safety***

All pets must be restrained by a leash or cage prior to and during the inspection process. Restraining a pet in a bedroom without a cage or leash is not permitted. Failure to properly restrain a pet may result in the inspection not being performed



and classified as a participant “no-show”. “No-shows” will be handled in accordance with the polices contained in this Plan.

The SFHA may require any adult member present to provide a government issued identification prior to commencing the inspection process. Failure to provide a government issued identification may result in the inspection not being performed and classified as a participant or owner (initial inspections) “no-show”. “No-shows” will be handled in accordance with the polices contained in this Plan.

### ***Unit Description***

Where a unit cannot be readily identified by the SFHA or where more than one unit exists in a building, the SFHA may require that the unit be properly identified near the door (example: Unit A, B, 1, 2, Upper, Lower, etc.)

### ***Walls***

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

### ***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

### ***Doors***

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be operable without the use of a key.

Skeleton keys are not permitted in any exterior doors.

All gates and/or security doors that must be entered through in order to gain access to a unit must have a working and audible door bell.

### ***Floors***

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

### ***Sinks***

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

***Access to Unit***

“Through another unit” means that access to the unit is only possible by means of passage through another dwelling unit.

Functioning mail boxes are a requirement and any damaged or missing mail boxes will be a mandatory fail item.

Functioning door bells and call boxes are always required and any damaged or missing door bells or call boxes will be a mandatory fail item.

***Security***

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

***Site and Neighborhood***

The presence of an abandoned car on the premises of the assisted unit is a mandatory fail item.

***Condition of Stairs, Rails, and Porches***

In accordance with HQS Form, “unsound and hazardous” means: stairs, porches, balconies, or missing decks with severe structural defects; broken, rotting, or missing steps; absence of a handrail when there are extended lengths of steps (generally four or more consecutive steps); absence of or insecure railings around porch or balcony which is approximately 30 inches or more above the ground.

***Carbon Monoxide***

Carbon Monoxide detectors must be installed in accordance with California Building Codes and the California Senate Bill SB183, which require the following:

1. The current California Building Code and California Senate Bill, SB183 require listed carbon monoxide alarms to be installed in residential occupancies in which fuel-burning appliances are installed, and in dwelling units that have attached garages as outlined below.
2. All existing one and two family dwellings meeting the criteria in item 1 above are required to have carbon monoxide alarms installed by July 1, 2011.
3. Other existing residential buildings must be provided with carbon monoxide alarms in which fuel-burning appliances are installed, and in dwelling units that have attached garages when alterations, repairs, or additions requiring a building permit exceed one thousand dollars (\$1,000) are done.

4. Existing residential buildings with 3 units or more that meet the criteria in item 1 above are required to have carbon monoxide alarms installed by January 1, 2013.
5. For new construction, CO alarms must be hard-wired and interconnected.
6. CO alarms in existing buildings may be solely battery operated when repairs or alterations do not result in the removal of wall and ceiling finishes or there is no access by means of attic, basement or crawl space.
7. CO alarms are required to be installed in the following locations:
8. Outside of each sleeping room in the immediate vicinity of the sleeping room.
9. On every level of a dwelling unit, including basements.
10. In tourist hotels and motels only, on the ceiling of sleeping rooms with permanently installed fuel-burning appliances.
11. Multi-purpose alarms: CO alarms combined with smoke alarms shall be listed, meet the UL 2034 standard, and be California State Fire Marshal listed for smoke alarms.

#### ***Smoke Detectors***

Smoke detectors are required in accordance with California Building Code Section 310.9.1. Smoke detectors are required to be present inside every bedroom or room in which someone sleeps. An additional detector must be present in the area directly adjacent to the sleeping areas or hallway. One smoke detector must be present on every floor of the unit, including basements and attics. Crawl spaces and uninhabitable attics do not require a smoke detector. However, if the attic or crawl space has a furnace, water heater or any other appliance that could become a source of fire (gas, oil, electric) then a smoke alarm should be present.

Wherever more than one smoke alarm is required in new construction, the California Building Code requires that all smoke alarms shall be interconnected.

#### **Accessory Dwelling Units (ADU)**

An Accessory Dwelling Unit (ADU), also known as “in-law” or secondary units, is an additional, self-contained dwelling unit located within the same lot as an existing residential building.

Where required, ADU’s must present the SFHA inspector with a permit from the City allowing the ADU.

## **8-I.C. LIFE THREATENING CONDITIONS**

*[24 C.F.R. § 982.404(a)]*

HUD requires the SFHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life threatening conditions within 24 hours of SFHA notification.

### **SFHA Policy**

The following are considered life threatening conditions:

- Any property determined uninhabitable by a city agency, including uninhabitable units due to fire, flood, or other natural disasters.
- Any condition that jeopardizes the security of the unit (Example: missing or broken locks on exterior doors).
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling.
- Natural or LP gas or fuel oil leaks.
  - A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled.
- Any electrical problem or condition that could result in shock or fire.
  - A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed.
  - A light fixture is hanging by its wires.
  - A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit.
  - A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed.
  - An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses.
  - A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections.
  - Any nicks, abrasions, or fraying of the insulation that exposes conducting wire.
  - Exposed bare wires or electrical connections.

- Any condition that results in openings in electrical panels or electrical control device enclosures.
- Water leaking or ponding near any electrical device.
- Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.
- Utilities not in service, including no running hot water.
- Conditions that present the imminent possibility of injury.
- Obstacles that prevent safe entrance or exit from the unit.
  - Any components that affect the function of the fire escape are missing or damaged.
  - Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency.
  - The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.
- Absence of a functioning toilet in the unit.
- Inoperable or missing smoke detectors.
- Missing or inoperable carbon monoxide detector.
- Missing, damaged, discharged, overcharged, or expired fire extinguisher (where required).
- Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting.
  - The chimney or venting system on a fuel-fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting or gases.
  - A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside.
  - A fuel-fired space heater is not properly vented or lacks available combustion air.
  - A non-vented space heater is present.
  - Safety devices on a fuel-fired space heater are missing or damaged.

- The chimney or venting system on a fuel-fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gas.
- Deteriorating paint as defined at 24 C.F.R. § 35.110 in a unit built before 1978 that is to be occupied by a family with a child under six years of age if it would prevent the family from moving into the unit.

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family-caused life-threatening condition as required by the PHA, the PHA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the PHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

## **8-I.D. OWNER AND FAMILY RESPONSIBILITIES**

*[24 C.F.R. § 982.404]*

### **Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in a breach of the HQS. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

### **Owner Responsibilities**

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

### **SFHA Policy**

If an owner has more than 6 units that share a meter in the same building, then the owner may require the tenant to pay for the utility cost(s) for the shared meter utilities only if the owner provides a written plan to the Authority with the methodology in which the tenants in the building are charged for the utility. The methodology for utility charges must reflect a fair and equitable process that applies consistently between HCV tenants and all others. The SFHA has the sole discretion to determine whether the process is fair and equitable and to require it be included in the lease.

If an owner has less than six (6) units that share a meter in the same building then the owner will pay all the utility cost(s) and will not be allowed to place the cost(s) of the utilities on the tenant.

Owners are not permitted to keep storage within the assisted unit including, but not limited to: garage, parking space, attics, basements, or other storage areas designed to be utilized by for the occupants of the unit.

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

### **8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

*[24 C.F.R. § 35.1225; FR Notice 1/13/17]*

If the SFHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the SFHA must complete a risk assessment of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the SFHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 C.F.R. § 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the SFHA will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

### **8-I.F. VIOLATION OF HQS SPACE STANDARDS**

*[24 C.F.R. § 982.403]*

If the PHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

## PART II

### THE INSPECTION PROCESS

#### 8-II.A. OVERVIEW

[24 C.F.R. § 982.405]

##### Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual Inspections.* HUD requires the PHA to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the HQS.

##### Inspection of PHA-Owned Units [24 C.F.R. § 982.352(b)]

The PHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD, and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

##### Inspection Costs

The PHA may not charge the family for unit inspections or re-inspections [24 C.F.R. § 982.405(e)]. In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 C.F.R. § 982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for re-inspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the



time for repairs has elapsed and the deficiency has not been corrected. The owner may not pass the cost of a re-inspection fee to the family. Re-inspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

### **SFHA Policy**

The SFHA will not charge a fee for failed re-inspections.

### **Notice and Scheduling**

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 C.F.R. § 982.551(d)].

### **SFHA Policy**

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 24 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. In the case of a life threatening emergency, the SFHA will give as much notice as possible, given the nature of the emergency.

### **Owner and Family Inspection Attendance**

HUD permits the SFHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

When a family occupies the unit at the time of inspection an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the SFHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

Inspections postponed as reasonable accommodations for a tenant's disability will not be considered as missed inspections and will not be grounds for adverse action. Tenants may be entitled to special arrangements or inspections as reasonable accommodations for the tenant's disabilities; such special arrangements may include, but are not limited to, inspections conducted without the tenant's presence.

## **8-II.B. INITIAL HQS INSPECTION**

*[24 C.F.R. § 982.401(a)]*

### **Initial Inspections [FR Notice 1/18/17]**

The PHA may, but is not required to, approve assisted tenancy and start HAP if the unit fails HQS inspection, but only if the deficiencies identified are non-life-threatening. Further, the PHA may, but is not required to, authorize occupancy if a unit passed an alternative inspection in the last 24 months.

### **SFHA Policy**

The unit must pass the HQS inspection on or before the effective date of the HAP contract.

The SFHA will not rely on alternative inspections and will conduct an HQS inspection for each unit prior to executing a HAP contract with the owner.

### **Timing of Initial Inspections**

HHUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [24 C.F.R. § 982.305(b)(2)].

### **SFHA Policy**

The SFHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 30 calendar days of submission of the Request for Tenancy Approval (RTA).

### **Inspection Results and Re-inspections**

#### **SFHA Policy**

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the SFHA for good cause. The SFHA will re-inspect the unit within seven (7) calendar days of the date the owner notifies the SFHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any SFHA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the SFHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The SFHA may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval after the owner has made repairs, if they are unable to locate another suitable unit.

### **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

#### **SFHA Policy**

All utilities must be in service at initial inspection.

## **Appliances [Form HUD – 52580]**

### **SFHA Policy**

All appliances must be in place and in proper working condition during an initial inspection.

## **8-II.C. ANNUAL/BIENNIAL HQS INSPECTIONS**

*[24 C.F.R. § 982.405; parts 982 and 406]*

### **Use of Alternate Inspections**

#### **SFHA Policy**

Each unit under HAP contract must be inspected within 24 months of the last full HQS inspection.

The SFHA will accept the results of inspections performed by HUD or for other housing programs such as HOME or LIHTC, only if HCV units are included in the population of units forming the basis of the sample.

### **Scheduling the Inspection**

Each unit under HAP contract must be inspected within 24 months of the last full HQS inspection.

#### **SFHA Policy**

If an adult family member or the owner cannot be present on the scheduled date, the family should submit a written request to the SFHA to reschedule the inspection. The written request must be submitted at least three (3) days prior to the scheduled inspection date and should include the desired rescheduled date and the reasons for the rescheduling. The SFHA will make a reasonable effort to accommodate dates that fall within seven (7) calendar days of the originally-scheduled date. The SFHA may schedule an inspection more than seven (7) days after the original date for good cause.

If the family misses the first scheduled appointment without submitting a timely request for a new inspection date, the inspection will be considered a “fail/no show” and the SFHA will automatically schedule a second inspection. A second inspection may not be re-scheduled without good cause. If the family misses two scheduled inspections without SFHA approval, the SFHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family’s assistance in accordance with Chapter 12.

## **8-II.D. SPECIAL INSPECTIONS**

*[24 C.F.R. § 982.405(g); HCV GB, p. 10-30]*

If a participant or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of

Notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

### **SFHA Policy**

The SFHA may require that the complainant (owner or family) be present at the complaint inspection.

The SFHA will conduct complaint inspections related to emergency fail items within 24 hours of receipt of the telephone call, fax, or other SFHA notification. Emergency complaints received on Friday will be inspected on the next business day.

The SFHA will conduct complaint inspections related to non-emergency fail items within one 15 calendar days of receipt of the telephone call, fax, or other SFHA notification.

During a special inspection, the SFHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the SFHA may elect to conduct a full annual inspection.

## **8-II.E. QUALITY CONTROL INSPECTIONS**

*[24 C.F.R. § 982.405(b); HCV GB, p. 10-32]*

HUD requires a SFHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

## **8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the SFHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

### **SFHA Policy**

When life threatening conditions are identified, the SFHA will immediately notify both parties verbally in person or by telephone and/or in writing by door-hanger notice, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the SFHA's notice.

When failures that are not life threatening are identified, the SFHA will send the owner and the family a written notification of the inspection results within seven (7) calendar days of the inspection. The written notice will specify who is responsible for correcting

the violation, and the time frame within which the failure must be corrected. Generally not more than 30 calendar days will be allowed for the correction.

The notice of inspection results will inform the owner that if life threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any PHA-approved extension), the owner's HAP will be abated in accordance with SFHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with SFHA policy (see Chapter 12).

## **Extensions**

For conditions that are life-threatening, the SFHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the SFHA may grant an exception to the required time frames for correcting the violation, if the SFHA determines that an extension is appropriate [24 C.F.R. § 982.404].

### **SFHA Policy**

Extensions will be granted in cases where the SFHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case by case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions or the availability of materials or services in the market needed to make the repairs. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

## **Re-inspections**

### **SFHA Policy**

The SFHA will conduct a re-inspection immediately following the end of the corrective period, or any SFHA approved extension. Re-inspection of the unit is passed upon verification from the housing inspector through an on-site inspection or through certification by both the landlord & tenant that all corrections have been made to the unit. The inspector may accept an owner's certification, a receipt from a vendor, a photo of the repair, or tenant confirmation that required repairs are complete and then verify that action at the next on-site inspection.

The decision to conduct an on-site or remote re-inspection will be tied to the severity of corrections needed and/or past experience with the owner and property. Prior to an on-site re-inspection by the housing inspector, the family and owner will be given reasonable

notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, the SFHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with SFHA policies. If the SFHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the SFHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

## **8-II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, the SFHA must take prompt and vigorous action to enforce the owner obligations.

### **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by the SFHA, HUD requires the SFHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 C.F.R. § 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

The SFHA will make all HAP abatements effective the first of the month following the expiration of the SFHA specified correction period (including any extension).

The SFHA will inspect abated units within seven (7) calendar days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

### **HAP Contract Termination**

The SFHA must decide how long any abatement period will continue before the HAP contract will be terminated. The SFHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The SFHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

### **SFHA Policy**

The maximum length of time that HAP may be abated is 180 days. However, if the owner completes corrections and notifies the SFHA before the termination date of the HAP contract, the SFHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the SFHA is 30 calendar days.

If the owner does not make the necessary corrections by the end of the abatement period, the SFHA will send a notice of HAP termination to the owner and a notice to the family that the HAP contract is being terminated. Once the termination goes into effect, the SFHA will not rescind it.

If the HAP for a unit is abated three or more times during a five year period, the SFHA reserves the right to terminate the contract.

### **8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS**

*[24 C.F.R. § 982.404(b)]*

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the SFHA (and any extensions), the SFHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

## **PART III**

### **RENT REASONABLENESS**

*[24 C.F.R. § 982.507]*

#### **8-III.A. OVERVIEW**

No HAP contract can be approved until the SFHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

#### **SFHA-Owned Units [24 C.F.R. § 982.352(b)]**

In cases where an HCV family is receiving assistance in a SFHA-owned unit, the SFHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A SFHA-owned unit is defined as a unit that is owned by the SFHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the SFHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the SFHA. The independent agency must be approved by HUD, and may be the unit of general local government for the SFHA jurisdiction (unless the SFHA is itself the unit of general local government or an agency of such government).

#### **8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

##### **Owner-Initiated Rent Determinations**

The SFHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The SFHA (or independent agency in the case of SFHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the SFHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family but can only occur once a year. Increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

##### **SFHA Policy**

After the initial occupancy period, the owner may request a rent adjustment. For rent increase requests after initial lease-up, the SFHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the SFHA will consider unit size and length of tenancy in the other units.



The SFHA will limit all rent increases for current participants to the lower of either of the following: (1) the lower of Rent Reasonableness; (2) the Owner's Request or (3) an amount approved according to the established San Francisco Rent Board's allowable increase percentage.

### ***Rent Control***

Pursuant to Notice 2011-28, all rent increases must comply with any state or local rent control limits. The following section will outline how San Francisco's Rent Ordinance applies to the Housing Choice Voucher Program.

Exemptions to San Francisco's Rent Ordinance (San Francisco Administrative Code section 37.2(r)(5-7), California Civil Code section 1954.52):

- Residential units in buildings where certificates of occupancy were first issued after June 13, 1979 are exempt from the San Francisco Rent Ordinance;
- Single family homes; and
- Condominiums where the tenant moved in on or after January 1, 1996.

San Francisco's Rent Ordinance applies to:

- Residential units in buildings (multi-unit buildings) certified for occupancy before June 13, 1979 (The SF Assessor's Office maintains a record of the construction);
- Unwarranted in-law apartments (considered multi-units per the Rent ordinance); and
- Condominiums where the tenant moved in prior to January 1, 1996.

Public records alone may not determine unit type. If a public record is not consistent with the inspection report of the Housing Choice Voucher Inspector, the determination of unit type by the inspector will prevail. A Rent Board determination within the previous 12 months will prevail over all of the above.

For example, a public record lists a unit as a 2 bedroom, 1 bath unit but the Housing Choice Voucher Inspector identifies a 3 bedroom, 2 bath unit that is in accordance with the Housing Quality Standards, then the unit will be recorded as a 3 bedroom, 2 bath unit.

#### **A. Applicable Rent pursuant to Rent Control**

Tenants who reside in units that must adhere to San Francisco's Rent Ordinance (see above) may pay more than 30% of their adjusted gross income in rent. The Rent Ordinance is triggered when the contract rent for a Section 8 unit goes above the applicable payment standard.

#### **Limitations on Contract Rent Increases**

The San Francisco Rent Board publishes the percentage that rents may rise in units that must adhere to the Rent Ordinance. The percentage is effective from March 1-February 28/29 of the following year and is based on 60% of the increase in the

United States Department of Labor's Consumer Price Index (CPI) for the prior year. (San Francisco Administrative Code section 37.3(a)(1).

(1) Contract Rent Increasing within payment standard

The Rent Ordinance is not applicable where a Contract Rent is increasing and is still within the payment standard.

(2) Contract Rent Increase above payment standard

a. First time Contract Rent Increases above the payment standard

The first time a Contract Rent increases to an amount above its payment standard allows a landlord to receive the amount equal to the **maximum** payment standard for that unit size on the effective date of the increase multiplied by the Rent Board's applicable increase percentage on the new rent effective date and then adding those two numbers together.

For example: Tenant X is renting an apartment for \$1400 whose payment standard is \$1500 per month. The San Francisco Rent Board's permissible increase for that year is 1%. The calculation BEGINS with the maximum payment standard (\$1500) and is multiplied by 1% (.01) to equal (\$15.00). ( $1500 \times .01 = 15$ ). Thus, the new maximum contract rent would be \$1515.

b. Contract Rent Increase Requested where Contract Rent is already above the payment standard

When a rent increase is requested and **the contract rent** is already above the payment standard, the rent increase is limited to the Contract Rent amount at the time the request is made multiplied by the Rent Board's applicable increase percentage on the effective date of the rent increase and adding those two numbers together.

For example: Tenant X is renting an apartment whose maximum payment standard is \$1500 per month. At the time the rent increase is requested, Tenant is already paying \$1600 per month, which is \$100 above the payment standard. The new contract rent amount would be calculated as follows:  
Contract Rent Amount (\$1600) x Applicable percentage increase (1% or .01) = \$16.00. Thus  $\$1600 + \$16 = \$1616$   
\$1616 would be the new rent amount.

c. Contract Rent Increase due to "Banking"

"Banking" is a term that results from a landlord not increasing rent, or not increasing rent fully, during years for which the rent could have been increased and while the increases would have been subject to the

rent increase limitations of the Rent Ordinance. The percentage increases not imposed are banked for use at a later time. In order to qualify for “Banking”, the following requirements must be met:

- The unit must fall under the Rent Ordinance;
- The unit must fall under the Rent Ordinance continuously;
- The increases can only be “Banked” for those years where the unit had a rent that was equal to or higher than its payment standard;
- Banked increases may only be imposed and effective twelve months after the unit fell within the Rent Ordinance’s purview by the contract rent becoming equal to the payment standard or higher than the payment standard; and
- The rent increases may not be compounded. (San Francisco Administrative Code section 37.3(a)(2).)

For example. Landlord just learned about banking and has been a member of the HCV program for 10 years. Upon learning about “Banking”, the Landlord asks for a rent increase allowable for the previous 10 years requesting the percentage increase for each year. The rent is as follows:

2005: \$1000 (Rent under payment standard-no rent control)  
2006: \$1000 (Rent under payment standard-no rent control)  
2007: \$1000 (Rent under payment standard-no rent control)  
2008: \$1000 (Rent under payment standard-no rent control)  
2009: \$1000 (Rent under payment standard-no rent control)  
2010: \$1000 (Rent under payment standard-no rent control)  
2011: \$1000 (Rent under payment standard-no rent control)  
2012: \$1000 (Rent under payment standard-no rent control)

Landlord learns that the HUD approved Payment Standard has increased to \$1500. On February 1, 2013, the landlord requests a rent increase to \$1500.

2013: Rent increases to \$1500  
2014: \$1500  
2015: \$1500  
2016: \$1500

On July 15, 2016, the landlord requests a rent increase that includes all banked increases for the previous years. The following calculation must be done:

2014: 1.9%  
2015: 1.9%

2016: 1%

-----  
4.8%

$$1500 + (1500 \times .048 = 72) = \$1572$$

\*The ONLY years that would be applicable here would be 2014-2015 because those are the only years where the landlord was entitled to a rent increase that has not yet been imposed and where the unit came within the purview of the Rent Ordinance by the contract rent being equal to or above the payment standard. 2016 does not constitute banking because it is the current year and will receive the regular allowed increase as reflected above.

The SFHA will follow the Rent Board's calculation policy for rent controlled units. Thus, the SFHA will go out three (3) decimal places when calculating new maximum rent increases. Where the third place is 5 or above, the SFHA will round up the number to the second place. For example, \$10.987 would become \$10.99.

Housing Choice Voucher cannot increase rent for capital improvement costs or increased operating and maintenance expenses. These rent increases allowable under the Rent Ordinance do not apply to Housing Choice Voucher Landlords.

#### ***Rent Reasonableness***

All contract rents are subject to the SFHA's rent reasonableness. If there is a dispute between a rent amounts under rent reasonableness and the Rent Ordinance, the lower of the two shall be the new maximum contract rent.

For example: Tenant X is renting an apartment for \$1000 (current rent) and the payment standard is (\$1200). Owner requests a rent increase to \$1,100. The maximum approved rent is \$1100.

\$1,000 (Current Rent); \$1,200 (Payment Standard); \$1,100 (Owner Request); \$1,350 (Rent Reasonableness)

- Maximum Approved Rent = \$1,100 (Owner Request)

The SFHA will determine whether the requested increase is reasonable within 30 calendar days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rent adjustments will be effective the first of the month following 60 days after the SFHA's receipt of the owner's request. Rent increases requested by the landlord cannot occur more than once per year (12 months) and only if the unit has passed HQS inspection within the last 24 months.

Units subject to the rent control ordinance where rent exceeds the established SFHA Payment Standard for the family in effect at the time of the request may increase rents only by the allowable percentage pursuant to the rent control ordinance.

If the Owner is requesting a change in the utility responsibilities, a new HAP and lease is required.

## **SFHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the SFHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the SFHA to make a determination at any other time. The SFHA may decide that a new determination of rent reasonableness is needed at any time.

### **SFHA Policy**

In addition to the instances described above, the SFHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the SFHA determines that the initial rent reasonableness determination was in error or (2) the SFHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

## **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

### **Factors to Consider**

HUD requires the SFHA to take into consideration the factors listed below when determining rent comparability. The SFHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

### **Units that Must Not be used as Comparable(s)**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d) (3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

**Note:** Notice PIH 2011-46, issued August 17, 2011, and provides further guidance on the issue of what constitutes an assisted unit.

## **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the SFHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the SFHA information regarding rents charged for other units on the premises.

## **8-III.D SFHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data Is Collected**

#### **SFHA Policy**

The SFHA will independently, or through third-party providers, collect and maintain a sufficient database of unassisted market rent data to perform rent reasonableness determinations. The SFHA or its third party provider will collect and maintain a large enough sample of comparable units and enough unit-specific data (unit age, location, condition, market area, structure type, amenities, etc.) to ensure that the rent reasonableness determination are accurate. Potential data sources include newspapers, realtors, market surveys, inquiries of owners, web-based rental systems, and other available sources. The rent reasonableness process will make appropriate rental rate adjustments for rental concessions (if applicable) and utility rates and responsibilities.

### **How Rents Are Determined**

#### **SFHA Policy**

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable unassisted units within the City and County of San Francisco or up-to a 3 mile radius. If no comparable units can be found within a 3 mile radius, the comparable will be increased by one mile up to a 10 mile radius of the to-be assisted (subject) unit until a comparable is located. The SFHA will use an automated process that selects at least two (2) units that most closely match the proposed unit's description based on structure, size, year built, utilities, amenities, quality, location, and maintenance. The SFHA will adjust rents based on market data. The proposed unit's rent will be the lesser of the proposed rent or the adjusted comparable rent.

Housing services are not typically provided in the housing tenant-based program. Therefore, the SFHA will not evaluate this element unless specifically requested by the family or owner and is reflected in the lease. In the event of such request, and for project based units, the SFHA will utilize the automated process to establish the average rent and independently evaluate the service component to establish the final rent.

The SFHA will notify the owner of the rent the SFHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The SFHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within seven (7)

calendar days of the SFHA's request for information or the owner's request to submit information.

## **EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS**

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 C.F.R. § 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

### **Sanitary Facilities**

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

### **Food Preparation and Refuse Disposal**

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

### **Space and Security**

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

### **Thermal Environment**

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

### **Illumination and Electricity**

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

### **Structure and Materials**

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.



### **Interior Air Quality**

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one window that can open or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

### **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

### **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- Provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the SFHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the SFHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 C.F.R. Part 35, Subparts A, B, M, and R.

### **Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

### **Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

### **Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

**Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

**Hazards and Health/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

## **EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY**

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

(1) *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.

(2) *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.

### **SFHA Policy**

SRO units are required to have a microwave and refrigerator in the unit and/or an adequate community kitchen. Adequate is defined by the SFHA as one stove and one refrigerator for every 6 persons.

(3) *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.

(4) *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.

(5) *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

(6) *Structure and Materials*. Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.

(7) *Indoor Air*. Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.

(8) *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

(9) *Neighborhood conditions*. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

## CHAPTER 9: GENERAL LEASING POLICIES

### INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the SFHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the SFHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 C.F.R. 982.305(a)]
- The unit must be inspected by the SFHA and meet the Housing Quality Standards (HQS) [24 C.F.R. 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 C.F.R. 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 C.F.R. 982.305(a)]
- The owner must be an eligible owner, approvable by the SFHA, with no conflicts of interest [24 C.F.R. 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 C.F.R. 982.305(a)]

## 9-I.A. TENANT SCREENING

The SFHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 C.F.R. 982.307(a)(1)].

The SFHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the SFHA's policies with regard to screening applicant families for program eligibility [24 C.F.R. 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before SFHA approval of the tenancy, the SFHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 C.F.R. 982.307(a)(2)]. The SFHA must also inform the owner or manager of their responsibility to comply with all applicable VAWA requirements. [42 U.S.C. § 14043e-11; 24 CFR part 5, subpart L; 24 CFR part 982]

The SFHA must provide the owner with the family's current and prior address (as shown in the SFHA records); and the name and address (if known to the SFHA) of the landlord at the family's current and prior address. [24 C.F.R. 982.307 (b)(1)].

The SFHA is permitted, but not required, to offer the owner other information in the SFHA's possession about the tenancy history or drug trafficking of family members [24 C.F.R. 982.307(b)(2)].

The SFHA's policy on providing information to the owner must be included in the family's briefing packet [24 C.F.R. 982.307(b)(3)].

**The SFHA may not disclose to the owner any confidential information provided to the SFHA by the family as part of VAWA documentation, or in relation to any other VAWA related matter, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking unless the disclosure is requested or consented to in writing by the individual that provided the information in a time limited release. [24 CFR 5.2007(c)(2)].SFHA Policy**

The SFHA will not screen applicants for family behavior or suitability for tenancy.

The SFHA will not provide additional screening information to the owner.

## **9-I.B. REQUESTING TENANCY APPROVAL**

*[Form HUD-52517]*

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the SFHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the SFHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the SFHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the SFHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

### **SFHA Policy**

- The RTA must be signed by both the family and the owner.
- The owner may submit the RTA on behalf of the family.
- Completed RTA (including the proposed dwelling lease) must be submitted electronically by e-mail or as hard copies, in-person, by mail, or by fax.
- The family may not submit, and the SFHA will not process, more than one (1) RTA at a time.

When the family submits the RTA the SFHA will review the RTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the SFHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents may only be accepted as hard copies, in-person, by mail, or by fax. The SFHA may accept missing information over the phone following the oral verification polices discussed in Chapter 7.

When the family submits the RTA and proposed lease, the SFHA will also review the

terms of the RTA for consistency with the terms of the proposed lease.

- If the terms of the RTA are not consistent with the terms of the proposed lease, the SFHA will notify the family and the owner of the discrepancies.
- Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. The SFHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the SFHA will attempt to communicate with the owner and family by phone, fax, or email. The SFHA will use mail when the parties cannot be reached by phone, fax, or email.

### **9-I.C. OWNER PARTICIPATION**

The SFHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the SFHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which the SFHA must disapprove an owner. No owner has a right to participate in the HCV program [24 C.F.R. 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the SFHA's jurisdiction. This includes the dwelling unit they are currently occupying.

#### **Ineligible Units [24 C.F.R. 982.352(a)]**

The SFHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

#### **SFHA-Owned Units [24 C.F.R. 982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by the SFHA issuing the voucher may also be leased in the voucher program. In order for a SFHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the SFHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a SFHA-owned unit without any pressure or steering by the SFHA.

The SFHA does not have any eligible SFHA-owned units available for leasing under the voucher program.

#### **Special Housing Types [24 C.F.R. 982 Subpart M]**

HUD regulations permit, but do not generally require, the SFHA to permit families to use



voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include Single Room Occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the SFHA has chosen to allow.

The regulations do require the SFHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **Duplicative Assistance [24 C.F.R. 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD.

For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **Housing Quality Standards (HQS) [24 C.F.R. 982.305 and 24 C.F.R. 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

### **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the

unit meets the applicable HQS space requirements [24 C.F.R. 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

### **Rent Reasonableness [24 C.F.R. 982.305 and 24 C.F.R. 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

### **Rent Burden [24 C.F.R. 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the SFHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 C.F.R. 982.308(a)]

### **Lease Form and Tenancy Addendum [24 C.F.R. 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

### **SFHA Policy**

The SFHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

### **Lease Information [24 C.F.R. 982.308(d)]**

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

### **Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 C.F.R. 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the SFHA to approve a shorter initial lease term if certain conditions are met.

#### **SFHA Policy**

The SFHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner [24 C.F.R. 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be stated in the dwelling lease if they exist.

The SFHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 C.F.R. 982.309(b)].

### **Security Deposit [24 C.F.R. 982.313 (a) and (b)]**

The owner may collect a security deposit from the tenant. The SFHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the SFHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

#### **SFHA Policy**

The SFHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

### **Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the SFHA's housing assistance payments to the owner [24 C.F.R. 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 C.F.R. 982.510(c)].

### **SFHA Policy**

The SFHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services (including storage and/or parking) that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services (including storage and/or parking) that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services (including storage and/or parking) may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

### **SFHA Review of Lease**

The SFHA will review the dwelling lease for compliance with all applicable requirements.

### **SFHA Policy**

If the dwelling lease is incomplete or incorrect, the SFHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The SFHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the SFHA will attempt to communicate with the owner and family by phone, fax, or email. The SFHA will use mail when the parties can't be reached by phone, fax, or email.

The SFHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the SFHA

determines that the lease does not comply with State or local law [24 C.F.R. 982.308(c)]

### **SFHA Policy**

The SFHA will not review the owner's lease for compliance with state/local law.

## **9-I.F. TENANCY APPROVAL**

*[24 C.F.R. 982.305]*

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the SFHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the SFHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the SFHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 C.F.R. 982.305(a)]; the owner is an eligible owner, not disapproved by the SFHA, with no conflicts of interest [24 C.F.R. 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 C.F.R. 982.305(b)].

### **SFHA Policy**

The SFHA will complete its determination within 15 calendar days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with the SFHA, the SFHA will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The SFHA will not accept corrections over the phone.

If the SFHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The SFHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the SFHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

## **9-I.G. HAP CONTRACT EXECUTION**

*[24 C.F.R. 982.305]*

The HAP contract is a written agreement between the SFHA and the owner of the dwelling unit. Under the HAP contract, the SFHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the SFHA has given approval for the family of the assisted tenancy, the owner and the SFHA must execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 C.F.R. 982.451(a)(2)].

The SFHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The SFHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The SFHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the SFHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void, and the SFHA may not pay any housing assistance payment to the owner.

### **SFHA Policy**

Owners who have not previously participated in the HCV program may be required to attend a meeting with the SFHA in which the terms of the Tenancy Addendum and the HAP contract will be explained. The SFHA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the SFHA. The SFHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the SFHA will execute the HAP contract. The SFHA will not execute the HAP contract until the owner has submitted IRS form W-9. The SFHA will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

## **9-I.H. CHANGES IN LEASE OR RENT**

*[24 C.F.R. 982.308]*

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the SFHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, SFHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the SFHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent to owner, the owner must notify the SFHA at least 60 days before any such changes go into effect [24 C.F.R. 982.308(g)(4)]. The SFHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease and any other applicable federal, state and local laws.

No rent increase is permitted during the initial term of the lease [24 C.F.R. 982.309(a)(3)].

## CHAPTER 10: MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

### INTRODUCTION

Freedom of housing choice is a hallmark of the housing choice voucher (HCV) program. HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and SFHA policies governing moves within or outside the SFHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the SFHA's HCV program, whether the family moves to another unit within the SFHA's jurisdiction or to a unit outside the SFHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the SFHA's jurisdiction. This part also covers the special responsibilities that the SFHA has under portability regulations and procedures.



## PART I

### MOVING WITH CONTINUED ASSISTANCE

#### 10-I.A. ALLOWABLE MOVES

HUD lists five regulatory conditions and the statutory condition under VAWA in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 C.F.R. 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the SFHA a copy of the notice at the same time [24 C.F.R. 982.314(d)(1)].
- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit, or if any family member that has been the victim of a sexual assault that occurred on the premises during the 90 calendar day period preceding the family's move or request to move [24 CFR 982.354(b)(4)]. The SFHA must adopt an emergency transfer plan as required by regulations at 24 C.F.R. 5.2005(e).
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 C.F.R. 982.314(b)(1)(ii)].

#### **SFHA Policy**

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the SFHA a copy of the termination agreement.

If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the SFHA will request documentation in accordance with section 16-IX.D of this plan.

The SFHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the SFHA will document the waiver in the family's file.

The SFHA has adopted an emergency referral plan, which is included in Exhibit 16-3 of this plan.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 C.F.R. 982.314(b)(2)]. The family must give the SFHA a copy of any owner eviction notice [24 C.F.R. 982.551(g)].

- The SFHA has terminated the assisted lease for the family’s unit for the owner’s breach [24 C.F.R. 982.314(b)(1)(i)].
- The SFHA determines that the family’s current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the SFHA must issue the family a new voucher, and the family and SFHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the SFHA must terminate the HAP contract for the family’s old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the SFHA gives notice to the owner. [24 C.F.R. 982.403(a) and (c)]
- The SFHA also permits a family to move out of an assisted dwelling unit in order to protect the health or safety of an individual if the individual reasonably believes they are imminently threatened by harm from further violence if they remain in the unit.

## **10-I.B. RESTRICTIONS ON MOVES**

A family’s right to move is generally contingent upon the family’s compliance with program requirements [24 C.F.R. 982.1(b)(2)]. HUD specifies two conditions under which the SFHA may deny a family permission to move and two ways in which the SFHA may restrict moves by a family.

### ***Denial of Moves***

HUD regulations permit the SFHA to deny a family permission to move under the following conditions:

### ***Insufficient Funding***

The SFHA may deny a family permission to move if the SFHA does not have sufficient funding for continued assistance [24 C.F.R. 982.314(e)(1)]. However, Notice PIH 2016-09 significantly restricts the ability of PHAs to deny permission to move under portability due to insufficient funding. The requirements found in this notice are mandatory. For moves outside the SFHA’s jurisdiction under portability, no policy decisions are required.

### **SFHA Policy**

The SFHA will deny a family permission to move on grounds that the SFHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the SFHA; (b) the SFHA can demonstrate that the move will, in fact, result in higher subsidy costs; (c) the SFHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs; and (d) for portability moves, the receiving PHA is not absorbing the voucher.

If the SFHA does not have sufficient funding for continued assistance, but the family must move from their unit (e.g., the unit failed HQS), the family may move to a higher cost unit if the move is within the SFHA’s jurisdiction. The SFHA, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area.

For both moves within the SFHA's jurisdiction and outside under portability, the SFHA will not deny a move due to insufficient funding if the SFHA previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. The SFHA will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

If the SFHA denies a family request to move due to insufficient funds, it will mail the family a letter stating that the denial is due to lack of funding and the family's request will remain open for twelve (12) months. The SFHA may not subsequently admit any additional families to the voucher program before it assist the family seeking to move.

### ***Grounds for Denial or Termination of Assistance***

The SFHA has grounds for denying or terminating the family's assistance [24 C.F.R. 982.552]. VAWA may require exceptions to these grounds for denial or termination of assistance for families where the grounds for denial or termination are made on the basis or as a direct result of the fact that the tenant has been a victim of domestic violence, dating violence, sexual assault or stalking [24 CFR 5.2005(b); 24 CFR 982.552(c)(2)(v)].

#### **SFHA Policy**

If the SFHA has grounds for denying or terminating a family's assistance, the SFHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances. Refer to sections 3-III.G and 12-II.E for VAWA provisions.

### **Restrictions on Elective Moves [24 C.F.R. 982.314(c)]**

HUD regulations permit the SFHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the SFHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member or if any family member has been the victim of a sexual assault that occurred on the premises during the 90 calendar day period preceding the family's request to move. The SFHA may not terminate assistance if the family, with or without prior notification to the SFHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90 calendar day period preceding the family's move. . (For the policy on documentation of abuse, see section 16-IX.D)

#### **SFHA Policy**

The SFHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the SFHA's jurisdiction or outside it under portability.

The SFHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the SFHA's

jurisdiction.

The SFHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, dating violence, stalking, sexual assault, and witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the SFHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

## **10-I.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify the SFHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 C.F.R. 982.314(d)(2)]. A family is not required to provide notification of their move, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move. The PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, or any family member who has been the victim of a sexual assault that occurred on the premises during the 180-calendar-day period preceding the family's move.

If the family wishes to move to a unit outside the SFHA's jurisdiction under portability, the notice to the SFHA must specify the area where the family wishes to move [24 C.F.R. 982.314(d)(2)]. The notices must be in writing [24 C.F.R. 982.5].

### **Approval**

#### **SFHA Policy**

Upon receipt of a family's notification that it wishes to move, the SFHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The SFHA will notify the family in writing of its determination within 30 calendar days following receipt of the family's notification. Approval of VAWA emergency transfer requests will be made in accordance with the emergency transfer plan found in Exhibit 16-3.

## **Reexamination of Family Income and Composition**

### **SFHA Policy**

For families approved to move to a new unit within the SFHA's jurisdiction, the SFHA may perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the SFHA's jurisdiction under portability, the SFHA will follow the policies set forth in Part II of this chapter.

## **Voucher Issuance and Briefing**

### **SFHA Policy**

For families approved to move to a new unit within the SFHA's jurisdiction, the SFHA will issue a new voucher within 15 calendar days of the SFHA's written approval to move. A briefing may be required for these families. The SFHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit in accordance with the lease and the Housing Assistance Payment Contract. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the SFHA's jurisdiction under portability, the SFHA will follow the policies set forth in Part II of this chapter.

## **Housing Assistance Payments [24 C.F.R. 982.311(d)]**

When a family moves out of an assisted unit, the SFHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

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

## PART II

### PORTABILITY

#### 10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 C.F.R. 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The PHA that issues the voucher is called the initial PHA. The PHA that has jurisdiction in the area to which the family wants to move is called the receiving PHA.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA provides all housing services for the family and bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance with its own program funds, and the initial PHA has no further relationship with the family. The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2016-09].

PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

#### **SFHA Policy**

The SFHA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

#### 10-II.B. INITIAL PHA ROLE

##### *Administration by initial and receiving PHA:*

- a. The receiving PHA must determine the family unit size for the family, and base its determination on the subsidy standards of the receiving PHA. (CFR 982.355 part (c)(12))
- b. Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must notify the initial PHA of any extensions granted to the term of the voucher. (CFR 982.355 part (c)(12))

## SFHA Policy

The receiving PHA is responsible for evaluating and making determinations on the voucher holder's reasonable accommodation requests, including reasonable accommodation requests for additional time to find a unit, and reasonable accommodation requests for a different size voucher.

The obligation attaches to the receiving PHA when the voucher holder ports to the jurisdiction, even if recipient SFHA has not yet "absorbed" the voucher and/or even if the voucher holder has not yet secured a unit.

### ***Allowable Moves under Portability***

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 C.F.R. 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 C.F.R. 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. HUD regulations and SFHA Policy determine whether a family qualifies.

### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside the SFHA's jurisdiction under portability. However, HUD gives the SFHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

## SFHA Policy

In determining whether or not to deny an applicant family permission to move under portability because the SFHA lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10-I.B of this chapter.

The participant/applicant must remain in the SFHA jurisdiction for 12 months prior to porting out of the jurisdiction. The SFHA will review requests for port outs for families who have been unable to secure housing in San Francisco within 90 days of receiving their voucher. The family must demonstrate that a greater likelihood for success in leasing a unit will be identified outside of San Francisco. The determination of whether the family can port outside of the jurisdiction will be made by the Executive Director or their designee.

In addition, the SFHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 C.F.R. 982.353(c)].

### **SFHA Policy**

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in the SFHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial PHA's jurisdiction for at least 12 months before requesting portability.

The SFHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2). However, any exception to this policy is subject to the approval of the receiving PHA [24 C.F.R. 982.353(c)(3)].

### ***Participant Families***

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 C.F.R. 982.353(b)]. VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed they were imminently threatened by harm from further violence if they remained in the unit, or if any family member who has been the victim of a sexual assault that occurred on the premises during the 90 calendar day period preceding the family's move. [24 C.F.R. 982.353(b)].

### **SFHA Policy**

The SFHA will determine whether a participant family may move out of the SFHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The SFHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

## ***Determining Income Eligibility***

### ***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 C.F.R. 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2012-42].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 C.F.R. 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2016-9].

### ***Participant Families***

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 C.F.R. 982.353(d)(2), 24 C.F.R. 982.355(c)(1)].

## ***Reexamination of Family Income and Composition***

No new reexamination of family income and composition is required for an applicant family.



### **SFHA Policy**

For a participant family approved to move out of its jurisdiction under portability, the PHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

If the family owes money to the SFHA, they will not be allowed to port out to another jurisdiction until the debt is repaid. The SFHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

### ***Briefing***

The regulations and policies on briefings set forth in Chapter 5 of this plan require the SFHA to provide information on portability to all applicant families that qualify to lease a unit outside the SFHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

### **SFHA Policy**

No formal briefing will be required for a participant family wishing to move outside the SFHA's jurisdiction under portability. However, the SFHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). The SFHA will provide the name, address, and phone of the contact for the SFHA in the jurisdiction to which they wish to move. The SFHA will advise the family that they will be under the SFHA's policies and procedures, including subsidy standards and voucher extension policies.

### ***Voucher Issuance and Term***

An applicant family has no right to portability until after the family has been issued a voucher [24 C.F.R. 982.353(b)]. In issuing vouchers to applicant families, the SFHA will follow the regulations and procedures set forth in Chapter 5.

### **SFHA Policy**

Non-resident applicant families will be required to lease a unit within the City and County of San Francisco for at least one year prior to being eligible for portability. This requirement does not apply if the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 180-calendar-day period preceding the family's request to move.

A non-resident is defined to be when neither the household head nor spouse of an assisted family already had a "domicile" (legal residence) in the jurisdiction of the initial PHA at the time when the family first submitted an application for participation in the program to the initial PHA. Proof of residency must be reliable and may include: California's Driver's License with a San Francisco address, 12 consecutive bank statements, or school records with a San Francisco address. Lease agreements will not be used as the sole

determining factor of residency and must be supported by utility bills or other reliable documentation that shows residency.

For participating families approved to move under portability, the PHA will utilize the existing voucher with the existing voucher terms to be sent to the receiving housing authority. Extension, if any, will be handled in accordance with the policies set forth in this Plan.

#### ***Preapproval Contact with the Receiving PHA***

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [Notice PIH 2012-42].

#### **SFHA Policy**

The SFHA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

#### ***Initial Contact with the Receiving PHA***

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 C.F.R. 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2012-42]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 C.F.R. 982.355(c)(2)].

#### **SFHA Policy**

Because the portability process is time-sensitive, the PHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail address, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The SFHA will pass this information along to the family. The SFHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

#### ***Sending Documentation to the Receiving PHA***

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2012-42]
- A copy of the family's voucher [Notice PIH 2012-42]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 C.F.R. 982.355(c)(4), PIH 2012-42]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 C.F.R. 982.355(c)(4), Notice PIH 2012-42]

### **SFHA Policy**

In addition to these documents, the SFHA will provide the following information, if available, to the receiving PHA:

Social security numbers (SSNs)

Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system

Documentation of legal identity

Documentation of citizenship or eligible immigration status

Documentation of participation in the earned income disallowance (EID) benefit

Documentation of participation in a family self-sufficiency (FSS) program

The SFHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

### ***Initial Billing Deadline [Notice PIH 2012-42]***

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

### **SFHA Policy**

If the SFHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the PHA reports that the family is not yet under HAP contract, the SFHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The SFHA will send the receiving PHA a written confirmation of its decision by mail.

The SFHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

### ***Monthly Billing Payments [24 C.F.R. 982.355(e), Notice PIH 2012-42]***

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is

able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

### **SFHA Policy**

The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them.

### ***Annual Updates of Form HUD-50058***

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

### ***Denial or Termination of Assistance [24 C.F.R. 982.355(c)(9)]***

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

## **10-II.C. RECEIVING THE SFHA ROLE**

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 C.F.R. 982.355(10)].

The SFHA provides assistance for families seeking to port into their jurisdiction as a result of a qualified VAWA emergency transfer [24 CFR 5.2005(e)(7)]. See Exhibit 16-3.

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list(s) is not used [24 C.F.R. 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 C.F.R. 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 C.F.R. 982.355(e)(2)].

### ***Initial Contact with Family***

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families [24 C.F.R. 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2012-42].

When a portable family requests assistance from the receiving PHA, the receiving PHA must

promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 C.F.R. 982.355(c)(5)]. If the PHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2012-42]. (See later under "Absorbing a Portable Family" for more on this topic.)

### **SFHA Policy**

Within 15 calendar days after a portable family requests assistance, the receiving PHA will notify the initial PHA whether it intends to bill the receiving PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2012-42]. (For more on this topic, see later under "Denial or Termination of Assistance.")

### ***Briefing***

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2012-42].

### **SFHA Policy**

The SFHA will not require the family to attend a briefing. The SFHA will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the SFHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. The SFHA will suggest that the family attend a full briefing at a later date.

### ***Income Eligibility and Reexamination***

HUD allows the receiving PHA to conduct its own income reexamination of a portable family [24 C.F.R. 982.355(c)(4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2012-42, 24 C.F.R. 982.201(b)(4)]. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 C.F.R. 982.355(c)(1)].

### **SFHA Policy**

For any family moving into its jurisdiction under portability, the SFHA will conduct a new reexamination of family income and composition. However, the SFHA will not delay issuing the family a voucher for this reason. Nor will the SFHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the SFHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the SFHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may

be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

### ***Voucher Issuance***

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 C.F.R. 982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 C.F.R. 982.355(c)(6)].

### ***Timing of Voucher Issuance***

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2012-42].

### **SFHA Policy**

When a family ports into its jurisdiction, the SFHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the PHA's procedures. The SFHA will update the family's information when verification has been completed.

### ***Voucher Term***

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 C.F.R. 982.355(c)(6)].

### **SFHA Policy**

***The term of the receiving PHA voucher may not expire before 30 calendar days from the expiration date of the initial PHA voucher. Voucher Extensions [24 C.F.R. 982.355(c)(6), Notice 2012-42]***

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

### **SFHA Policy**

The SFHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the SFHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The SFHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

### ***Notifying the Initial PHA***

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit

under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 C.F.R. 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 C.F.R. 982.355(e)(5), Notice PIH 2012-42]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2012-42].

### **Administering a Portable Family's Voucher**

#### ***Initial Billing Deadline***

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 15 calendar days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2012-42]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

#### **SFHA Policy**

The SFHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 15 calendar days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is over leased) [Notice PIH 2012-42].

### **Ongoing Notification Responsibilities [Notice PIH 2012-42, HUD-52665]**

#### ***Annual Reexamination.***

The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

#### **SFHA Policy**

The SFHA will send a copy of the updated HUD-50058 by regular mail at the same time the PHA and owner are notified of the reexamination results.

#### ***Change in Billing Amount.***

The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 15 calendar days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 15 calendar days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

***Late Payments [Notice PIH 2012-42]***

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

***Overpayments [Notice PIH 2012-42]***

In all cases where the receiving agency has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2012-42.



### ***Denial or Termination of Assistance***

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 C.F.R. 982.355(c)(9), 24 C.F.R. 982.355(c)(10)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 15 calendar days following the effective date of the termination of the billing arrangement [Notice PIH 2012-42].

#### **SFHA Policy**

If the PHA elects to deny or terminate assistance for a portable family, the PHA will notify the initial PHA within 15 calendar days after the informal review or hearing if the denial or termination is upheld. The PHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

### **Absorbing a Portable Family**

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the PHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in over leasing [24 C.F.R. 982.355(d)(1), Notice PIH 2012-42].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 C.F.R. 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, the receiving PHA must send an updated form HUD-52665 to the initial PHA no later than 15 calendar days following the effective date of the termination of the billing arrangement. ]

#### **SFHA Policy**

If the PHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the PHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption. If the PHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 C.F.R. 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

### **Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

## CHAPTER 11: REEXAMINATIONS

### INTRODUCTION

The PHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

**PART I: ANNUAL REEXAMINATIONS**  
*[24 C.F.R. 982.516]*

**11-I.A. OVERVIEW**

The PHA must conduct a reexamination of family income and composition at least annually for all income except fixed income which triennial reexaminations may be conducted. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated annually or for streamlined recertification's, by applying a verified cost of living adjustment (COLA) to fixed income annually for up to three (3) years. This part discusses the schedule for annual reexaminations and streamlined triennial recertification's for all households whose only source of income is fixed for all adult members and received from the Social Security Administration.

**11-I.B STREAMLINED ANNUAL REEXAMINATIONS**

*[24 C.F.R. 982.516(b)]*

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

**SFHA Policy**

The SFHA will streamline the annual reexamination process by applying the verified COLA or interest rate to families where everyone in the household is receiving Social Security and SSI benefits. If verification of the COLA or rate of interest is not available, the PHA will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

**11-I.C. SCHEDULING ANNUAL REEXAMINATIONS**

The PHA must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

**SFHA Policy**

The SFHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. The SFHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

*Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

The SFHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

## **Notification of and Participation in the Annual Reexamination Process**

### **SFHA Policy**

Notification of annual reexamination will be sent by first-class mail and will contain instructions on how to provide SFHA the required information and its supporting documents. The SFHA may conduct the annual reexamination in a variety of ways including but is not limited to: mail-in process, online process, in-person interview, or other method the SFHA determines to be effective in evaluating family income and composition. In all cases, the SFHA reserves the right to require an in-person interview where all adult family members must be present at any time.

If the family is unable to comply with the requirements set-forth in SFHA's notice, the family must contact the SFHA and request an accommodation or additional time to comply. Failure to contact the SFHA or failure to meet the requirements as set-forth in the letter may result in termination of assistance.

Third party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

An advocate, interpreter, or other assistant may assist the family in the interview or reexamination process.

## **11-I.D. CONDUCTING ANNUAL REEXAMINATIONS**

As part of the annual reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 C.F.R. 982.551(b)].

### **SFHA 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 SFHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documents or forms related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 15 calendar days of the appointment letter. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

At the annual reexamination, the SFHA 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. [Notice PIH 2012-28] If the SFHA proposes to terminate assistance based on lifetime sex offender registration information, the SFHA 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 C.F.R. 5.903(f) and 5.905(d)]. (See Chapter 12.)

The information provided by the family must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the PHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 C.F.R. 982.403].

## **11-I.E. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS**

*[24 C.F.R. 982.552(b)(5)]*

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

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

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

### **SFHA Policy**

During the annual reexamination process, the SFHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 C.F.R. 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents or is

considered a *vulnerable youth* based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the SFHA will process a reexamination in accordance with the policies in this chapter.

## **11-I.F. EFFECTIVE DATES**

### **SFHA Policy**

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

- If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.
- If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.
- If the SFHA 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 SFHA, but will always allow for the 30-day notice period.
- If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

- If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.
- If the SFHA 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 SFHA.
- If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the SFHA by the date specified, and this delay prevents the SFHA from completing the reexamination as scheduled.

## **PART II: INTERIM REEXAMINATIONS**

*[24 C.F.R. 982.516]*

### **11-II.A. OVERVIEW**

Family circumstances may change between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

### **11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The family is required to report all changes in family composition. The PHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

#### **SFHA Policy**

The family is required to report all changes in family income and composition within 15 calendar days of the change. The SFHA will conduct interim reexaminations to account for any changes in household composition. The SFHA will conduct an interim re-examination for changes in income that occur between annual reexaminations that will result in reduction in family shares.

#### **New Family Members Not Requiring PHA Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 C.F.R. 982.551(h)(2)].

#### **SFHA Policy**

The family must inform the SFHA of the birth, adoption, or court-awarded custody of a child within 30 calendar days.

#### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 C.F.R.



982.551(h)(2)] or other household member (live-in aide or foster child) [24 C.F.R. 982.551(h)(4)].

When any new family member is added, the PHA must make appropriate adjustments in the family share of the rent and the HAP payment at the effective date of either the annual or interim reexamination [24 C.F.R. 982.516(e)(2)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rent by the family, the PHA must terminate the family's HAP contract in accordance with its terms [24 C.F.R. 982.403].

### **SFHA Policy**

Families must request SFHA 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 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the SFHA prior to the individual moving into the unit.

The SFHA will not approve the addition of a new family or household member unless the individual meets the SFHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The SFHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS subsidy standards.

If the SFHA determines an individual meets the SFHA's eligibility criteria and documentation requirements, the SFHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the SFHA determines that an individual does not meet the SFHA's eligibility criteria or documentation requirements, the SFHA 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 SFHA will make its determination within 15 calendar days of receiving all information required to verify the individual's eligibility.

### **Departure of a Family or Household Member**

Families must promptly notify the PHA if any family member no longer lives in the unit

[24 C.F.R. 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 C.F.R. 982.402], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

### **SFHA Policy**

If a household member, live-in aide, foster child or foster adult ceases to reside in the unit, the family must inform the PHA within 15 calendar days. This requirement also

applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

The resident shall provide satisfactory written proof that the household member, live-in aide, foster child or foster adult no longer lives at the Residence. Such proof includes, but is not limited to, proof of forwarding address from the U.S. Post Office, copies of a new lease agreement, utility bills or rent receipt for a new residence.

### **11-II.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

#### **PHA-Initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

#### **SFHA Policy**

The SFHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the SFHA will conduct an interim reexamination at the start and conclusion of the 24-month eligibility period.

If the family has reported zero income, the SFHA will conduct an interim reexamination every 6 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 SFHA 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 SFHA will conduct an interim reexamination.

The SFHA 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.

#### ***Required Reporting***

HUD regulations give the PHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

#### **SFHA Policy**

Families are required to report all increases in earned income, including new employment, within 15 calendar days of the date the change takes effect.

### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 C.F.R. 982.516(b)(2)]. The SFHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

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 C.F.R. 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

#### **SFHA Policy**

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the SFHA 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 family share of rent, the SFHA will conduct an interim reexamination. See Section 11-II.D for effective dates.

**Families must report changes in income or expenses within 15 calendar days of the date the change takes effect.11-II.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### **SFHA Policy**

The family must notify the SFHA all changes in writing and provide all supporting documentation.

The family will not be required to attend an interview for an interim reexamination. However, if the SFHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the SFHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 30 calendar days of receiving a request from the SFHA. This time frame may be extended for good cause with SFHA approval. The SFHA will accept required documentation by mail, by fax, or in person.

### **Effective Dates**

The PHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 C.F.R. 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

## **SFHA Policy**

If the family share of the rent is to *increase*:

The increase 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 overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

Interim requests will take effect on the first of the month after all required documentation is submitted and verified.

Interim requests as a result of a deceased family member will be processed effective the first of the month following the date the member died.

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.

If the family causes a delay in processing the annual reexamination, *decreases* in the tenant 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 SFHA by the date specified, and this delay prevents the SFHA from completing the reexamination as scheduled.

## **PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

### **11-III.A. OVERVIEW**

After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 C.F.R. 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### **11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES**

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

#### **Payment Standards [24 C.F.R. 982.505]**

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the PHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

If the PHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:

- If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
- If the payment standard amount has *decreased*, during the term of a HAP contract, the PHA is not required to reduce the payment standard as the HAP contract remains in effect. At the family's *second annual* reexamination, the PHA may, but is not required to, apply the decreased payment standard or may gradually implement the reduced payment standard (See Chapter 6 for the PHA's policy on decreases in the payment standard).

If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

#### **Subsidy Standards [24 C.F.R. 982.505(c)(4)]**

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard

amount for the family at the family's *first annual* reexamination following the change in family unit size.

#### **Utility Allowances [24 C.F.R. 982.517(d)]**

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

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

#### **SFHA Policy**

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

### **11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

The amount and effective date of the new HAP payment

The amount and effective date of the new family share of the rent

The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 C.F.R. 982.555(a)(1)(i)] (see Chapter 16).

#### **SFHA Policy**

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

### **11-III.D. DISCREPANCIES**

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

## CHAPTER 12: TERMINATION OF ASSISTANCE AND TENANCY

### INTRODUCTION

HUD regulations specify mandatory and optional grounds for which the SFHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the SFHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the SFHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the SFHA may consider in lieu of termination, the criteria the SFHA will use when deciding what action to take, and the steps the SFHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

## **PART I: GROUNDS FOR TERMINATION OF ASSISTANCE**

### **12-I.A. OVERVIEW**

HUD requires the SFHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the SFHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the SFHA.

### **12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE**

*[24 C.F.R. 982.455]*

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the SFHA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

#### **SFHA Policy**

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the SFHA of the change and request an interim reexamination before the expiration of the 180-day period.

### **12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that the SFHA terminate housing assistance payments on behalf of the family at any time.

#### **SFHA Policy**

The request to terminate assistance should be made in writing and signed by the head of household, and spouse or co-head if applicable. Before terminating the family's assistance, the SFHA will follow the notice requirements in Section 12-II.F.

### **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires the SFHA to terminate assistance in the following circumstances.

*Eviction [24 C.F.R. 982.552(b)(2), Pub.L. 109-162]*

The SFHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incidents of actual or threatened 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.

#### **SFHA Policy**

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of



assistance is not mandatory. However, the SFHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C and other factors as described in Sections 12-II.E. Upon consideration of such alternatives and factors, the SFHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

***Failure to Provide Consent [24 C.F.R. 982.552(b)(3)]***

The SFHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

***Failure to Document Citizenship [24 C.F.R. 982.552(b)(4) and 24 C.F.R. 5.514(c)]***

The SFHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the SFHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

***Failure to Disclose and Document Social Security Numbers [24 C.F.R. 5.218(c), Notice PIH 2012-10]***

The SFHA 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 SFHA 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 SFHA 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 SFHA determined the family to be noncompliant.

**SFHA Policy**

The SFHA 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.

***Methamphetamine Manufacture or Production [24 C.F.R. 982.553(b)(1)(ii)]***

The SFHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

***Lifetime Registered Sex Offenders [Notice PIH 2012-28]***

Should the SFHA 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 SFHA must immediately terminate assistance for the household member.

In this situation, the SFHA 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 SFHA must terminate assistance for the household.

***Failure of Students to Meet Ongoing Eligibility Requirements [24 C.F.R. 982.552(b)(5) and FR 4/10/06]***

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the SFHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and SFHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

***Death of the Sole Family Member [24 C.F.R. 982.311(d) and Notice PIH 2010-9]***

The SFHA must immediately terminate program assistance for a deceased single member family. The SFHA will continue to respond to pending add requests that have been submitted to the SFHA prior to or on the date of death. The pending request must be date stamped by the SFHA. Any requests submitted after death or without a date stamp will receive an automatic denial.

**12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

**Mandatory Policies [24 C.F.R. 982.553(b) and 982.551(l)]**

HUD requires the SFHA to establish policies that permit the SFHA to terminate assistance if the SFHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents

- Any household member has violated the family’s obligation not to engage in any drug-related criminal activity
- Any household member has violated the family’s obligation not to engage in violent criminal activity

***Use of Illegal Drugs and Alcohol [24 C.F.R. 966.4(l)(5)(i)(B)]***

**SFHA Policy**

The SFHA will terminate a family’s assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

The SFHA will terminate assistance if any household member’s abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents. . A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous twelve months.

The SFHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the SFHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the SFHA may, on a case-by-case basis, choose not to terminate assistance.

The PHA will not terminate assistance on the basis of or as a direct result of the fact that the assisted tenant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking. See section 3-III.G. for further discussion of relevant factors for consideration under VAWA.

***Drug-Related and Violent Criminal Activity [24 C.F.R. 5.100]***

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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

*Violent criminal activity* means any criminal activity that has 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.

### **SFHA Policy**

The SFHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The SFHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the SFHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the SFHA may, on a case-by-case basis, choose not to terminate assistance.

### **Other Authorized Reasons for Termination of Assistance [24 C.F.R. 982.552(c)]**

HUD permits the SFHA to terminate assistance under a number of other circumstances. It is left to the discretion of the SFHA whether such circumstances in general warrant consideration for the termination of assistance. The Violence Against Women Reauthorization Act of 2013 explicitly prohibits PHA's and Owners from terminating assistance or evicting assisted tenants on the basis of or as a direct result of the fact that an assisted tenant has been or is a victim of domestic violence, dating violence, sexual assault, or stalking.

### **SFHA Policy**

The SFHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

The SFHA will terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related SFHA policies.
- Any family member has been evicted from federally-assisted housing in the last five years.
- Any family member who has been arrested or convicted of illegal possession and/or use of a firearm or aggravated assault weapon in violation of federal, state, or local criminal or civil laws.
- Any family member who has been convicted of child molestation within the past five years.
- Any family member who has been convicted of arson within the past five years.
- Any SFHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program pursuant to federal or state

law.

The SFHA **may** terminate a family's assistance if:

- The family has breached the terms of a repayment agreement entered into with the SFHA more than one time in any 12-month period
- The family currently owes rent or other amounts to any SFHA in connection with the HCV, Certificate, Moderate Rehabilitation, or other public housing programs. A family member has engaged in or threatened violent or abusive behavior toward SFHA personnel.
- A family member has engaged in or threatened violent or abusive behavior toward SFHA personnel.

*Abusive or violent behavior* towards SFHA 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.

- The family refuses to enter into a repayment agreement with the SFHA for past debt owed
- The family has breached the terms of a repayment agreement entered into with the SFHA.

In making its decision to terminate assistance, the SFHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the SFHA may, on a case-by-case basis, choose not to terminate assistance.

An arrest must be substantiated by a supporting document of criminal activity. Arrest records or police reports will not be used as the sole basis for terminating assistance.

***Family Absence from the Unit [24 C.F.R. 982.312]***

The family may be absent from the unit for brief periods. The SFHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

**SFHA Policy**

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Chapter 13.

***Background Checks:***

**SFHA Policy**

The SFHA may conduct a criminal background check at anytime during a participant or household members tenancy

### ***Lifetime Sex Offender Registration Requirement***

Should the SFHA discover that a member of an assisted household was subject to a lifetime sex offender registration requirement at admission and was erroneously admitted after June 25, 2001, the SFHA must immediately terminate assistance for the household member.

In this situation, the SFHA 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 SFHA must terminate assistance for the household. [PIH Notice 2012-28]

### ***Insufficient Funding [24 C.F.R. 982.454]***

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

### **SFHA Policy**

The SFHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the SFHA determines there is a shortage of funding, prior to terminating any HAP contracts, the SFHA will determine if any other actions can be taken to reduce program costs.

In the event that the SFHA decides to stop issuing vouchers as a result of a funding shortfall, and the SFHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the SFHA resumes issuing vouchers, the SFHA will issue vouchers first to the special purpose voucher families on its waiting list(s) until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the SFHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the SFHA will inform the local HUD field office. The SFHA will terminate the minimum number needed in order to reduce HAP costs to a level within the SFHA's annual budget authority.

If the SFHA must terminate HAP contracts due to insufficient funding, the SFHA will do so in accordance with the following criteria and instructions:

Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

If the SFHA experiences a shortfall in Housing Assistance Payments (HAP) funding as a result of Congressional action through the Federal Appropriations process, the SFHA may implement a series of procedures to ensure that the fiscal solvency of the SFHA is

maintained while minimizing the impact on participating families.

The procedures may include but are not limited to:

- Implementing mass rent-reasonableness or re-determination
- Adjusting the Payment Standard
- Adjusting Occupancy Standards to reflect a basic two persons per bedroom regardless of age or sex or relationship policy
- Requesting HUD authority to adjust the percentage of income a family pays for rent
- Not re-issuing turn-over units
- Not absorbing portability clients from jurisdictions with Higher Payment Standards
- Rescinding vouchers for the number of families necessary to meet financial obligations of the Housing Choice Voucher Program. In the event this option is implemented, priority will be given to senior and/or disabled households. Following this exemption, selection will be done by random lottery.

## **PART II: APPROACH TO TERMINATION OF ASSISTANCE**

### **12-II.A. OVERVIEW**

The SFHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the SFHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the SFHA may choose to take when it has discretion, and outlines the criteria the SFHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the SFHA's intent to terminate assistance.

### **12-II.B. METHOD OF TERMINATION**

*[24 C.F.R. 982.552(a)(3)]*

Termination of assistance for a participant may include any or all of the following:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to enter into a new HAP contract or approve a lease, or
- Refusing to process a request for or to provide assistance under portability procedures.

### **12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### **Change in Household Composition**

As a condition of continued assistance, the SFHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 C.F.R. 982.552(c)(2)(ii)].

#### **SFHA Policy**

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon SFHA request.

#### **Repayment of Family Debts**

#### **SFHA Policy**

If a family owes amounts to the SFHA, as a condition of continued assistance, the SFHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the SFHA of the amount owed. See Chapter 16 for policies on repayment agreements.



## **12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

### ***Evidence***

For criminal activity, HUD permits the SFHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 C.F.R. 982.553(c)].

### **SFHA Policy**

The SFHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

### ***Consideration of Circumstances [24 C.F.R. 982.552(c)(2)(i)]***

The SFHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

### **SFHA Policy**

The SFHA will consider the following factors when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents.

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act.

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault, or stalking.

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future.

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

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

***Reasonable Accommodation [24 C.F.R. 982.552(c)(2)(iv)]***

If the family includes a person with disabilities, the SFHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 C.F.R. Part 8.

**SFHA Policy**

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

**12-II.E. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING VICTIMS AND PERPETRATORS**

***[24 C.F.R. 5.2005]***

The Violence Against Women Reauthorization Act of 2013 (VAWA) provides that "criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be a cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of that domestic violence, dating violence, sexual assault, or stalking."

VAWA also gives the SFHA the authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant."

VAWA does not limit the authority of the SFHA to terminate the assistance of any participant if the SFHA "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance." However, situations where this might be relevant are extremely rare.

**SFHA Policy**

In determining whether a participant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the SFHA 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 a short period of time;

- 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;

If the tenant wishes to contest the SFHA's determination that they are an actual and imminent threat to other tenants or employees, the tenant may do so as part of the informal hearing.

## **Victim Documentation**

### **SFHA Policy**

When a participant family is facing assistance termination because of the actions of a participant, household member, guest, or other person under the participant's control and a participant or affiliated family member of the participant's family claims that they are the victim of such actions and that the actions are related to domestic violence, dating violence, sexual assault, or stalking, the SFHA will request in writing that the individual submit documentation affirming that claim. The written request will include explicit instructions on where, when, and to whom the documentation must be submitted. It will also state the consequences for failure to submit the documentation by the deadline.

The documentation may consist of one of the following:

- A certification form approved by the appropriate agency that states that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking; states that the incident that is the ground for protection meets the VAWA statutory requirements for protection; and includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.
- A document that is signed by an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom an applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault or stalking, or the effects of the abuse, and the tenant, and states under penalty of perjury that the non-tenant signing individual believes that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protections talking that is the ground for protection meets the VAWA statutory requirements for protection for protection.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or
- At the discretion of a public housing agency or owner or manager of housing assisted under a covered housing program, a statement or other evidence provided by an applicant or tenant.

The individual claiming victim status must submit the requested documentation within 14 business days after receipt of the SFHA's written request or must request an extension within that time frame. The SFHA may, at its discretion, extend the deadline for a

reasonable period of time based on the circumstances of the family.

If the individual provides the requested documentation within 14 business days, or any SFHA-approved extension, the SFHA will reconsider its termination decision in light of the documentation.

If the individual does not provide the requested documentation within 14 business days, or any SFHA-approved extension, the SFHA will proceed with termination of the family's assistance in accordance with applicable law, program regulations, and the policies in this plan.

### **Terminating the Assistance of a Domestic Violence Perpetrator [24 C.F.R. 5.2005(c)]**

Although VAWA provides assistance termination protection for victims of domestic violence, dating violence, sexual assault, or stalking, it does not provide protection for perpetrators. VAWA gives the SFHA the explicit authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others...without terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.” This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the SFHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance [Pub.L. 109-271]. This means that the SFHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

#### **SFHA Policy**

The SFHA will terminate assistance to a family member if the SFHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the SFHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the SFHA by the victim in accordance with VAWA documentation requirements, found in section 16-IX.D of this Plan. The SFHA will also consider the factors in section 12-II.D. Upon such consideration, the SFHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the SFHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

### **Lease Bifurcation and VAWA Continued Assistance**

While the PHA has the authority to terminate assistance to the perpetrator, in the case of HCV programs, it is at the discretion of the apartment owner to allow the bifurcation of a lease [24 CFR 982.53(e)]. In the event that the apartment owner agrees to bifurcate the lease, the owner must immediately notify the PHA of the change in the lease and provide a copy of all such changes to the PHA [24 CFR 982.308(g); 24 CFR 983.256(e)].

If the family member that was evicted or to whom assistance was terminated was the eligible tenant, the remaining family members will continue to receive assistance for at least 30 calendar days from the date of bifurcation of the lease to either: establish eligibility for assistance within the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease, establish eligibility under another VAWA covered housing program, or find alternative housing.

If the remaining family member is ineligible due to immigration status, and has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status, assistance will be terminated after 30 days. The PHA will not stop assistance until 30 days after the owner bifurcated the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month [24 CFR 5.2009(a)(b); HUD Notice PIH-2017-08 (HA)].

If the remaining family member has a satisfactory immigration status, the family member will have 90 calendar days, or until the expiration of the lease if less than 90 calendar days, to establish eligibility or find alternative housing. In these instances, the PHA has the discretion to extend this period to an additional 60 calendar days.

#### **HUD-VASH Vouchers and VAWA Continued Assistance**

Upon termination of the perpetrator's HUD-VASH voucher due to the perpetrator's acts of domestic violence, dating violence, sexual assault, or stalking, the victim should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible veteran family. If a regular HCV is not available for the victim, the perpetrator will be terminated from assistance, and the victim will continue to utilize the HUD-VASH voucher. In the case of the victim utilizing the HUD-VASH voucher upon termination of the perpetrator, this HUD-VASH voucher must be issued to another eligible veteran family upon the voucher's turnover.

#### **SFHA Confidentiality Requirements [24 C.F.R. 5.2007(a)(1)(v)]**

All information provided to the SFHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

#### **SFHA Policy**

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the SFHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

## **12-II.F. TERMINATION NOTICE**

*[HCV GB, p. 15-7]*

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the SFHA must give the family and the owner written notice that specifies:

The reasons for which assistance has been terminated

The effective date of the termination

The family's right to an informal hearing as described in Chapter 16

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 C.F.R. 982.553(d)].

### **SFHA Policy**

When termination is initiated by the SFHA, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the SFHA, 30 days' notice will not be given. In these cases, the notice to terminate will be sent at the time the SFHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the SFHA (see section 12-I.C.). The SFHA will then send a confirmation notice to the family and the owner within 15 calendar days of the family's request, but no later than the termination effective date (as requested by the family).

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA sends to the family must meet the additional HUD and PHA notice requirements discussed in section 16-III.C of this plan. VAWA 2013 expands notification requirements to require PHAs to provide notice of VAWA rights and the HUD 5382 form when a PHA terminates a household's housing benefits.

### **SFHA Policy**

Whenever the SFHA decides to terminate a family's assistance because of the family's action or failure to act, the SFHA will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-5382. The SFHA will request in writing that a family member wishing to claim protection under VAWA notify the SFHA within 14 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the PHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 C.F.R. 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

### **Notice of Termination Based on Citizenship Status [24 C.F.R. 5.514 (c) and (d)]**

The SFHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the SFHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the 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 that they have the right to request an informal hearing with the SFHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

#### **SFHA Policy**

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

### **12-II.G. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE**

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

## **PART III: TERMINATION OF TENANCY BY THE OWNER**

### **12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; the SFHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

### **12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY**

*[24 C.F.R. 982.310 and Form HUD-52641-A, Tenancy Addendum, Pub.L. 109-162]*

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

#### ***Serious or Repeated Lease Violations***

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, including failure to pay rent or other amounts due under the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking against that participant. This includes failure to pay rent or other amounts due under the lease. However, the SFHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

#### ***Violation of Federal, State, or Local Law***

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

#### ***Criminal Activity or Alcohol Abuse***

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 C.F.R. 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or



- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

### ***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction, except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking and the tenant or an affiliated individual of the tenant is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking. (See Section 12-II.E.).

### ***Other Good Cause***

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do.

During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent) subject to local, state and federal laws.

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

Note that “other good cause” does **not** include vacating a property that has been foreclosed upon during the lease term prior to the sale of that property. However, the new owner of the property may terminate the tenancy effective on the date of transfer of the unit if the owner will occupy the unit as a primary residence and has provided the tenant a notice to vacate at least 90 days before the effective date of such notice [Notice PIH 2010-49]. Further information on the protections afforded to tenants in the event of foreclosure can be found in Section 13-II.G.

## **12-III.C. EVICTION**

*[24 C.F.R. 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]*

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

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

VAWA 2013 requires that the tenant be provided with a notice describing VAWA rights upon termination of the tenancy due to criminal activity. This notice of VAWA rights must be translated in accordance with the SFHA LEP Plan (see Appendix A).

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the SFHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the SFHA a copy of any eviction notice (see Chapter 5).

### **SFHA Policy**

If the eviction action is finalized in court, the owner must provide the SFHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than seven (7) calendar days following the court-ordered eviction. The judgment from the court is grounds to terminate the subsidy.

## **12-III.D. DECIDING WHETHER TO TERMINATE TENANCY**

*[24 C.F.R. 982.310(h), 24 C.F.R. 982.310(h)(4)]*

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in

the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

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

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 C.F.R. 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault, or stalking is limited by the Violence Against Women Reauthorization Act of 2013 (VAWA). (See Section 12-II.E.)

### **12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if the SFHA has no other grounds for termination of assistance, the SFHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

## **EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS**

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

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

### **SFHA Policy**

The security deposit may be used for repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant. (California Civil Code section 1950.5)

- The family must allow the SFHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

### **SFHA Policy**

The SFHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

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

### **SFHA Policy**

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

- The family must promptly give the SFHA a copy of any owner eviction notice.

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

### **SFHA Policy**

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The SFHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the SFHA in writing if any family member no longer lives in the unit.
- If the SFHA has given approval, a foster child or a live-in aide may reside in the unit. The SFHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when SFHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

### **SFHA Policy**

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the SFHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the SFHA when the family is absent from the unit.

### **SFHA Policy**

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the SFHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).

- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and SFHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and SFHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the SFHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

## CHAPTER 13: OWNERS

### INTRODUCTION

Owners play a major role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 C.F.R. 982.4(b)]. The term “owner” includes a principal or other interested party [24 C.F.R. 982.453; 24 C.F.R. 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the SFHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the SFHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including SFHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

## **PART I. OWNERS IN THE HCV PROGRAM**

### **13-I.A. OWNER RECRUITMENT AND RETENTION**

*[HCV GB, pp. 2-4 to 2-6]*

#### **Recruitment**

The SFHA is responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the SFHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the SFHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the SFHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, the SFHA must identify and recruit new owners to participate in the program.

#### **SFHA Policy**

The SFHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The SFHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and/or managers
- Contacting property owners and/or managers by phone or in-person
- Holding owner recruitment/information meetings at least once a year
- Participating in community based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

#### **Retention**

In addition to recruiting owners to participate in the HCV program, the SFHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

#### **SFHA Policy**

All SFHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The SFHA will provide owners with a handbook that explains the program, including HUD and SFHA policies and procedures, in easy-to-understand language.

The SFHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated SFHA contact person.



- Coordinating inspection and leasing activities between the SFHA, the owner, and the family.
- Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.
- Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit

### **13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires the SFHA to assist families in their housing search by providing the family with a list of landlords or other parties known to the SFHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the SFHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the SFHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 C.F.R. 982.301(b)(11)].

#### **SFHA Policy**

The SFHA will refer potential participants to an online system provided by the SFHA to search for potential housing.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. The SFHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the SFHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 C.F.R. 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 C.F.R. 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 C.F.R. 982.305(a)]. The SFHA will inspect the owner's dwelling unit at least annually to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards and policies for HQS inspections at initial lease-up and throughout the family's tenancy.

The SFHA must determine that the proposed rent for the unit is reasonable [24 C.F.R. 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, if the gross rent exceeds the applicable payment standard, the SFHA must ensure that the family share does not exceed 40 percent of the family's monthly adjusted income [24 C.F.R. 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 C.F.R. 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The SFHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.1

### **13-I.C. OWNER RESPONSIBILITIES**

*[24 C.F.R. 982.452]*

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Compliance with all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the SFHA information required under the HAP contract
- Collecting the security deposit, the tenant rent and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the

lease

- Allow reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 C.F.R. 100.203]
- Complying with the Violence against Women Reauthorization Act of 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family (see 24 C.F.R. Part 5, Subpart L; 24 C.F.R. 982.310(h)(4); and 24 C.F.R. 982.452(b)(1))

### **13-I.D. OWNER QUALIFICATIONS**

The SFHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the SFHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 C.F.R. 982.306(e)].

#### ***Owners Barred from Participation [24 C.F.R. 982.306(a) and (b)]***

The SFHA must not approve the assisted tenancy if the SFHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 C.F.R. part 24. HUD may direct the SFHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

#### **SFHA Policy**

In its administrative discretion, the PHA may deny approval of an assisted tenancy for any of the following reasons in accordance with 24 CFR 982.306:

- The PHA must not approve an assisted tenancy if the PHA has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under 2 CFR part 2424.
- When directed by HUD, the PHA must not approve an assisted tenancy if:
  - The federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements, and such action is pending; or
  - A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.
- In its administrative discretion, the PHA may deny approval of an assisted tenancy for any of the following reasons:
  - The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act ( 42 U.S.C. 1437f);
  - The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
  - The owner has engaged in any drug-related criminal activity or any violent criminal activity;
  - The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased

with project-based Section 8 assistance or leased under any other federal housing program;

- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
    - Threatens the right to peaceful enjoyment of the premises by other residents;
    - (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;
    - (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or
    - (iv) Is drug-related criminal activity or violent criminal activity; or
  - The owner has a history or practice of renting units that fail to meet State or local housing codes; or
  - The owner has not paid State or local real estate taxes, fines or assessments.
- The PHA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. This restriction against PHA approval of a unit only applies at the time a family initially receives tenant-based assistance for occupancy of a particular unit, but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.
  - SFHA does not tolerate words, conduct, or behavior that belittles, demeans, intimidates, harasses, threatens, bullies, or discriminates against applicants, participants or SFHA staff. Real or implied threat(s) of physical aggression, use of stature or title to intimidate another into taking an action that is adverse to their housing or employment and exchanges of monetary, physical or sexual acts, at Landlord's request that adversely impact an applicant, participant, or employee are not acceptable. Incident(s) of any of the above described or similar behavior will be reviewed by the SFHA on a case by case basis. Corrective actions may include but not be limited to removal from the premises, disapproval of a unit, or disapproval of an assisted tenancy.
  - Nothing in this policy is intended to give any owner any right to participate in the program.
  - For purposes of this section, "owner" includes a principal or other interested party.

***Leasing to Relatives [24 C.F.R. 982.306(d), HCV GB p. 11-2]***

The SFHA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The SFHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

***Conflict of Interest [24 C.F.R. 982.161; HCV GB p. 8-19]***

The SFHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the SFHA (except a participant commissioner)
- Any employee of the SFHA, or any contractor, subcontractor or agent of the SFHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The SFHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the SFHA must include the following [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the SFHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the SFHA or assistance under the HCV program for an eligible SFHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the SFHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the SFHA has requested a conflict of interest waiver, the SFHA may not execute the HAP contract until HUD has made a decision on the waiver request.

### **SFHA Policy**

In considering whether to request a conflict of interest waiver from HUD, the SFHA will consider certain; such as consistency of the waiver with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

### **Owner Actions That May Result in Disapproval of a Tenancy Request [24 C.F.R. 982.306(c)]**

HUD regulations permit the SFHA to disapprove a request for tenancy for various actions and inactions of the owner.

If the SFHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

### **SFHA Policy**

The SFHA will refuse to approve a request for tenancy if the SFHA becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- The owner has a pattern with the use of violent, abusive, or excessive offensive language towards SFHA personnel, its agents, and/or contractors.
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the SFHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; or
- The owner has not paid state or local real estate taxes, fines, or assessment.

- In determining an owner’s current or past behavior, the SFHA may evaluate current or previous units subsidized by the program. Along with this, the SFHA may perform a criminal background and credit check screening of all owners who have 10% or more ownership interest in the assisted unit. The SFHA will screen owners for family denial criteria outlined in chapter 3 of this plan.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the SFHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the SFHA may, on a case-by-case basis, choose to approve an owner.

### **Legal Ownership of Unit**

The following represents SFHA Policy on legal ownership of a dwelling unit to be assisted under the HCV program.

#### **SFHA Policy**

The SFHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

### **13-I.E. NON-DISCRIMINATION**

*[HAP Contract – Form HUD-52641]*

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the SFHA.

The owner must cooperate with the SFHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the SFHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

#### **Mandatory Violence Against Women Act Requirements**

##### ***Tenancy Screening and Eviction***

An Owner must not deny the tenancy of an applicant, or evict a tenant on the basis or as a *direct result* of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation or occupancy. The PHA encourages Owners to allow tenants out of their lease if their family needs to move out to protect the health or safety of the victim.

### ***Certification of Documentation***

Owners are not required to ask for documentation when an individual presents a claim for VAWA protections. If the owner chooses to request an individual to document their claim of domestic violence, dating violence, sexual assault, or stalking, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1). Exceptions to this provision in cases of conflicting documentation.

### ***Victim Confidentiality***

Information submitted to an owner, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in strict confidence. This means that the SFHA (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 by the SFHA for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law 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 a written time-limited release; (b) required for use in an eviction proceeding; or (c) otherwise required by applicable law.

For more information on VAWA regulations, see Section 16-IX of this plan and Exhibit 16-5, Notice to HCV Owners and Managers Regarding the VAWA.

## **13.I.F. QUARTERLY PROGRAMMATIC AND HAP REVIEW**

### **SFHA Policy**

At the conclusion of each quarter of the calendar year (March, June, September, November) , the Authority will initiate a review of Housing Assistance Payments (HAP) for the largest PBV property owners. A quarterly programmatic and HAP analysis report will be provided to the owner that includes a summary of each owner/property manager's utilization rates, payment records, and any holds or abatements that were put in place during the quarter. The review will provide the owner/property manager an opportunity to enter any missing payment requests for the quarter.

Each report will include a deadline to notify the Authority of any discrepancies on the report. Upon conclusion of the deadline, the Authority will schedule a meeting with the owner/property manager within 30 calendar days to discuss and finalize the contents of the report concluding with a confirmatory letter wherein both parties agree that the content of the report is true and correct. The confirmatory letter must be signed and returned to the Authority within seven (7) calendar days of the meeting. The confirmatory letter confirms that both parties agree to closing payments for the quarter report reviewed.



If the Authority does not receive a signed confirmatory letter before the deadline provided by the Authority, the Authority will close the quarterly review and it will be implied that Owner intended to agree with the content. Failure to respond or participate in the process wherein the proper parties have been notified will waive any claims to unpaid HAP for the period covered by the report. The Authority is able to accept extension requests for Quarter One, Quarter two and Quarter three. However, at the end of the Quarter Four, the Authority will close its books for the full calendar year. After the Authority closes its books, it will not consider any requests for extension or remaining requests for corrections for the calendar year.

## **PART II. HAP CONTRACTS**

### **13-II.A. OVERVIEW**

The HAP contract represents a written agreement between the SFHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the SFHA's obligations. Under the HAP contract, the SFHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in the SFHA's HCV program.

If the SFHA has given approval for the family of the assisted tenancy, the owner and the SFHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

### **13-II.B. HAP CONTRACT CONTENTS**

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the SFHA representative and owner [HCV Guidebook, pp 11-10 and 11-11].

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- SFHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- SFHA and HUD Access to Premises and Owner's Records

- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the SFHA. The tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

### **13-II.C. HAP CONTRACT PAYMENTS**

#### **General**

During the term of the HAP contract, and subject to the provisions of the HAP contract, the SFHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. The SFHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the SFHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the SFHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the rent to owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 C.F.R. 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 C.F.R. 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the SFHA, the excess amount must be returned immediately. If the SFHA determines that the owner is not entitled to all or a portion of the HAP, the SFHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

## **Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the SFHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

## **Late HAP Payments [24 C.F.R. 982.451(a)(5)]**

The SFHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for late penalties if the SFHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The SFHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the SFHA's control. In addition, late payment penalties are not required if the SFHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

## **Termination of HAP Payments [24 C.F.R. 982.311(b)]**

The SFHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the SFHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

### **SFHA Policy**

The owner must inform the SFHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the SFHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the SFHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the SFHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the SFHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

### **13-II.D. BREACH OF HAP CONTRACT**

*[24 C.F.R. 982.453]*

Any of the following actions by the owner constitutes a breach of the HAP contract:

If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS

If the owner has violated any obligation under any other HAP contract under Section 8

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

For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan

If the owner has engaged in drug-related criminal activity

If the owner has committed any violent criminal activity

If the SFHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The SFHA's rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination of the HAP contract. The SFHA may also obtain additional relief by judicial order or action.

The SFHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The SFHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

#### **SFHA Policy**

Before the SFHA invokes a remedy against an owner, the SFHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the SFHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the SFHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the

owner's record of compliance and the number and seriousness of any prior HAP contract violations.

### **13-II.E. HAP CONTRACT TERM AND TERMINATIONS**

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 C.F.R. 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The SFHA terminates the HAP contract;
- The SFHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the SFHA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by the SFHA;
- The Annual Contributions Contract (ACC) between the SFHA and HUD expires
- The SFHA elects to terminate the HAP contract.

#### **SFHA Policy**

The SFHA may elect to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program [24 C.F.R. 982.454];
- The unit does not meet HQS size requirements due to change in family composition [24 C.F.R. 982.403] – see chapter 8;
- The unit does not meet HQS [24 C.F.R. 982.404] – see chapter 8;
- The family breaks up [HUD Form 52641] – see chapter 3;
- The owner breaches the HAP contract [24 C.F.R. 982.453(b)] – see Section 13-II.D.
- Unprofessional conduct towards SFHA staff including harassment, abuse or threatening behavior.

If the SFHA terminates the HAP contract, the SFHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

### **SFHA Policy**

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the SFHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the SFHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

### **13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT**

#### ***[HUD-52641]***

The HAP contract cannot be assigned to a new owner without the prior written consent of the SFHA.

An owner under a HAP contract must notify the SFHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the SFHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the SFHA finds acceptable. The new owner must provide the SFHA with a copy of the executed agreement.

### **SFHA Policy**

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The SFHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 15 calendar days of receiving the owner's request, the SFHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the SFHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the SFHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the SFHA will process the leasing in accordance with the policies in chapter 9.

### **13-II.G. FORECLOSURE**

*[HUD-52641 and Notice PIH 2010-49]*

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). Specifically, the HAP contract now contains language stating that in the case of any foreclosure, the immediate successor in interest in the property pursuant to the foreclosure will assume such interest subject to the lease between the prior owner and the tenant, and to the HAP contract between the prior owner and the SFHA for the occupied unit. This provision of the HAP contract does not affect any state or local law that provides longer time periods or other additional protections for tenants.

If the SFHA learns that a property is in foreclosure, it must take the following actions:

Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. (Further guidance on how to obtain this information can be found in Notice PIH 2010-49.)

Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information, such as a tax identification number, and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

Inform the tenant in the event that the SFHA is unable to make HAP payments to the successor in interest due an action or inaction by the successor that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQS), or due to an inability to identify the successor. The SFHA should also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

Make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be or has been assisted under the Neighborhood Stabilization Program (NSP). (For further guidance on cases in where the units have been assisted under the NSP, see Notice PIH 2010-49.)



The SFHA is also required to notify HCV applicants who have been issued a voucher, participant heads of household, and current and prospective owners of HCV-assisted housing of the protections afforded to tenants under the PTFA.

**SFHA Policy**

The SFHA will provide all HCV applicants that have been issued a voucher with information regarding the PTFA at admission (see Section 5-I.B) and to participant heads of household at annual reexamination.

The SFHA will provide information regarding the PTFA to prospective owners when they begin their participation in the HCV program, and to current HCV owners one time with the monthly HAP.

Note that the foreclosure provision of the HAP contract and additional tenant protections under the Protecting Tenants at Foreclosure Act will sunset December 31, 2014.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

## CHAPTER 14: PROGRAM INTEGRITY

### INTRODUCTION

The SFHA is committed to ensuring that subsidy funds made available to the SFHA are spent in accordance with HUD requirements.

This chapter covers HUD and SFHA 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 SFHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the SFHA must and may take when errors or program abuses are found.

## **PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and detecting program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 C.F.R. 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

#### **SFHA Policy**

To ensure that the SFHA’s HCV program is administered according to the highest ethical and legal standards, the SFHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The SFHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- The SFHA will provide each applicant and participant with a copy of “Is Fraud Worth It?” (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- The SFHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, the SFHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
- The SFHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key SFHA forms and form letters that request information from a family or owner.
- SFHA staff will be required to review and explain the contents of all HUD- and SFHA-required forms prior to requesting family member signatures.
- At every regular reexamination, SFHA staff will explain any changes in HUD regulations or SFHA Policy that affect program participants.
- The SFHA will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.
- The SFHA will provide owners with ongoing information about the program,

with an emphasis on actions and situations to avoid.

- The SFHA will provide each SFHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

#### **14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the SFHA will use a variety of activities to detect errors and program abuse.

##### **Quality Control and Analysis of Data**

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the SFHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 C.F.R., Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

##### **SFHA Policy**

In addition to the SEMAP quality control requirements, the SFHA will employ a variety of methods to detect errors and program abuse.

The SFHA routinely will use HUD 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 SFHA.

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 SFHA will compare family-reported income and expenditures to detect possible unreported income.

##### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

##### **SFHA Policy**

The SFHA 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 SFHA's error detection and abuse prevention efforts.

## **Individual Reporting of Possible Errors and Program Abuse**

### **SFHA Policy**

The SFHA will encourage staff, program participants, and the public to report possible program abuse.

## **14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When the SFHA Will Investigate**

#### **SFHA Policy**

The SFHA 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 SFHA 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 SFHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

### **Consent to Release of Information [24 C.F.R. 982.516]**

The SFHA may investigate possible instances of error or abuse using all available SFHA and public records. If necessary, the SFHA will require HCV families to sign consent forms for the release of additional information.

### **Analysis and Findings**

#### **SFHA Policy**

The SFHA 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 SFHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the SFHA, and (3) what corrective measures or penalties will be assessed.

### **Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the SFHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

### **SFHA Policy**

In the case of family-caused errors or program abuse, the SFHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the SFHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

## **Notice and Appeals**

### **SFHA Policy**

The SFHA will inform the relevant party in writing of its findings and remedies within 30 calendar 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 SFHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).PART II: CORRECTIVE MEASURES AND PENALTIES

## **14-II.A. SUBSIDY UNDER OR OVERPAYMENTS**

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

### **Corrections**

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the SFHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

### **SFHA Policy**

Increases in the family share will be implemented on the first of the month following a written 30-day notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

### **Reimbursement**

Whether the family or owner is required to reimburse the SFHA or the SFHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

## **14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the SFHA to use incorrect information provided by a third party.

### **Family Reimbursement to SFHA [HCV GB pp. 22-12 to 22-13]**

#### **SFHA Policy**

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The SFHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the SFHA will terminate the family's assistance in accordance with the policies in Chapter 12.

### **SFHA Reimbursement to Family [HCV GB p. 22-12]**

#### **SFHA Policy**

The SFHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

### **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the SFHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 C.F.R. 982.552(c)(iv)].

#### **SFHA Policy**

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by the SFHA for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to the SFHA Board of Commissioners, employees, contractors, or other SFHA representatives
- Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the SFHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g. income, family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting

- employment income)
- Admission of program abuse by an adult family member

The SFHA 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 SFHA may, at its discretion, impose any of the following remedies.

- The SFHA may require the family to repay excess subsidy amounts paid by the SFHA, as described earlier in this section.
- The SFHA 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 12 (for participants).
- The SFHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The SFHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

### **14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

#### **Owner Reimbursement to the SFHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the SFHA any excess subsidy received. The SFHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the SFHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

#### **SFHA Policy**

In cases where the owner has received excess subsidy, the SFHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

#### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- Make any false statement to the SFHA [Title 18 U.S.C. Section 1001].



- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 C.F.R. 982.453(a)(3)] including:

### **SFHA Policy**

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the SFHA
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to unassisted tenants at no extra charge
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit
- Knowingly accepting incorrect or excess housing assistance payments
- Offering bribes or illegal gratuities to the SFHA Board of Commissioners, employees, contractors, or other SFHA representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the SFHA
- Residing in the unit with an assisted family

### **Remedies and Penalties**

When the SFHA determines that the owner has committed program abuse, the SFHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any SFHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

### **14-II.D. SFHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of SFHA staff with respect to program administration are discussed throughout this plan. This section specifically addresses actions of a SFHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the SFHA personnel policy.

SFHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

### **Repayment to the SFHA**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by SFHA staff [HCV GB. 22-12].

## **SFHA Reimbursement to Family or Owner**

The SFHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the SFHA's administrative fee reserves [HCV GB p. 22-12].

## **Prohibited Activities**

### **SFHA Policy**

Any of the following will be considered evidence of program abuse by SFHA staff:

- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the SFHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of SFHA activities, policies, or practices
- Misappropriating or misusing HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

## **14-II.E. CRIMINAL PROSECUTION**

### **SFHA Policy**

When the SFHA determines that program abuse by an owner, family, or SFHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the SFHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

## **14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES**

The SFHA may retain a portion of program fraud losses that the SFHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 C.F.R. 982.163].

The SFHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 C.F.R. 792.202 permits the SFHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the SFHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 C.F.R. 982.555.

If HUD incurs costs on behalf of the SFHA related to the collection, these costs must be deducted from the amount retained by the SFHA.

## CHAPTER 15: SPECIAL HOUSING TYPES

*[24 C.F.R. 982 Subpart M]*

### INTRODUCTION

The SFHA may permit a family to use any of the special housing types discussed in this chapter. However, the SFHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The PHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

#### **SFHA Policy**

The SFHAs policy is to permit all special housing types as modified by this chapter, and that the general requirements of the HCV program apply to special housing types. Special housing types include Single Room Occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 C.F.R. 982.601].

Special housing types include Single Room Occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes (including manufactured home space rental) where the family owns the home and leases the space, and homeownership [24 C.F.R. 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

## **PART I: SINGLE ROOM OCCUPANCY**

*[24 C.F.R. 982.602 through 982.605]*

### **15-I.A. OVERVIEW**

A Single Room Occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

### **15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the SFHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

### **15-I.C. HOUSING QUALITY STANDARDS (HQS)**

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.
- *Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 C.F.R. 982.605].*
- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located

more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.

- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

## **PART II: CONGREGATE HOUSING**

*[24 C.F.R. 982.606 through 982.609]*

### **15-II.A. OVERVIEW**

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the SFHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The SFHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

### **15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the SFHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the SFHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

### **15-II.C. HOUSING QUALITY STANDARDS**

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

## **PART III: GROUP HOME**

*[24 C.F.R. 982.610 through 982.614 and HCV GB p. 7-4]*

### **15-III.A. OVERVIEW**

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the SFHA, a live-in aide may live in the group home with a person with disabilities. The SFHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

### **15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be zero- or one-bedroom, depending on the SFHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, the SFHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.



### 15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

## PART IV: SHARED HOUSING

*[24 C.F.R. 982.615 through 982.618]*

### 15-IV.A. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the SFHA, a live-in aide may reside with the family to care for a person with disabilities. The SFHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

### 15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the lower of the utility allowance for the family unit size (voucher size) or the prorata share of the utility allowance for the shared housing unit.

**Example:** A family holds a 2-bedroom voucher. The family decides to occupy 3 out of 4 bedrooms available in the unit.

The utility allowance for a 4-bedroom unit equals \$200

The utility allowance for a 2-bedroom unit equals \$100

The prorata share of the utility allowance is \$150 (3/4 of \$200)

The PHA will use the 2-bedroom utility allowance of \$100.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the SFHA should consider whether sanitary and food preparation areas are private or shared.

### **15-IV.C. HOUSING QUALITY STANDARDS**

The SFHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A zero-bedroom or one-bedroom unit may not be used for shared housing.

## **PART V: COOPERATIVE HOUSING**

*[24 C.F.R. 982.619]*

### **15-V.A. OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

### **15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

### **15-V.C. HOUSING QUALITY STANDARDS**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## **PART VI: MANUFACTURED HOMES**

*[24 C.F.R. 982.620 through 982.624; FR Notice 1/18/17]*

### **15-VI.A. OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

- (1) A family can choose to rent a manufactured home already installed on a space and the SFHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.
- (2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space as well as certain other housing expenses. SFHA may, but is not required to, provide assistance for such families.

### **15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

#### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### **Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

### **15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

*[FR Notice 1/18/17]*

#### **Payment Standards**

The PHA payment standard for manufactured homes is determined in accordance with 24 C.F.R. 982.505 and is the payment standard used for the PHA's HCV program. It is based on the applicable FMR for the area in which the manufactured home space is located.

The payment standard for the family is the lower of the family unit size (voucher size) or the payment standard for the number of bedrooms in the manufactured home.

#### **Utility Allowance**

The SFHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space

must not include the costs of digging a well or installing a septic system.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender, or utility company.

### **Space Rent**

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities. The rent for the manufactured home space (including other eligible housing expenses) is the total of:

- The rent charged for the manufactured home space;
- Owner maintenance and management charges for the space;
- The monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- The applicable allowance for tenant-paid utilities.

### **Housing Assistance Payment**

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

### **Rent Reasonableness**

Initially, and annually thereafter the SFHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The SFHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

## **15-VI.D. HOUSING QUALITY STANDARDS**

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

### **Manufactured Home Tie-Down**

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

## **PART VII: HOMEOWNERSHIP**

*[24 C.F.R. 982.625 through 982.643]*

### **15-VII.A. OVERVIEW**

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The PHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance a PHA may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. PHAs may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If a PHA offers both forms of assistance, a family must choose which form of assistance to receive.

The PHA must offer either form of homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

#### **SFHA Policy**

SFHA will only offer one form of homeownership assistance: monthly homeownership assistance payments.

SFHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **15-VII.B. FAMILY ELIGIBILITY**

*[24 C.F.R. 982.627]*

The family must meet all of the requirements listed below before the commencement of homeownership assistance. The PHA may also establish additional initial requirements as long as they are described in the PHA administrative plan.

- The family must have been admitted to the Housing Choice Voucher program.
- The family must qualify as a first-time homeowner, or may be a cooperative member.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. The PHA may establish a higher income standard for families. However, a family that meets the federal minimum income

requirement (but not the PHA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.

- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.
- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the PHA must grant an exemption from the employment requirement if the PHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 C.F.R. 982.631(c).
- The family must meet an income standard that is based on the City of San Francisco's minimum wage. The minimum gross annual income for the family should be equal to the City of San Francisco minimum wage multiplied by 2000 hours, based on the income of adult family members who will own the home. However, a family that meets the Federal minimum income requirement of a gross annual income equal to the Federal minimum wage multiplied by 2000 hours, will be considered to meet the minimum income requirement if the family can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.



## **15-VII.C. SELECTION OF FAMILIES**

*[24 C.F.R. 982.626]*

Unless otherwise provided (under the homeownership option), the PHA may limit homeownership assistance to families or purposes defined by the PHA, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

If the PHA limits the number of families that may participate in the homeownership option, the PHA must establish a system by which to select families to participate.

## **15-VII.D. ELIGIBLE UNITS**

*[24 C.F.R. 982.628]*

In order for a unit to be eligible, the PHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD’s “eligible housing” requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by the PHA and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
- For PHA-owned units all of the following conditions must be satisfied:
  - The PHA informs the family, both orally and in writing, that the family has the right to

purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;

- The unit is not ineligible housing;
- The PHA obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any PHA provided financing. All of these actions must be completed in accordance with program requirements.

The PHA must not approve the unit if the PHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

### **15-VII.E. ADDITIONAL SFHA REQUIREMENTS FOR SEARCH AND PURCHASE**

*[24 C.F.R. 982.629]*

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The PHA may establish the maximum time that will be allowed for a family to locate and purchase a home, and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list(s) for a voucher.

### **15-VII.F. HOMEOWNERSHIP COUNSELING**

*[24 C.F.R. 982.630]*

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA. HUD suggests the following topics for the PHA-required pre-assistance counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;

- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The PHA may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the PHA does not use a HUD-approved housing counseling agency to provide the counseling, the PHA should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

## **15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER**

*[24 C.F.R. 982.631]*

### **Home Inspections**

The PHA may not commence monthly homeownership assistance payments for a family until the PHA has inspected the unit and has determined that the unit passes HQS.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

The PHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

### **Contract of Sale**

Before commencement of monthly homeownership assistance payments, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by

an independent inspector selected by the purchaser;

- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under C.F.R. part 24.

### **Disapproval of a Seller**

In its administrative discretion, the PHA may deny approval of a seller for the same reasons a PHA may disapprove an owner under the regular HCV program [see 24 C.F.R. 982.306(c)].

## **15-VII.H. FINANCING**

*[24 C.F.R. 982.632]*

The PHA may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The PHA must establish policies describing these requirements in the administrative plan.

A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

## **15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS**

*[24 C.F.R. 982.633]*

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 C.F.R. 982.551 (h) and (i).
- The family must supply information to the PHA or HUD as specified in 24 C.F.R.

982.551(b). The family must further supply any information required by the PHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.

- The family must notify the PHA before moving out of the home.
- The family must notify the PHA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 C.F.R. 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 C.F.R. 982.551(c), (d), (e), (f), (g) and (j).

## **15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE**

*[24 C.F.R. 982.634]*

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

## **15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES**

*[24 C.F.R. 982.635]*

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, the PHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described elsewhere in this plan for the Housing Choice Voucher program. The payment standard for a family is the greater of (i) The payment standard as determined at the commencement of homeownership assistance for occupancy of the home, or (ii) The payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

The PHA may pay the homeownership assistance payments directly to the family, or at the PHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

The PHA must adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by the PHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Home insurance;
- The PHA allowance for maintenance expenses;
- The PHA allowance for costs of major repairs and replacements;
- The PHA utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;

- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 C.F.R. 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by the PHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- The PHA allowance for maintenance expenses;
- The PHA allowance for costs of major repairs and replacements;
- The PHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

## **15-VII.L. PORTABILITY**

*[24 C.F.R. 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]*

Subject to the restrictions on portability included in HUD regulations and PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

## **15-VII.M. MOVING WITH CONTINUED ASSISTANCE**

*[24 C.F.R. 982.637]*

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

The PHA may deny permission to move to a new unit with continued voucher:

- If the PHA has insufficient funding to provide continued assistance.
- In accordance with 24 C.F.R. 982.638, regarding denial or termination of assistance.
- In accordance with the PHA's policy regarding number of moves within a 12-month period.

The PHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

## **15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE**

*[24 C.F.R. 982.638]*

At any time, the PHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 C.F.R. 982.552 (Grounds for denial or termination of assistance) or 24 C.F.R. 982.553 (Crime by family members).

The PHA may also deny or terminate assistance for violation of participant obligations described in 24 C.F.R. Parts 982.551 or 982.633 and in accordance with its own policy.

The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.



## CHAPTER 16: PROGRAM ADMINISTRATION

### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the PHA. This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

## **PART I: ADMINISTRATIVE FEE RESERVE [24 C.F.R. 982.155]**

The PHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 C.F.R. 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 C.F.R. 982.155(b)(3).

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

### **SFHA Policy**

Expenditures from the UNP account will be made in accordance with all applicable federal requirements. Expenditures will comply with the procurement plan approved by the Board of Commissioners.

## **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

### **16-II.A. OVERVIEW**

Although many of the program’s requirements are established centrally by HUD, the HCV program’s regulations recognize that some flexibility is required to allow the PHA to adapt the program to local conditions. This part discusses how the PHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

*Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and

*Utility Allowances*, which specify how a family’s payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

#### **SFHA Policy**

Copies of the payment standard and utility allowance schedules are available for review in the PHA’s offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

The PHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

### **16-II.B. PAYMENT STANDARDS**

*[24 C.F.R. 982.503; HCV GB, Chapter 7]*

The payment standard sets the maximum subsidy payment a family can receive from the PHA each month [24 C.F.R. 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA’s jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a “basic range” established by HUD – between 90 and 110 percent of the published FMR for each unit size.

#### **Updating Payment Standards**

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 C.F.R. 982.503(b)]. HUD may require the PHA to make

further adjustments if it determines that rent burdens for assisted families in the PHA's jurisdiction are unacceptably high [24 C.F.R. 982.503(g)].

### **SFHA Policy**

The SFHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" the SFHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** The SFHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The SFHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the SFHA will consider increasing the payment standard. In evaluating rent burdens, the SFHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** The SFHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** The SFHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** The SFHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** The SFHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on December 1<sup>st</sup> of every year unless, based on the proposed FMRs, it appears that one or more of the PHA's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, the PHA's payment standards will be effective October 1<sup>st</sup> instead of December 1<sup>st</sup>.

If the PHA has already processed reexaminations that will be effective on or after October 1<sup>st</sup>, and the effective date of the payment standards is October 1<sup>st</sup>, the PHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by the PHA at the time the reexamination was originally processed.

### **Exception Payment Standards [982.503(c)]**

The PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

### **Unit-by-Unit Exceptions [24 C.F.R. 982.503(b), 24 C.F.R. 982.505(d), Notice PIH 2010-26]**

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 C.F.R. 982.503(b)]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

### **SFHA Policy**

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the PHA must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 C.F.R. 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, the PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, the PHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The PHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

### **Decreases in the Payment Standard below the Basic Range [24 C.F.R. 982.503(d)]**

The PHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

## **16-II.C. UTILITY ALLOWANCES**

*[24 C.F.R. 982.517]*

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

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

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the PHA about establishing utility allowance schedules.

### **Air Conditioning**

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

### **SFHA Policy**

The SFHA has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the SFHA will apply this allowance to a family's rent and subsidy calculations.

### **Reasonable Accommodation**

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

The PHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 C.F.R. 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 C.F.R. 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

#### **Decisions Subject to Informal Review**

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 C.F.R. 982.554(a)]. Denial of assistance may include any or all of the following [24 C.F.R. 982.552(a)(2)]:

Denying listing on the PHA waiting list

Denying or withdrawing a voucher

Refusing to enter into a HAP contract or approve a lease

Refusing to process or provide assistance under portability procedures

Denial of assistance based on an unfavorable history that may be the result of domestic violence, dating violence, sexual assault or stalking. (See Section 3-III.G.)

#### **SFHA Policy**

Informal reviews will not be provided for:

- Discretionary administrative determinations by the PHA.
- General policy issues or class grievances.
- A determination of the family unit size under the PHA subsidy standards.
- A PHA determination not to approve an extension of the voucher term.
- A PHA determination not to grant approval of the tenancy.
- A PHA determination that a unit selected by the applicant is not in compliance with HQS.
- A PHA determination that the unit is not in accordance with HQS because of the family size or composition.



- Denial of an add request

The list of actions above for which informal reviews will not be provided is not exhaustive.

### **Notice to the Applicant [24 C.F.R. 982.554(a)]**

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

### **Scheduling an Informal Review**

#### **SFHA Policy**

A request for an informal review must be made in writing and delivered to the SFHA either in person or by first class mail, postmarked, by the close of the business day, no later than 15 calendar days from the date on the SFHA's denial of assistance.

The SFHA must respond to the informal review within 15 calendar days of the family's request.

### **Informal Review Procedures [24 C.F.R. 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the review will make a recommendation to the SFHA, but the SFHA is responsible for making the final decision as to whether assistance should be granted or denied.

See "SFHA Policy" below "Informal Review Decision" for SFHA process on informal review and decision.

### **Informal Review Decision [24 C.F.R. 982.554(b)]**

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

#### **SFHA Policy**

In rendering a decision, the SFHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. The SFHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds

for denial, and the denial is required by HUD, the SFHA will uphold the decision to deny assistance.

- If the facts prove the grounds for denial, and the denial is discretionary, the SFHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The SFHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 15 calendar days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS**

*[24 C.F.R. 982.555]*

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule
- A determination of the family unit size under the PHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 C.F.R. 984.303(i)]

### **SFHA Policy**

In addition to the above, the SFHA will provide an opportunity for a hearing in the following circumstances:

- Denial of a Reasonable Accommodation

The SFHA will not provide a hearing under the above circumstances until an adverse action has been taken by the PHA.

The SFHA will not provide a hearing under the above circumstances until the SFHA has made a determination on a specific request and a notice has been sent identifying the determination or as required by law.

The SFHA will not provide a hearing for rent increases that result solely as a result of a landlord's request for a rent increase and where the tenants rent portion is not recalculated.

### **SFHA Policy**

**Victim of Domestic Violence:** In hearings wherein the participant requesting the hearing is the alleged perpetrator of a domestic violence case and the reason for the hearing is a result of the alleged domestic violence, the alleged victim will be provided an opportunity to be a witness at the hearing. The decision to be a witness or not is solely up to the witness. Both parties will not be in the same room. Alleged perpetrator or his counsel will have an opportunity to question the witness via an online platform such as Zoom, Teams, Google, etc. Witness shall enter and leave the hearing only for the portion of the hearing for which they are testifying and will not be provided access or a copy of the final decision. The witness will be provided with a summary of the hearing decision identifying whether the issue before the hearing officer was upheld or overturned.

### **Informal Hearing Procedures**

#### ***Notice to the Family [24 C.F.R. 982.555(c)]***

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

### **SFHA Policy**

In cases where the SFHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of the SFHA.
- A brief statement of the reasons for the decision, including the regulatory reference.
- A statement of the family's right to an explanation of the basis for the SFHA's decision.
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.

### ***To whom the hearing request should be addressed. Scheduling an Informal Hearing [24 C.F.R. 982.555(d)]***

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

### **SFHA Policy**

A request for an informal hearing must be made in writing and delivered to the SFHA either in person or by first class mail, by the close of the business day, no later than 15 calendar days from the date of the correspondence initiating the request for a hearing.

The SFHA must schedule and send written notice of the informal hearing to the family within 15 calendar days of the family's request. The SFHA will make an initial attempt to determine which dates and times are available to the tenant, their representative and the SFHA staff. If no response is provided within 72 hours of the initial correspondence (phone call or e-mail) then a date will be selected by the SFHA and the notice of the date and time of the hearing will be sent to the tenant notifying them of the date and time of the hearing. Cancellation or request for rescheduling of this date by the tenant, advocate or SFHA staff will count as the parties one time reschedule per the language below.

Cancellation of the hearing must be made by the resident or the authorized representative in writing.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the SFHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The SFHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

***Pre-Hearing Right to Discovery [24 C.F.R. 982.555(e)]***

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

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

For the purpose of informal hearings, *documents* include records and regulations.

**SFHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date. The PHA will not copy a tenant file in preparation for a hearing but will allow the family to review the file and an opportunity to copy documents needed in preparation for the hearing.

***Participant's Right to Bring Counsel [24 C.F.R. 982.555(e) (3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

***Informal Hearing Officer [24 C.F.R. 982.555(e) (4)]***

Informal hearings will be conducted by a person approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

**SFHA Policy**

SFHA hearings will be conducted by a single hearing officer and not a panel.

A hearing shall be conducted by an impartial person or persons, appointed by the SFHA, other than the person who made or approved the SFHA action under review or a subordinate of such person.

***Attendance at the Informal Hearing***

**SFHA Policy**

Hearings may be attended by a hearing officer and the following applicable persons:

- A PHA representative(s) and any witnesses for the PHA
- The participant and any witnesses for the participant
- The participant's counsel or other representative

- Any other person approved by the PHA as a reasonable accommodation for a person with a disability

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 C.F.R. 982.555(4)(ii)].

### **SFHA Policy**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 C.F.R. 982.555(e)(5)]***

The PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

### **SFHA Policy**

Any evidence to be considered by the hearing officer must be presented at the time of the hearing and must be directly related to the cause for the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses. All witnesses shall be asked to swear or affirm that the information they are about to provide is true.

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the SFHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

***Hearing Officer's Decision [24 C.F.R. 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

**SFHA Policy**

In rendering a decision, the hearing officer will consider the following matters:

**SFHA Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if the SFHA and the family were given the opportunity to examine any relevant documents in accordance with SFHA policy.

**SFHA Evidence to Support the SFHA 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 SFHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and SFHA policies. If the grounds for termination are not specified in the regulations or in compliance with SFHA policies, then the decision of the SFHA will be overturned.

The hearing officer will issue a written decision to the family and the SFHA no later than 15 calendar days after the hearing. The report will contain the following information:

**Hearing information:**

Name of the participant;

Date, time and place of the hearing;

Name of the hearing officer;

Name of the SFHA representative; and

Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which

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

**Analysis:** The hearing officer will provide an analysis of the Findings of Fact and determine which party has proved their argument by a preponderance of the evidence. The “Findings of Fact” and “Analysis” may be joined under the heading “Findings of Fact/Analysis”

**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 SFHA’s decision.

**Order:** The hearing report will include a statement of whether the SFHA’s decision is upheld or overturned. If it is overturned, the hearing officer will instruct the SFHA to change the decision in accordance with the hearing officer’s determination. In the case of termination of assistance, the hearing officer will instruct the SFHA to restore the participant’s program status.

In the case of overturning income and rent computations, the hearing officer will instruct the SFHA to re-calculate the rent and/or income based on the documents originally submitted to the SFHA at the time the calculations were completed. Income or expense documents submitted at the hearing but not available to the SFHA at the time of calculation may not be used to overturn a previous calculation but will rather serve as the basis for a future interim calculation. The decision to overturn or uphold the SFHA’s action must be based on the income and supporting documents presented to the SFHA at the time the rent calculation was conducted. Any additional documents submitted would become part of an interim calculation and will not affect the hearing decision.

In the case of a denial of reasonable accommodation request, the hearing officer may overturn a decision and require the SFHA to re-consider the request or enter into negotiations with the family. The hearing officer is not authorized to make reasonable accommodation decisions on behalf of the SFHA.

### ***Recording of the Hearing***

The SFHA will record every hearing with a digital recorder or similar device. The family may record the hearing with their own device or request a copy from the SFHA for a charge of \$5.00. Video recordings of the hearing are not permitted absent consent of all parties in the hearing room at the commencement of the hearing. If additional persons shall enter, they too must agree to a video recording of the hearing. Absent unanimous consent of video recording throughout the hearing by all parties present, a video recording of the hearing shall not be permitted.

### ***Procedures for Rehearing or Further Hearing***

#### **SFHA 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 SFHA will take effect and another hearing will not be granted.

***PHA Notice of Final Decision [24 C.F.R. 982.555(f)]***

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state, or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

**SFHA Policy**

The SFHA will mail a "Notice of Final Decision" including the hearing officer's report to the participant and their representative. There will be no further appeals after the "Notice of Final Decision" has been provided by the SFHA. The hearing officer decision will be implemented within 60 calendar days. If the SFHA determines that the hearing decision was contrary to federal, state, or local law, HUD regulations or requirements, the Executive Director or their designee will refrain from taking the action and will notify the participant within 30 calendar days of the date of the decision.

**16-III.D. RAD GRIEVANCE HEARINGS:**

RAD properties are required to provide a two-step grievance procedure for landlord/tenant concerns. RAD properties may provide their own hearing officer for informal hearings but must use SFHA hearing officers for the formal hearing.

RAD properties must follow the Administrative Plan hearing process and procedures for all hearings that are governed by the Housing Choice Voucher Administrative Plan.

**16-III.E. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS**

***[24 C.F.R. 5.514]***

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

### **Notice of Denial or Termination of Assistance [24 C.F.R. 5.514(d)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 C.F.R. 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

### **USCIS Appeal Process [24 C.F.R. 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

#### **SFHA Policy**

The SFHA will notify the family in writing of the results of the USCIS secondary verification within 15 calendar days of receiving the results.

The family must provide the SFHA with a copy of the written request for appeal and proof of mailing within 15 calendar days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

#### **SFHA Policy**

The SFHA will send written notice to the family of its right to request an informal hearing within 15 calendar days of receiving notice of the USCIS decision regarding the family's immigration status.

## **Informal Hearing Procedures for Applicants [24 C.F.R. 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### ***Informal Hearing Officer***

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C for a listing of positions that serve as informal hearing officers.

### ***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 PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

#### **SFHA 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 SFHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. Upon request, the PHA will provide competent interpretation services, free of charge.

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

#### **SFHA Policy**

The PHA will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 15 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

### **Informal Hearing Procedures for Residents [24 C.F.R. 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

### **Retention of Documents [24 C.F.R. 5.514(h)]**

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

The application for assistance

The form completed by the family for income reexamination

Photocopies of any original documents, including original USCIS documents

The signed verification consent form

The USCIS verification results

The request for a USCIS appeal

The final USCIS determination

The request for an informal hearing

The final informal hearing decision

## **PART IV: OWNER OR FAMILY DEBTS TO THE PHA**

### **16-IV.A. OVERVIEW**

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 C.F.R. 982.54]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

#### **SFHA Policy**

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the SFHA holds the owner or participant liable to return any overpayments to the SFHA.

The SFHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

Participants who have been referred or approved for an emergency move must enter into a repayment agreement for debt owed prior to moving. The repayment agreement is an exception to the rule that would otherwise deny the participant a move with debt. Missed payments will result in termination of subsidy.

When an owner or participant refuses to repay monies owed to the SFHA, the SFHA 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

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to the PHA**

#### **SFHA Policy**

Any amount due to the SFHA by an owner must be repaid by the owner within 30 days of the SFHA determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the SFHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments the SFHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the SFHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement. If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the SFHA, the SFHA will ban the owner from future participation in the program and pursue other modes of collection.

## ***Due Dates***

### **SFHA Policy**

All payments are due by the close of business on the 15<sup>th</sup> day of the month. If the 15<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 15<sup>th</sup>.

## ***Late or Missed Payments***

### **SFHA 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 SFHA, the SFHA will send the owner a delinquency notice giving the owner 10 calendar 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 SFHA will pursue other modes of collection including reduction of future HAP payments, if any.

If the owner receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the SFHA will pursue other modes of collection including reduction of future HAP payments, if any.

## **Family Debts to the PHA**

### **SFHA Policy**

Any amount owed to the PHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 calendar days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

Individuals applying to another PHA program or requesting evidence of good standing for a program outside of the SFHA, who are no longer participants in the public housing program or HCV program but maintain a debt with the Authority, must pay 50% of the total debt owed at the time the repayment agreement is entered into and agree to a minimum of 7.5% monthly payment until the debt is paid in full.

## **Repayment Agreement [24 C.F.R. 792.103]**

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

## **General Repayment Agreement Guidelines for Families**

### ***Down Payment Requirement***

#### **SFHA Policy**

Before executing a repayment agreement with a family, the SFHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the SFHA that a down payment of 10 percent would impose an undue hardship, the SFHA may, in its sole discretion, require a lesser percentage or waive the requirement.

### ***Payment Thresholds***

Notice PIH 2010-19 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 C.F.R. 982.552(c)(1)(vii)].

#### **SFHA Policy**

The SFHA has established the following thresholds for repayment of debts:

- Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months.
- Amounts between \$2,000 and \$2,999 must be repaid within 30 months.
- Amounts between \$1,000 and \$1,999 must be repaid within 24 months.
- Amounts under \$1,000 must be repaid within 12 months.

If a family can provide evidence satisfactory to the SFHA that the threshold applicable to the family’s debt would impose an undue hardship, the SFHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the SFHA will consider all relevant information, including the following:

- The amount owed by the family to the SFHA
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control
- The family’s current and potential income and expenses
- The family’s current family share, as calculated under 24 C.F.R. 982.515
- The family’s history of meeting its financial responsibilities

### ***Execution of the Agreement***

#### **SFHA Policy**

Any repayment agreement between the SFHA and a family must be signed and dated by the SFHA and by the head of household and spouse/co-head (if applicable).

## *Due Dates*

### **SFHA Policy**

All payments are due by the close of business on the 15<sup>th</sup> day of the month. If the 15<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 15<sup>th</sup>.

## *Late or Missed Payments*

### **SFHA 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 SFHA, the SFHA will send the family a delinquency notice giving the family 15 calendar days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PHA will terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the SFHA will terminate assistance in accordance with the policies in Chapter 12.

## *No Offer of Repayment Agreement*

### **SFHA Policy**

The SFHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

## **Repayment Agreements Involving Improper Payments**

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act

A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner

A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases

A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance



## **PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

High-performing PHAs can be given a competitive advantage under notices of funding availability [24 C.F.R. 985.103].

PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 C.F.R. 985.106].

PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 C.F.R. 985.107].

HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 C.F.R. 985.109].

### **16-V.B. SEMAP CERTIFICATION**

*[24 C.F.R. 985.101]*

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 C.F.R. 985.105].

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

A PHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the PHA's SEMAP certification, HUD will rate the PHA's performance under each SEMAP indicator in accordance with program requirements.

## HUD Verification Method

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The PHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 C.F.R. 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 C.F.R. 985.3].

## 16-V.C. SEMAP INDICATORS

*[24 C.F.R. 985.3 and form HUD-52648]*

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b></p> <p><b>Maximum Score: 15</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 2: Rent reasonableness</b></p> <p><b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li><li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 3: Determination of adjusted income</b></p>

**Maximum Score: 20**

- This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.
- Points are based on the percent of files that are calculated and verified correctly, according to the PHA’s quality control sample.

**Indicator 4: Utility allowance schedule**

**Maximum Score: 5**

- This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.
- Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA’s certification.

**Indicator 5: HQS quality control inspections**

**Maximum Score: 5**

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control reinspections were completed, according to the PHA’s certification.

**Indicator 6: HQS enforcement**

**Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA’s certification.

**Indicator 7: Expanding housing opportunities**

**Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA’s jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.

- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA’s certification.

**Indicator 8: FMR limit and payment standards**

**Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA’s jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA’s certification.

**Indicator 9: Annual reexaminations**

**Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family’s share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections**

**Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections**

**Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up****Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for at least 98 percent of the number of the PHA's baseline voucher units in the ACC for the calendar year ending on or before the PHA's fiscal year, or whether the PHA has expended at least 98 percent of its allocated budget authority for the same calendar year. The PHA can receive 15 points if 95 to 97 percent of vouchers are leased or budget authority is utilized.
- Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances****Maximum Points: 10**

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders****Maximum Points: 5**

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

**Deconcentration Bonus Indicator****Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

## **PART VI: RECORD KEEPING & CORRESPONDENCE MANAGEMENT**

### **16-VI.A. OVERVIEW**

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. CORRESPONDENCE MAILED AND RECEIVED**

#### **SFHA Policy**

All correspondence mailed from the SFHA will be considered mailed by the date of the notice and will be considered received by the intended party within 5 calendar days of the notice. The SFHA will maintain a copy of every correspondence mailed to the family in accordance with the Record Retentions policies contained in this Plan.

All correspondence received by the SFHA from a participant, owner, or the general public will be stamped by the SFHA with the date it was actually received and will be placed in record and maintained in accordance with the policies contained in this Plan.

### **16-VI.C. RECORD RETENTION**

*[24 C.F.R. 982.158]*

During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the PHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 C.F.R. 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

- Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

## **16-VI.D. RECORDS MANAGEMENT**

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### **SFHA Policy**

All applicant and participant information will be kept in a secure location and access will be limited to authorized SFHA staff.

SFHA 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 C.F.R. 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD-issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

### **SFHA Policy**

Prior to utilizing HUD's EIV system, the SFHA will adopt and implement EIV security procedures required by HUD.

### **Criminal Records**

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 C.F.R. 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained

confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 C.F.R. 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 C.F.R. 5.905.

### **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

### **Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 16-IX.E.



## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-VII.A. OVERVIEW**

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the PHA is subject to.

### **16-VII.B. REPORTING REQUIREMENT**

*[24 C.F.R. 35.1225(e)]*

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within seven (7) calendar days of being so notified by any other medical health care professional.

#### **SFHA Policy**

The SFHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

### **16-VII.C. DATA COLLECTION AND RECORD KEEPING**

*[24 C.F.R. 35.1225(f)]*

At least quarterly, the PHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the PHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the PHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the PHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

#### **SFHA Policy**

The public health department(s) has stated they do not wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the SFHA is not providing such a report.

## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 C.F.R. 982.354(e)(1) and 982.454]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within 10 business days [24 C.F.R. 982.354]. Insufficient funding may also impact the PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

#### **SFHA Policy**

The SFHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the SFHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, the SFHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if the SFHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the SFHA will be considered to have insufficient funding.

## **PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY**

### **16-IX.A. OVERVIEW**

The Violence against Women 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 housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking”; 4-III.C, “Selection Method” 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, or Stalking”; and 12-II.F, “Termination Notice”; Exhibit 16-3, “SFHA Emergency Move Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (HCV Version).”

### **16-IX.B. DEFINITIONS**

[24 C.F.R. 5.2003, 42 USC 13925]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants or lawful occupants 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 SFHA jurisdiction, 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 SFHA jurisdiction. The term “spouse” or “intimate partner of the victim” includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as

determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons.

- The term *actual and imminent threat* means a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.
- The term *affiliated individual* means, with respect to an individual:
  - A spouse, parent, brother or sister, or child of that individual, or a person to whom that individual stands in the position or place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
  - Any other individual, tenant, or lawful occupant living in the household of the individual.
- 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-IX.C. NOTIFICATION [24 CFR 5.2005(a)]**

### **Notification to Public**

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

#### **SFHA Policy**

The SFHA 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 housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of the PHA's emergency transfer plan (See Chapter 4)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

## **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

SFHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

### **SFHA Policy**

The SFHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The PHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

The PHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The PHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The SFHA will provide all to applicants and participants will consist of the notices in Exhibits 16-1 and 16-2.

## **Notification to Owners and Managers**

While PHAs are no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, the PHA may still choose to inform them.

### **SFHA Policy**

The SFHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their appropriate participation in the HCV program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

## **16-IX.D. DOCUMENTATION [24 C.F.R. 5.2007]**

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 C.F.R. 5.2007(a)]

The individual may satisfy the PHA's request by providing any one of the following three forms of documentation. It is at the discretion of the tenant or applicant which one of the following forms of documentation to submit [24 C.F.R. 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
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 meet the applicable definition of domestic violence, dating violence, sexual assault, or stalking under VAWA (found in section 16-IX.B of this plan). The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation (24 CFR 5.2007(b)(2)).

#### **SFHA 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 SFHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by the SFHA will be in writing.

#### **Conflicting Documentation [24 C.F.R. 5.2007(e)]**

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3) within 30 calendar days of the date of the request for third-party documentation. The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

#### **SFHA Policy**

If presented with conflicting certification documents (two or more forms HUD-5382) from members of the same household, the SFHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance

with 24 C.F.R. 5.2007(b)(2) and by following any HUD guidance on how such determinations should be made. The family will have 60 calendar days from the date of request by the SFHA to provide this documentation.

**Discretion to Require No Formal Documentation [24 C.F.R. 5.2007(b)(3)]**

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 C.F.R. 5.2007(b).

**SFHA Policy**

If the PHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, the PHA will document acceptance of the statement or evidence in the individual's file.

**Failure to Provide Documentation [24 C.F.R. 5.2007(a)(2)(i)]**

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

**16-IX.E. CONFIDENTIALITY**

*[24 C.F.R. 5.2007(c)]*

All information provided to the PHA or Owner regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in strict confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so by the PHA for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law, 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 a written time-limited release, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

**SFHA Policy**

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the SFHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

**EXHIBIT 16-1: SAMPLE Notice of Occupancy Rights under the Violence against Women Act, Form HUD-5380**

**Notice of Occupancy Rights under the Violence Against Women Act<sup>1</sup>**

***To all Tenants and Applicants***

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.<sup>2</sup> The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees the Housing Authority of the City and County of San Francisco and is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.

***Protections for Applicants***

If you otherwise qualify for assistance under the Housing Authority of the City and County of San Francisco you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

***Protections for Tenants***

If you are receiving assistance under the Housing Choice Voucher Program or the Low Income Public Housing Program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the Housing Choice Voucher or Low Income Public Housing Program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

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<sup>1</sup> Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

<sup>2</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.



## **Removing the Abuser or Perpetrator from the Household**

The SFHA may bifurcate the voucher in order to 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 SFHA chooses to bifurcate the subsidy, HP may not take away the rights of eligible tenants to the voucher or otherwise punish the remaining tenants. If abuser or perpetrator was the sole participant to have established eligibility for assistance under the program, the SFHA must allow the participant who is or has been a victim and other household members to retain the voucher for a period of time in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing. When the subsidy is bifurcated, the SFHA must pursue termination of the perpetrators subsidy. At no time may the SFHA bifurcate the subsidy and create two subsidies permanently.

## **Moving to another Unit**

Upon your request, the SFHA may re-issue a voucher allowing participant to move to another unit. In order to approve a request, the SFHA will 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 move, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

1. **You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
2. **You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
3. **You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

The SFHA 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 SFHA's emergency transfer plan provides further information on emergency transfers, and HP 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 SFHA will 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 SFHA must be in writing, and the SFHA 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 SFHA 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 SFHA as documentation. It is your choice which of the following to submit if the SFHA 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 SFHA 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 SFHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the SFHA does not have to provide you with the protections contained in this notice.

If the SFHA 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 SFHA 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, HP does not have to provide you with the protections contained in this notice.

## **Confidentiality**

The SFHA 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 SFHA must not allow any individual administering assistance or other services on behalf of HP (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 SFHA must not enter your information into any shared database or disclose your information to any other entity or individual. The SFHA, however, may disclose the information provided if:

- You give written permission to The SFHA to release the information on a time limited basis.
- The SFHA 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 SFHA or your landlord to release the information.

VAWA does not limit the SFHA'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 SFHA 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 SFHA 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 SFHA can demonstrate the above, the SFHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

## **Other Laws**

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

**For Additional Information**

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 La Casa de Las Madres at 415-503-0500.

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 or stalking, you may contact La Casa de Las Madres at 415-503-0500.

**EXHIBIT 16-2: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation,  
Form HUD-5382**

**EXHIBIT 16-2: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation,**

**CERTIFICATION OF  
DOMESTIC VIOLENCE,  
DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

**Use of This Optional Form:** If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

**Submission of Documentation:** The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,  
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: \_\_\_\_\_

2. Name of victim: \_\_\_\_\_

3. Your name (if different from victim's): \_\_\_\_\_

4. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_

\_\_\_\_\_

5. Residence of victim: \_\_\_\_\_

6. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

10. Location of incident(s): \_\_\_\_\_

In your own words, briefly describe the incident(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

**EXHIBIT 16-3: SFHA EMERGENCY MOVE PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, or STALKING (HCV VERSION)**

Attachment: Certification form HUD-5382

Housing Authority of the City and County of San Francisco

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

**Housing Choice Voucher Program**

**VAWA Transfer Plan (Set Aside)**

Subject to availability of funding, 20 vouchers will be set-aside for participants who are victims of domestic violence, dating violence, sexual assault, or stalking as provided in HUD's regulations at 24 C.F.R. part 5, subpart L. The SFHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),<sup>3</sup> the SFHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to take their tenant based voucher and move to another location. For those tenants who are part of the Rental Assistance Demonstration Program, a participant may be referred pursuant to the RAD Referral Policy (see section 4-II.C). For participants who are in a project based unit and have not yet completed 13 months in the program, a tenant based voucher may be requested. A PHA may not terminate assistance to a family receiving project based assistance, regardless of whether the family has lived in the unit for less than 12 months, if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar day period preceding the family's request to move.

**Eligibility for Emergency /Move**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 C.F.R. part 5, subpart L qualifies for an emergency move, if:

- The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit; or
- The tenant is a victim of sexual assault that occurred on the premises within the 90 calendar day period preceding a request for an emergency transfer.

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<sup>3</sup> Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

A tenant requesting an Emergency Move may request a voucher in accordance with the procedures described in this plan.

### **SFHA Policy**

Tenants who are not in good standing may still request an emergency move if they meet the eligibility requirements in this section. A tenant is not in good standing if they owe a debt to the SFHA, are not current on a repayment agreement, have been served with a legal notice within the previous 60 days or have an Unlawful Detainer action that has been filed against their household. A participant who has a debt with the SFHA and requires an immediate move due to safety reasons must enter into a repayment agreement with the SFHA prior to moving.

### **Requesting an Emergency Move**

To request an emergency move, the Participant must notify their Landlord and the SFHA of their intention to move. The tenant shall submit a written notice of the move to both parties. The SFHA will provide reasonable accommodations to this policy for individuals with disabilities pursuant to Chapter 2. 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 SFHA'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.

### **Documentation**

Tenant that certifies in their written request, as outlined above, that the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same unit that the tenant is currently occupying, or that the tenant was assaulted on the premises during the 90 calendar-day period preceding the date of the request for transfer, is sufficient documentation of the tenant's qualification for an emergency transfer.

### **Confidentiality**

The SFHA will keep strictly confidential any information that the tenant submits in requesting an emergency move, and information about the emergency transfer, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking and all unless the tenant gives the SFHA written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See Exhibit 1601, *Notice of Occupancy Rights under the Violence Against Women Act For All Tenants* for more information about the SFHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.



## **Emergency Move Timing and Availability**

The SFHA cannot guarantee that an emergency move request will be approved or how long it will take to process. The SFHA will, however, act as quickly as possible to issue a voucher or complete the referral process to ensure a participant can move if they are a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a participant reasonably believes a proposed move by the landlord would not be safe, the participant may request a voucher to a different unit. If a unit is available, the transferred participant must agree to abide by the terms and conditions that govern occupancy in the unit to which the participant has been moved. The SFHA may be unable to move a participant to a particular unit if the participant has not or cannot establish eligibility for that unit.

If the SFHA has no safe and available units for which a tenant who needs an emergency is eligible, the SFHA will assist the participant in identifying other housing providers or programs who may have safe and available units to which the participant could move. At the participant's request, the SFHA will also assist participant in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

## **Safety and Security of Tenants**

Pending processing of the voucher or referral, if it is approved and occurs, the participant is urged to take all reasonable precautions to be safe.

Participants 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).

Participants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Participants 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>.

**Exhibit 16-4 – Emergency Referral/Move Request Form**

Participants may ask their Eligibility Workers for the appropriate form.

## **EXHIBIT 16-5: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

### **Protections for Victims (24 CFR 5.2005(d)(2))**

The SFHA must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance. Therefore, even if the direct result prohibition does not apply, the PHA or owner cannot use that violation to terminate or evict a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, if the covered housing provider does not ordinarily terminate or evict tenants for that violation.

### **Permissible Evictions**

You can evict a victim of domestic violence, dating violence, sexual assault, or stalking if you can demonstrate that there is an *actual and imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than you hold tenants who are not victims.

### **Removing the Abuser from the Household**

You may bifurcate (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

### **Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

If a tenant asserts VAWA’s protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You are not required to demand official documentation and may rely upon the victim’s statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A completed, signed HUD-approved certification form. The most recent form is HUD-5382. This form is available at the housing authority or online at <https://portal.hud.gov/hudportal/documents/huddoc?id=5382.docx>.
- A statement from a victim service provider, attorney, mental health professional, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she

believes, under penalty of perjury, that the incidents of abuse meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under VAWA (listed below). Both the victim and the professional must sign the statement.

- A Federal, State, tribal, territorial or local law enforcement agency or court record, such as a protective order, or administrative record.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

### **Confidentiality**

You must keep strictly confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. This means that the SFHA (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 by the SFHA for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law 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 a written time-limited release; (b) required for use in an eviction proceeding; or (c) otherwise required by applicable law. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written, time-limited, permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

### **VAWA and Other Laws**

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

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.

### **Additional Information**

If you have any questions regarding VAWA, please contact 415-715-5200.

### **Definitions**

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines domestic violence to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner

VAWA defines sexual assault as “any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent” (42 U.S.C. 14043e-11(a); 24 CFR 5.2003)

VAWA defines stalking as engaging 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.

VAWA defines dating violence as 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 the relationship, and
- 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 SFHA jurisdiction, 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 SFHA jurisdiction. The term “spouse or intimate partner of the victim” includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons.

## **CHAPTER 17: PROJECT-BASED VOUCHERS AND RENTAL ASSISTANCE DEMONSTRATION PROGRAM**

### **INTRODUCTION**

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program and the Rental Assistance Demonstration (RAD) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

## **PART I: GENERAL REQUIREMENTS**

### **17-I.A. OVERVIEW**

*[24 C.F.R. 983.5]*

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 C.F.R. 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

#### **SFHA Policy**

The SFHA will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance. SFHA will issue PBVs in accordance with the regulations described in 24 CFR Part 983 and PIH Notice 2017-21.

A "project" shall be defined as a single building, or as multiple contiguous buildings, or as multiple buildings on contiguous parcels of land.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 C.F.R. 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the PHA is not required to reduce the number of these units if the amount of authorized units is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].

#### **Additional Project-Based Units [FR Notice 1/18/17]**

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit, if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- Are specifically made available to house families that are comprised of or include a veteran.
  - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 C.F.R. 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

### **SFHA Policy**

The SFHA will not set aside units above the 20 percent program limit. The SFHA will exceed the program limit in accordance with the regulations described in 24 CFR part 983 and PIH Notice 2017-21.

### **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. In order to be accepted, the unit must meet the following conditions:

The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and

In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either:

Received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for Elderly (Section 202), Housing for Persons with Disabilities (section 811), Rent Supplement (Rent Supp), or Rental Assistance Program (RAP); or

The unit was subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for Elderly Persons (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that have previously received either PBV or HCV assistance are not covered under the exception.

### **SFHA Policy**

The SFHA will not project-base any of the above unit types. SFHA will only issue PBV's in accordance with 24 CFR Part 983 and PIH Notice 2017-21.

## **17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE**

*[24 C.F.R. 983.2]*

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 C.F.R. 983.2.

### **SFHA Policy**

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the SFHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.



## **17-I.C. RELOCATION REQUIREMENTS**

*[24 C.F.R. 983.7]*

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 C.F.R. part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 C.F.R. 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 C.F.R. part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

## **17-I.D. EQUAL OPPORTUNITY REQUIREMENTS**

*[24 C.F.R. 983.8]*

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 C.F.R. 5.105(a). In addition, the PHA must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 C.F.R. 903.7(o).

## **PART II: PBV OWNER PROPOSALS**

### **17-II.A. OVERVIEW**

With certain exceptions, the PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 C.F.R. 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 C.F.R. 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 C.F.R. 983.56], and meets the site selection standards [24 C.F.R. 983.57]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 C.F.R. 983.51 [Notice PIH 2011-54].

### **17-II.B. OWNER PROPOSAL SELECTION PROCEDURES**

*[24 C.F.R. 983.51(b)]*

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

- PHA request for PBV Proposals. The PHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- The PHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The PHA need not conduct another competition.

#### **Units Selected Non-Competitively [FR Notice 1/18/17]**

For certain public housing projects where the PHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, the PHA may select a project without following one of the two processes above.

#### **SFHA Policy**

The SFHA will not attach PBVs to projects owned by the SFHA as described above.

#### **Solicitation and Selection of PBV or RAD Proposals [24 C.F.R. 983.51(c)]**

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA.

The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

### **SFHA Policy**

#### ***SFHA Request for Proposals for Rehabilitated and Newly Constructed Units***

The SFHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in adherence with the SFHA Procurement policy.

The solicitation will specify the number of units the SFHA estimates that it will be able to assist under the funding the SFHA is making available.

In order for the proposal to be considered, the owner must submit the proposal to the SFHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The SFHA will rate and rank proposals for rehabilitated and newly constructed housing.

Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers the SFHA goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the SFHA will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

#### ***SFHA Requests for Proposals for Existing Housing Units***

The SFHA will advertise its request for proposals (RFP) for existing housing in adherence with the SFHA Procurement policy. The solicitation will specify the number of units the SFHA estimates that it will be able to assist under the funding the SFHA is making available. Owner proposals will be evaluated using the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
- Extent to which the project furthers the SFHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

***SFHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program***

The SFHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state, or local government housing assistance, including projects that were competitively awarded Low-Income Housing Tax Credits, community development, or supportive services program(s) where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. In these cases, assistance can be awarded non-competitively and posted for Public Notification.

Non-Competitive proposals can be presented to the SFHA at any time. Owners are not required to wait until a Request for Proposals is published to present a proposal for consideration under the guidelines of non-competitive selection.

The SFHA may periodically advertise that it is accepting proposals as described above.

In addition to, or in place of advertising, the SFHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis and will be awarded based on the availability of funding. The SFHA will review each proposal on its merits using the following factors:

Extent to which the project furthers the SFHA goal of deconcentrating poverty and expanding housing and economic opportunities; and

Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

**VASH Proposal Selection Process**

All PBV HUD VASH units must be endorsed by the Department of Veterans Affairs. It is the SFHA Policy to review all proposals submitted for PBV VASH, ranking each proposal against the common criteria as well as the mandatory selection criteria used for VASH proposals.

To minimize delay in providing assisted housing for eligible veterans, the SFHA will review and rank all proposals and only the highest scoring proposals will be presented to the Department of Veterans Affairs for endorsement.

Proposals that receive endorsement from the Department of Veteran Affairs will be sent to the Department of Housing and Urban Development for Final approval.

**PHA-Owned Units [24 C.F.R. 983.51(e), 983.59, Notice PIH 2015-05, and FR Notice 1/18/17]**

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

**SFHA Policy**

The SFHA will use an independent entity approved by HUD, to perform required rent determinations and housing quality standards inspections in PBV program units where the SFHA has an identity of interest in the property.

PBV program units may be based on a geographical area covering multiple sites located within that geographical area. The SFHA may only compensate the independent entity and appraiser from SFHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The SFHA may not use other program receipts to compensate the independent entity and appraiser for their services. The SFHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

**PHA Notice of Owner Selection [24 C.F.R. 983.51(d)]**

The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

**SFHA Policy**

Within 15 calendar days of the SFHA making the selection, the SFHA will notify the selected owner in writing of the owner's selection for the PBV program. The SFHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

The SFHA will make available to any interested party its rating and ranking sheets and documents that identify the SFHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after

publication of the notice of owner selection. The SFHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The SFHA will make these documents available for review at the SFHA during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

### **17-II.C. HOUSING TYPE [24 C.F.R. 983.52]**

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS.

Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

### **17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

#### **Ineligible Housing Types [24 C.F.R. 983.53]**

The PHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

#### **Subsidized Housing [24 C.F.R. 983.54]**

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

A public housing unit;

A unit subsidized with any other form of Section 8 assistance;

A unit subsidized with any governmental rent subsidy;

A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);

A Section 202 project for non-elderly with disabilities;

Section 811 project-based supportive housing for persons with disabilities;

Section 202 supportive housing for the elderly;

A Section 101 rent supplement project;

A unit subsidized with any form of tenant-based rental assistance;

A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements.

### **17-II.E. SUBSIDY LAYERING REQUIREMENTS**

*[24 C.F.R. 983.55, FR Notice 11/24/08, FR Notice 7/9/10, and FR Notice 6/25/14]*

The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 C.F.R. 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

The SFHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), the SFHA may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

## **17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

### **25 Percent per Project Cap [24 C.F.R. 983.56]**

The PHA will not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

### **Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17]**

Exceptions are allowed and PBV units are not counted against the 25 percent or 25-unit per project cap if:

The units are exclusively for elderly families

The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. The project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.



## **SFHA Policy**

The SFHA may provide PBV assistance for excepted units.

To be eligible for this service exception, the SFHA will evaluate as part of an owner's proposal, the type and extent of services to be provided based on the targeted population currently living or expected to live in the project. It is expected that a project must provide, at minimum and to the excepted units, one or more for the following services:

- Child care/ Early Childhood Education
- Transportation or Transportation Assistance
- Education/ESL Services
- Technology Access/Skill Development;
- Job Training, Vocational Skills Training and/or Employment Counseling/;
- Substance/Alcohol Abuse Treatment or Counseling;
- Health Care Support and Management;
- Household Skill Trainings (housekeeping & homemaking);
- Homeownership Counseling;
- Financial Empowerment/Family Budgeting;
- Peer Support Groups;
- Parenting Skills/Parent Support;
- Housing Stability Assistance/Support;
- Community Building Events and Activities;
- Nutrition Education and/or Support;
- Legal Resource/Referral Services;
- Resident Leadership Activities/Volunteerism;
- Health and Wellness Activities;
- Afterschool/summer youth activities;
- Violence Prevention Activities;
- Service Connection/Case Management

The SFHA will require that the owner monitor its supportive services requirement monthly and submit an annual report, at the time of rent-increase or contract renewal, a report listing the families, the types of serviced provided and accessed, and the frequency of the that access, and the effect of the access.

### **Projects not Subject to a Project Cap [FR Notice 1/18/17]**

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance. To qualify for the exception, the unit must:

Be covered by a PBV HAP contract that first became effective on or after 4/18/17; and

In the five years prior to the date the PHA either issued the RFP under which the project was selected or the PHA selected the project without competition, the unit met at least one of the two following conditions:

The unit received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for the Elderly (Section 303), Housing for Persons with disabilities (Section 811), the Rental Supplement program,

The unit was subject to a rent restriction as a result of one of the following HUD loans or insurance programs: Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for the Elderly (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that were previously receiving PBV assistance are not covered by the exception. Both existing and rehabilitation units are eligible for this exception. Newly constructed units qualify if they meet the definition of *replacement unit* described in FR Notice 1/18/17.

### **SFHA Policy**

The SFHA does not have any PBV units that are subject to the per project cap exception.

### **Promoting Partially-Assisted Buildings [24 C.F.R. 983.56(c)]**

A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 C.F.R. 983.3].

A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 percent.

### **SFHA Policy**

The SFHA will provide assistance for excepted units. Beyond that, the SFHA will not impose any further cap on the number of PBV units assisted per building.

## **17-II.G. SITE SELECTION STANDARDS**

### ***Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards* [24 C.F.R. 983.57(b)]**

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 C.F.R. 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the PHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 C.F.R. 982.401(l).

### **SFHA Policy**

It is the SFHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the SFHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the SFHA will grant exceptions to the 20 percent standard where the SFHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI, HOPE SF, redevelopment;
- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 C.F.R. 983.57(d)]**

The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;

Have adequate utilities and streets available to service the site;

Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;

Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and

Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **New Construction Site and Neighborhood Standards [24 C.F.R. 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;

The site must have adequate utilities and streets available to service the site;

The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;

The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;

The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;

The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and

Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **17-II.H. ENVIRONMENTAL REVIEW**

*[24 C.F.R. 983.58]*

The PHA activities under the PBV program are subject to HUD environmental regulations in 24 C.F.R. parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 C.F.R. part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 C.F.R. 58.5.

The PHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

## **PART III: DWELLING UNITS**

### **17-III.A. OVERVIEW**

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### **17-III.B. HOUSING QUALITY STANDARDS**

*[24 C.F.R. 983.101]*

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV and RAD program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 C.F.R. 5.703 do not apply to the PBV program.

#### **Lead-based Paint [24 C.F.R. 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 C.F.R. part 35, subparts A, B, H, and R, apply to the PBV program.

### **17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 C.F.R. 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 C.F.R. 100.205, as applicable. (24 C.F.R. 983.102)

### **17-III.D. INSPECTING UNITS**

#### **Pre-selection Inspection [24 C.F.R. 983.103(a)]**

The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, unless the PHA has adopted a policy to enter into

a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.

### **Pre-HAP Contract Inspections [24 C.F.R. 983.103(b); FR Notice 1/18/17]**

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.

#### **SFHA Policy**

The SFHA will enter into a PBV HAP contract when all units that will be under contract comply with HQS standards for life-threatening conditions as defined in Chapter 8.

### **Turnover Inspections [24 C.F.R. 983.103(c)]**

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

### **Annual/Biennial Inspections [24 C.F.R. 983.103(d); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

#### **SFHA Policy**

The SFHA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

### **Other Inspections [24 C.F.R. 983.103(e)]**

The PHA must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

**Inspecting PHA-Owned Units [24 C.F.R. 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.



## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

### **17-IV.A. OVERVIEW [24 C.F.R. 983.15]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

### **17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, the PHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 C.F.R. 983.152(b)].

The PHA may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 C.F.R. 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 C.F.R. 983.152(a)].

#### **Content of the Agreement [24 C.F.R. 983.152(d)]**

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

Site and the location of the contract units;

Number of contract units by area (size) and number of bedrooms and bathrooms;

Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;

Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;

An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;

Estimated initial rents to owner for the contract units;

Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.

Any additional requirements for quality, architecture, or design over and above HQS.

### **Execution of the Agreement [24 C.F.R. 983.153]**

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

### **SFHA Policy**

The SFHA will enter into the Agreement with the owner within 90 calendar days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

## **17-IV.C. CONDUCT OF DEVELOPMENT WORK**

### **Labor Standards [24 C.F.R. 983.154(b)]**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 C.F.R. part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

### **Equal Opportunity [24 C.F.R. 983.154(c)]**

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 C.F.R. part 135. The owner must also comply with federal equal employment opportunity requirements.

### **Owner Disclosure [24 C.F.R. 983.154(d) and (e)]**

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

#### **17-IV.D. COMPLETION OF HOUSING**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

##### **Evidence of Completion [24 C.F.R. 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and

Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the PHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

##### **SFHA Policy**

The SFHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The SFHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

##### **PHA Acceptance of Completed Units [24 C.F.R. 983.156]**

Upon notice from the owner that the housing is completed, the PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. The PHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW**

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 C.F.R. 983.202(a)].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 C.F.R. 983.203]**

The HAP contract must specify the following information:

The total number of contract units by number of bedrooms;

The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;

Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;

Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 C.F.R. part 8;

The HAP contract term;

The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

The initial rent to owner for the first 12 months of the HAP contract term.

#### **Execution of the HAP Contract [24 C.F.R. 983.204]**

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS), unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions. For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been

completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

### **SFHA Policy**

For existing housing, the HAP contract will be executed within 60 calendar days of the SFHA determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 60 calendar days of the SFHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

### **Term of HAP Contract [24 C.F.R. 983.205; FR Notice 1/18/17]**

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 C.F.R. 983.59(b)(2)].

### **SFHA Policy**

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the PHA may extend the term of the contract for an additional term of up to 20 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 C.F.R. 983.59(b)(2)].

### **SFHA Policy**

When determining whether or not to extend an expiring PBV contract, the SFHA will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority;

The condition of the contract units;

The owner's record of compliance with obligations under the HAP contract and lease(s);

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

***Termination by PHA [24 C.F.R. 983.205(c); FR Notice 1/18/17]***

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

***Termination by Owner [24 C.F.R. 983.205(d)]***

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

At their discretion the SFHA may specify in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

**Statutory Notice Requirements: Contract Termination or Expiration [24 C.F.R. 983.206; FR Notice 1/18/17]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV

assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

### **Remedies for HQS Violations [24 C.F.R. 983.208(b)]**

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract does not comply with HQS, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

### **SFHA Policy**

The SFHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

## **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

### **Substitution of Contract Units [24 C.F.R. 983.207(a)]**

At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

### **Addition of Contract Units [FR Notice 1/18/17]**

The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 C.F.R. 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

## **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES**

*[24 C.F.R. 983.207(b) and 983.302(e)]*

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

#### **17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 C.F.R. 983.210]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;

The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;

Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;

To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;

The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;

The amount of the HAP the owner is receiving is correct under the HAP contract;

The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;

Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;

The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and

Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

#### **17-V.F. ADDITIONAL HAP REQUIREMENTS**

##### **Housing Quality and Design Requirements [24 C.F.R. 983.101(e) and 983.208(a)]**

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and



re-decoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

### **SFHA Policy**

The SFHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The SFHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

### **Vacancy Payments [24 C.F.R. 983.352(b)]**

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

### **SFHA Policy**

The SFHA may pay vacancy payments up to two months contract rent while the unit is vacant. These amounts may be pro-rated.

The owner must certify that he did not cause the vacancy by violating the lease, the Contract or any applicable law. Also, the Owner must have notified the SFHA of the vacancy or prospective vacancy and the reasons for the vacancy within 15 calendar days upon learning of the vacancy or prospective vacancy or no vacancy payment will be approved.

The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

If the SFHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, the SFHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The SFHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B and/or the SFHA may withhold the amount owed.

## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17-VI.A. OVERVIEW**

Many of the provisions of the tenant-based voucher regulations [24 C.F.R. 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

### **17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 C.F.R. 983.251 (a) and (b)]**

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 C.F.R. 982.201(a) and 24 C.F.R. 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 C.F.R. 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 C.F.R. 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

#### **SFHA Policy**

The SFHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

### **In-Place Families [24 C.F.R. 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA's waiting list. Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 C.F.R. 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

#### ***17-VI.C. ORGANIZATION OF THE WAITING LIST [24 C.F.R. 983.251(c)]***

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

#### **SFHA Policy**

The SFHA will establish and manage separate waiting lists in accordance with policies established in Chapter 4 of this Plan.

#### **17-VI.D. SELECTION FROM THE WAITING LIST [24 C.F.R. 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected in accordance with Chapter 4. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list(s).

#### **Income Targeting [24 C.F.R. 983.251(c)(6)]**

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

#### **Units with Accessibility Features [24 C.F.R. 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

#### **Preferences [24 C.F.R. 983.251(d), FR Notice 11/24/08]**

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B above.

The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled

residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with “excepted units” for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 C.F.R. 983.261(b); FR Notice 1/18/17].

### **SFHA Policy**

The SFHA will provide a selection preference in accordance with the preference policies established in Chapter 4.

## **17-VI.E. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 C.F.R. 983.251(e)(3)]**

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

Refuse to list the applicant on the waiting list for tenant-based voucher assistance;

Deny any admission preference for which the applicant qualifies;

Change the applicant’s place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA’s selection policy;

Remove the applicant from the tenant-based voucher waiting list.

### **Disapproval by Landlord [24 C.F.R. 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner’s units, such rejection may not affect the family’s position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 C.F.R. 983.252]**

#### ***Family Briefing***

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

#### ***Persons with Disabilities***

If an applicant family’s head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 C.F.R. 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

### ***Persons with Limited English Proficiency***

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

### **17-VI.F. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 C.F.R. 983.253(a)(2) and (a)(3)].

#### **Leasing [24 C.F.R. 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the SFHA from the SFHA's waiting list(s). Except for families converted as part of the RAD program and as provided in the SFHA policy below, the contract unit leased to the family must be the appropriate size unit for the size of the family, based on the SFHA's subsidy standards. Families converted as part of the RAD program and SFHA policy below must occupy the closest and most appropriate size unit for the size of the family, based on the SFHA's subsidy standards.

#### **SFHA Policy**

Families that converted as part of the RAD program, or similar program, must occupy the closest and most appropriate size unit for the size of the family, based on the SFHA's subsidy standards. "Similar programs" are defined as those programs wherein a building was rehabilitated and the same residents residing in the building prior to, and during rehabilitation, returned to the same building post rehabilitation. In these instances, tenants have a right to return and, due to that right, an appropriately sized unit for the size of the family may not be available. Under these circumstances, the developer/owner will ensure that the unit occupied is the closest and most appropriate size unit for the size of the family, based on the SFHA's subsidy standards. The SFHA retains full discretion to deny any future referral requests to a developer/owner after the initial lease up until a household(s) is/are right sized in accordance with HUD regulations and this policy.

#### **Filling Vacancies [24 C.F.R. 983.254(a)]**

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### **SFHA Policy**

The owner must notify the SFHA in writing (mail, fax, or e-mail) within 15 calendar days of learning about any vacancy or expected vacancy.

The SFHA will make every reasonable effort to refer families to the owner within 30 calendar days of receiving such notice from the owner.

### **Reduction in HAP Contract Units Due to Vacancies [24 C.F.R. 983.254(b)]**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

#### **SFHA Policy**

If any contract units have been vacant for 120 days, the SFHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The SFHA will provide the notice to the owner within 15 calendar days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of the SFHA's notice.

### **17-VI.G. TENANT SCREENING [24 C.F.R. 983.255]**

#### **PHA Responsibility**

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

The PHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the time-limited, written request or with the time-limited written consent of the individual providing the documentation [24 C.F.R. 5.2007(c)].

#### **SFHA Policy**

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

#### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

Payment of rent and utility bills;

Caring for a unit and premises;

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

Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and

Compliance with other essential conditions of tenancy.

## **PART VII: OCCUPANCY**

### **17-VII.A. OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **17-VII.B. LEASE [24 C.F.R. 983.256]**

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

#### **Form of Lease [24 C.F.R. 983.256(b)]**

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

#### **SFHA Policy**

The SFHA will not review the owner's lease for compliance with state or local law.

#### **Lease Requirements [24 C.F.R. 983.256(c)]**

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner; and
- The amount of any charges for food, furniture, or supportive services.

#### **SFHA RAD Policy**

For units in RAD Placement Projects that converted to RAD in 2015 and 2016 occupied by a converted RAD family will require the following:



- **Rent Due Date Provision.** The lease must have a provision that does not penalize the family for payment rent by the 10<sup>th</sup> calendar day of every month.
- **Late Rent Fee.** The lease must have a provision that does not charge more than \$25 as a late fee that shall not be accessed until the 11<sup>th</sup> calendar day of the month.
- **Security Deposits.** The lease must not require a security deposit above and beyond what has already been charged by the SFHA.
- **Lease-Renewal.** The lease must have a provision that requires the owner to renew the lease unless cause-exists.

For all Project-Based Voucher units, the SFHA may require the following:

- **Smoking Policy.** Leases must have a non-smoking lease provision that complies with the City of San Francisco's Department of Public Health. Currently, smoking is not allowed within 10 feet of any building.

### **Tenancy Addendum [24 C.F.R. 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **Initial Term and Lease Renewal [24 C.F.R. 983.256(f)]**

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

### **Changes in the Lease [24 C.F.R. 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant.

The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

#### **Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 C.F.R. 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

#### ***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 C.F.R. 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

#### ***Owner Termination of Tenancy [24 CFR 983.257]***

Owners may not evict tenants on the basis, or as a direct result of, the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission. For more information on the VAWA requirements for the termination of protected tenants see section 12-IE of this plan”

#### **Continuation of Housing Assistance Payments [24 CFR 982.258]**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 C.F.R. 983.211.

#### **SFHA Policy**

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the SFHA of the change and request an interim reexamination before the expiration of the 180-day period.

#### **Security Deposits [24 C.F.R. 983.259]**

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

#### **SFHA Policy**

The SFHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

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

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

## **17-VII.C. MOVES**

### **Overcrowded, Under-Occupied, and Accessible Units [24 C.F.R. 983.260]**

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

#### **SFHA Policy**

The SFHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 15 calendar days of the SFHA's determination. The SFHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

1. PBV assistance in the same building or project;
2. PBV assistance in another project; and
3. Tenant-based voucher assistance, if available and upon SFHA discretion

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

#### **SFHA Policy**

When the SFHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 calendar days from the date of the offer to accept the

offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30 calendar day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

### **SFHA RAD Policy**

See Chapter 18.

### **Family Right to Move [24 C.F.R. 983.261]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

SFHA may not terminate assistance to a family receiving project based assistance, regardless of whether the family has lived in the unit for less than 12 months, if the family, with or without prior notification to the SFHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar day period preceding the family's request to move.

### **17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 C.F.R. 983.262]**

The PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a “qualifying family” because the family is no longer an elderly family due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant’s needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

he PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long-term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

### **SFHA Policy**

The SFHA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members’ control.

In all other cases, the SFHA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the SFHA will terminate the housing assistance payments at the expiration of this 30-day period.

The SFHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

## **PART VIII: DETERMINING RENT TO OWNER**

### **17-VIII.A. OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **17-VIII.B. RENT LIMITS [24 C.F.R. 983.301]**

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

### **Certain Tax Credit Units [24 C.F.R. 983.301(c)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;
- For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:
  - The tax credit rent minus any utility allowance;
  - The reasonable rent; or
  - The rent requested by the owner.

## ***Definitions***

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

### **Reasonable Rent [24 C.F.R. 983.301(e) and 983.302(c)(2)]**

The PHA must determine reasonable rent in accordance with 24 C.F.R. 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

To correct errors in calculations in accordance with HUD requirements

If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 C.F.R. 983.55

If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

### **SFHA Policy**

The SFHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 C.F.R. 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the SFHA will use the higher initial rent to owner amount.

### **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 C.F.R. 983.301(f)]**

When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment standard amount for use in the PBV program.



Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

### **SFHA Policy**

Upon written request by the owner, the SFHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The SFHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the SFHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the SFHA determines it is necessary due to SFHA budgetary constraints.

### **Use of Small Area FMRs (SAFMRs) [24 C.F.R. 888.113(h)]**

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs (either by HUD-designation or because the PHA requested HUD approval to use SAFMRs) may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy.

Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of both the SAFMR designation and the PHA administrative plan policy, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

### **SFHA Policy**

The SFHA will not apply SAFMRs to the SFHA's PBV program.

### **Redetermination of Rent [24 C.F.R. 983.302]**

The PHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

### **SFHA Policy**

An owner's request for a rent increase must be submitted to the SFHA 120 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

### ***Rent Decrease***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### ***Notice of Rent Change***

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

### **SFHA Policy**

The SFHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### **PHA-Owned Units [24 C.F.R. 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

### **17-VIII.C. REASONABLE RENT [24 C.F.R. 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### **When Rent Reasonable Determinations Are Required**

The PHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;

- The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

#### ***Comparability Analysis***

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

#### **PHA-Owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

#### **Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

#### **Other Subsidy [24 C.F.R. 983.304]**

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

### ***Combining Subsidy***

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

### **Rent Control [24 C.F.R. 983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law (see section 8-III.B).

## **PART IX: PAYMENTS TO OWNER**

### **17-IX.A. HOUSING ASSISTANCE PAYMENTS**

*[24 C.F.R. 983.351]*

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### **17-IX.B. VACANCY PAYMENTS [24 C.F.R. 983.352]**

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

#### **SFHA Policy**

If the SFHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the SFHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The SFHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the SFHA, the HAP contract may provide for vacancy payments to the owner. The SFHA may pay vacancy payments up to two months contract rent while the unit is vacant. These amounts may be pro-rated. The SFHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

### **SFHA Policy**

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made.

### **17-IX.C. TENANT RENT TO OWNER [24 C.F.R. 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

#### SFHA Policy

The SFHA will make utility reimbursements to the family.

### **17-IX.D. OTHER FEES AND CHARGES [24 C.F.R. 983.354]**

#### **Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

#### **Other Charges by Owner**

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

## CHAPTER 18: RENTAL ASSISTANCE DEMONSTRATION

### INTRODUCTION

The SFHA is a participant in the Rental Assistance Demonstration (RAD) Program utilizing Project Based Vouchers. This chapter includes policies and procedures to enable the implementation of RAD PBV.

There are four parts to this chapter.

Part I: PBV Project Selection: This section covers the cap on PBV vouchers, grievance rights, contract terms, and selection from the waiting list.

Part II: Applicant Referrals to Rad Properties: This section covers referrals, and owner selection.

Part III: Owner Selection of Tenants: This section covers leasing and vacancies.

Part IV: Appeal And Grievance Procedure for RAD Developments: This section covers grievances, appeals, and language access.



## **PART I: PBV PROJECT SELECTION**

### **Maximum Amount of PBV Assistance**

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which is set at 20 percent of the amount of budget authority allocated to a PHA under the Housing Choice Voucher program. To implement this provision, HUD is waiving section 8(o) (13) (B) of the 1937 Act as well as 24 C.F.R. § 983.6.

### **Cap on Number of PBV Units in each Project**

Fifty percent (50%) of the units in each project may receive PBV assistance. An assisted household cannot be involuntarily displaced as a result of this provision.

An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties.

Families living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 C.F.R. §§ 983.56, 983.257(c), 983.261(a) and (d).

To implement these provisions, HUD is waiving section 8(o) (13) (D) of the Act, as well as related provisions of 24 C.F.R. §§ 983.56, 983.257(c), 983.261(a) and (d) for initial occupancy in the RAD converted project. HUD waivers included extending RAD tenant projections in PIH Notice 2012-32, Section 1.6(C)((1) through Section 1.6(C)((8) to all non-RAD project based voucher units once RAD Use Agreement is recorded.

On January 6, 2014, the US Department of Housing and Urban Development (“HUD”) provided approval of applications that were submitted by the Housing Authority of the City and County of San Francisco (the “Authority”) on September 27, 2013, under the Rental Assistance Demonstration (“RAD”) Program for 4,575 housing units in 41 Authority projects.

For specific information on the developments converting/converted to RAD, please see the ISFHA’s Annual Plan for Fiscal Year 2019.

### **Capital Fund**

Current and future Capital Fund Budget grants will be reduced as a result of these projects converting to RAD, The revisions to SFHA’s Annual and Five-Year Plans are included in Chapters 7 8 and 9. These revisions include

- a. An estimate of the amount of the current Capital Fund grant that is associated with the proposed project(s) and the impact on SFHA’s current Five-Year PHA Plan and Five-Year Capital Fund Action Plan.

## **PBV Contract Terms**

### ***Length of Contract***

Covered projects shall have an initial HAP term of at least 15 years and up to 20 years upon request of the PHA and with approval by the agency administering the vouchers. To implement this provision, HUD is waiving section 8(o) (13) (F) of the Act (which established a maximum term of 15 years) as well as 24 C.F.R. § 983.205(a) (which governs contract term).

### ***Mandatory Contract Renewal***

By statute, upon contract expiration, the agency administering the vouchers shall offer, and the PHA shall accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 C.F.R. § 983.205(b), governing the PHA discretion to renew the Contract for term of up to 15 years, will not apply.

In the event that the HAP Contract is removed due to breach, non-compliance or insufficiency of Appropriations, for all units previously covered under the HAP Contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30% of 80% of median income for an appropriate size unit for the remainder of the term of the RAD Use Agreement.

### ***Initial Contract Rents***

Initial PBV contract rents are subject to the statutory and regulatory PBV requirements governing contract rents (see 24 C.F.R. § 983.301). To this effect, initial contract rents cannot exceed the lower of (a) the reasonable rent (as defined under 24 C.F.R. § 983.303; (b) an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard), minus any utility allowance; or (c) the rent requested by the owner.

PHAs may adjust subsidy (and contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. This use, which HUD refers to as “bundled” rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle.

### ***Adjusting Contract Rents***

Contract rents will be adjusted annually by HUD’s Operating Cost Adjustment Factor (“OCAF”) at each anniversary of the HAP Contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o) (13) (I) of the Act and 24 C.F.R. § 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance with 24 C.F.R. § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP Contract.

## **Resident Rights and Participants**

### ***No Re-screening of Tenant upon Conversion***

Current households are not subject to rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for conditions that occurred

prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 C.F.R. § 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. The SFHA will make their best effort to appropriately size households throughout the conversion.

### ***Right to Return***

Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

### ***Renewal of Lease***

The Landlord must renew all leases upon lease expiration, unless good cause exists. Consequently, 24 C.F.R. § 983.257(b) (3) will not apply. This provision must be incorporated by the PBV owner into the tenant lease or tenancy addendum, as appropriate.

### ***Phase-in of Tenant Rent Increases***

If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 C.F.R. § 983.3 (definition of "total tenant payment" (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases.

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) - 66% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full standard TTP

### ***Agreement Waiver***

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 C.F.R. Part 983 Subpart D are waived.

## **Voluntary Compliance Agreement**

SFHA is currently under a Voluntary Compliance Agreement (VCA). Compliance with the VCA will not be negatively impacted by RAD conversion activities. The Voluntary Compliance Agreement requirements and obligations transfer to the new owner upon conversion.

## **Public Housing FSS and ROSS Participants**

Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the FY 2013 PH FSS NOFA, to serve those FSS participants who live in units converted by RAD and who will as a result be moving to the HCV FSS program. A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program.

Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 C.F.R. 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS-SC grants.

## **Resident Participation and Funding**

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

## **Resident's Procedural Rights**

In addition to the regulations at 24 C.F.R. § 983.257, related to owner termination of tenancy and eviction the termination procedure for RAD conversions to PBV will require that the Landlord provide adequate written notice of termination of the lease which shall not be less than:

- A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction;
- 14 days in the case of nonpayment of rent; and
- 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.
- In addition to reasons that require an opportunity for an informal hearing given in 24 C.F.R. § 982.555(a)(1)(i)-(vi), 31 an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a PHA (as owner) action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

- For any hearing required under 24 C.F.R. § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program.
- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.
- An informal hearing will not be required for class grievances or to disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.
- The PHA (as owner) give residents notice of their ability to request an informal hearing as outlined in 24 C.F.R. § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 C.F.R. § 982.555(a)(1)(i)-(vi).
- The PHA (as owner) provide opportunity for an informal hearing before an eviction.

### **Earned Income Disregard**

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 C.F.R. § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in, as described in Section 1.6.C.4; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the Housing Choice Voucher program, the EID exclusion is limited to only persons with disabilities (24 C.F.R. § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only disabled persons is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment); tenants that move into the property following conversion, etc.) is covered by this waiver.

### **Choice Mobility Vouchers**

One of the key features of the PBV program is the mobility component, which provides that if the family has elected to terminate the assisted lease at any time after the first year of occupancy in accordance with program requirements, the PHA must offer the family the opportunity for continued tenant based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance, if available.

### **SFHA Policy**

The SFHA will not apply a turnover cap of available Housing Choice Vouchers for RAD PBV families who wish to exercise mobility. The SFHA will maintain a combined waiting list(s) for all PBV and RAD PBV families wishing to exercise mobility after one year of tenancy.

## **18-VLC. SELECTION FROM THE WAITING LIST(S)**

*[24 C.F.R. 983.251]*

Applicants who will occupy units with RAD assistance must be selected from the SFHA's site based waiting list(s). The SFHA may establish selection criteria or preferences for occupancy of particular RAD units.

### **SFHA Policy**

If a RAD site based waiting list(s) is exhausted and the SFHA is unable to provide new referrals, the SFHA may add applicants to the exhausted site based waitlist using one of the following methods:

- Select applicants from the SFHA HCV, Project Based Voucher or Public Housing waiting list
- Accept RAD Management referrals from pre-applications collected at the property

## **PART II: APPLICANT REFERRALS TO RAD PROPERTIES**

### **18-II.A. OVERVIEW**

The SFHA Client Placement Department must refer eligible applicants to RAD properties in accordance with a procedure that is consistent with civil rights and nondiscrimination laws. The SFHA must also refer applicants to RAD properties in the appropriate waitlist order. The SFHA will continue to refer applicants until a RAD vacancy is filled. Multiple applicants may be referred for each available RAD unit.

This section describes the SFHA's policies with regard to the number of unit offers that will be made to applicants selected from the waiting list(s). This section also describes the SFHA's policies for offering units with accessibility features.

### **18-II.B. UNIT OFFERS/ OFFER REFUSAL WITHOUT GOOD CAUSE**

Applicants will be referred to a RAD property upon receipt of an Applicant Referral Request Form submitted by the owner, detailing the unit size and type, income requirements and unit accessibility features. Applicants are referred based on waitlist position, compliance with the occupancy guidelines and income restrictions for the vacancy.

All applicants are required to complete an Accessible Unit Request Form to identify or decline the need for a unit with accessibility features. Applicants who have indicated the need for accessibility features are prioritized as referrals for vacancies that meet the applicant's accessibility needs.

#### **SFHA Policy**

Unit offers will be made in writing at the PBV (Project Based Voucher) Family Briefing. Unit offers made by telephone due to extenuating circumstances will be confirmed by letter.

Applicants must accept or refuse a unit offer within ten (10) calendar days of the date of the offer.

The SFHA will make a maximum of two (2) unit offers. The initial unit offer may be refused without good cause. A Notice of Proposed RAD Waitlist Withdrawal will be sent to the applicant advising of a final unit offer remaining and the risk of withdrawal.

The second and final unit offer must be accepted in order to prevent adverse action. When an applicant refuses two (2) unit offers without good cause, the SFHA will remove the applicant from the refused site based waitlists as well as the remaining RAD site based waitlist(s) on which the applicant is active in accordance with the Notice of Proposed RAD Waitlist Withdrawal. No adverse actions will impact non-RAD waitlist statuses/applications as a result of RAD unit refusals.

The SFHA will send a notice to the household of such removal. The notice will inform the family of their right to request an informal review and the process for doing so (see Chapter 14). The applicant may reapply for assistance if the waiting list(s) is open. If the waiting list(s) is not open, the applicant must wait to reapply until the SFHA opens the waiting list(s).

## 18-II.C. REFUSAL OF UNIT OFFER FOR GOOD CAUSE

### SFHA Policy

Applicant's households 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 selection from the waitlist, 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.

Good Cause refusals must be submitted in writing and must be accompanied by supporting documentation to verify the qualifying "good cause" reason. In the case of a unit refusal for good cause the applicant will not be removed from the waiting list(s) The applicant will remain at the top of the waiting list(s) until the family receives an offer for which they do not have good cause to refuse.

Examples of good cause for refusal of a referral include, but are not limited to, the following:

- Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities, so that accepting the offer would require the 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 household demonstrates to the SFHA'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, or risk assessments related to witness protection from a law enforcement agency. 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



## **18-II.D. RAD EMERGENCY REFERRALS FOR PROGRAM PARTICIPANTS**

### **SFHA Policy**

Households requiring an emergency transfer will be given a preference on a RAD PBV waiting list(s). This preference is specific and limited to Project-Based Voucher Assistance at a RAD property. To qualify for this preference, a family must have an approved (certified) Emergency Referral in accordance with RAD Emergency Referral Procedure.

If the RAD Property Manager determines that the RAD participant household's situation meets one or more of the definitions of emergency defined below, is supported by any required documentation as defined below, and the RAD participant household's emergency cannot be resolved by an internal transfer or temporary relocation, the RAD Property Manager will complete a RAD Emergency Referral Request Form for approval by the Mayor's Office of Housing and Community Development (MOHCD) The certified RAD Emergency Referral is then routed to the SFHA for placement.

Placement/referrals are made based on the sites selected by the resident on the RAD Site Based Waitlist Selection Form in the order of certified MOHCD approval with consideration of the household's needs/ all factors warranting the referral. Households with a debt owed to SFHA will not be required to pay as a requirement to move to another RAD unit/property.

A qualifying emergency situation includes the following:

- *Personal Safety Emergency:*
  - A RAD participant and/or household member is a target of any physical harassment and/or extreme or repeated verbal harassment, intimidation, or coercion, which places the household member(s) in imminent danger;
  - A RAD participant and/or household member is a participant in a witness protection program;
  - A RAD participant and/or household member is or has been a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse and reasonably believes there is a threat of imminent danger if not relocated.

- *Uninhabitable Conditions:*
  - The RAD participant’s unit, building, or RAD property pose an immediate, verifiable threat to the life, health, or safety of the tenant or family members and cannot be remedied by internal transfer or temporary relocation of the tenant. Examples include:
    - Destruction by fire or other disaster including, but not limited to, a flood, earthquake, or other natural or man-made disaster; or
    - The existence of a major maintenance or defect problem that constitutes a serious danger to health and safety.
  
- *Reasonable Accommodation:*
  - A RAD participant has a verifiable medical condition that requires an accommodation that cannot be reasonably provided in their existing development.

These policies do not apply to units with a homeless target population, including all formerly Moderate Rehabilitation Units converted to RAD (RAD Component 2). Please see Section 18-II.E. for the Emergency referral process of formerly Moderate Rehabilitation Units.

## **18-II.E. RAD EMERGENCY REFERRALS FOR PARTICIPANTS OF THE MODERATE REHABILITATION PROGRAM**

### **SFHA Policy**

Households requiring an emergency transfer will be given a preference on a RAD PBV waiting list(s). This preference is specific and limited to Project-Based Voucher Assistance at a RAD property. To qualify for this preference, a family must have an approved (certified) Emergency Referral in accordance with RAD Emergency Referral Procedure.

If the RAD Property Manager determines that the RAD participant household’s situation meets one or more of the definitions of emergency defined below, is supported by any required documentation as defined below, and the RAD participant household’s emergency cannot be resolved by an internal transfer or temporary relocation, the RAD Property Manager will complete a RAD Emergency Referral Request Form for approval by a third-party at the discretion of the Authority. The certified RAD Emergency Referral is then routed to the SFHA for placement.

Placement/referrals are made based on the sites selected by the resident on the RAD Site Based Waitlist Selection Form in the order of certified third-party approval with consideration of the household’s needs/ all factors warranting the referral. Households

with a debt owed to SFHA will not be required to pay as a requirement to move to another RAD unit/property.

A qualifying emergency situation includes the following:

- *Personal Safety Emergency:*
  - A RAD participant and/or household member is a target of any physical harassment and/or extreme or repeated verbal harassment, intimidation, or coercion, which places the household member(s) in imminent danger;
  - A RAD participant and/or household member is a participant in a witness protection program;
  - A RAD participant and/or household member is or has been a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse and reasonably believes there is a threat of imminent danger if not relocated.
  
- *Uninhabitable Conditions:*
  - The RAD participant's unit, building, or RAD property pose an immediate, verifiable threat to the life, health, or safety of the tenant or family members and cannot be remedied by internal transfer or temporary relocation of the tenant. Examples include:
    - Destruction by fire or other disaster including, but not limited to, a flood, earthquake, or other natural or man-made disaster; or
    - The existence of a major maintenance or defect problem that constitutes a serious danger to health and safety.
  
- *Reasonable Accommodation:*
  - A RAD participant has a verifiable medical condition that requires an accommodation that cannot be reasonably provided in their existing development.

## **PART III: OWNER SELECTION OF TENANTS**

### **18-III.A. OVERVIEW**

SFHA and RAD property owners developed a written tenant selection guidelines that are consistent with public financing regulations. These procedures have the purpose of providing housing opportunities for very low-income families.

### **18-III.B. LEASING**

*[24 C.F.R. 983.253(a)]*

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the SFHA from the SFHA's RAD property waiting list(s).

### **18-III.C. FILLING VACANCIES**

*[24 C.F.R. 983.254(a)]*

The owner must promptly notify the SFHA of any vacancy or expected vacancy in a RAD property. After receiving such notice, the SFHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The SFHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### **SFHA Policy**

SFHA and the RAD owners has developed and made available a referral procedure for filling available units, in compliance with this chapter.

## **PART IV: APPEAL AND GRIEVANCE PROCEDURE FOR RAD DEVELOPMENTS (Post Conversion)**

### **18-IV.A OVERVIEW**

The RAD developer strives to provide excellent services to tenants and applicants of the housing we own and manage. However, we realize that on occasion, disagreements between tenants or applicants and staff will occur. We have adopted the Appeal and Grievance Procedure described herein to ensure that tenants and applicants have a fair opportunity to present and resolve any disagreements or disputes they have in the area of property management. (Tenant Services grievances are covered in a separate procedure available from your property's Tenant Services office.)

Experience shows that most disagreements can be resolved quickly and informally through direct and honest communication. Therefore, we encourage you to bring your concerns directly to the pertinent employee for resolution. You may also request a hearing if you have a complaint about another tenant concerning your or others' health and safety or maintenance and management of the project.

If you do not believe that the employee has adequately addressed your concern, we ask that you bring your concern to the Property Manager, whose office is on the ground floor of the property you live in. If you do not believe that the Property Manager has adequately addressed your concern, or if your concern is with the Property Manager and you feel you cannot address this with them directly, please bring the issue to the Property Supervisor. The Property Supervisor manages the staff and facilities of several buildings.

Submit your request to the office of the Property Supervisor.

If the Property Supervisor does not resolve your concern satisfactorily, you may follow the procedure described below.

The RAD developer's policy is that all tenants' grievances be given complete and objective consideration. On rare occasions, this may require reference of a problem to higher levels of authority. This procedure has been adopted to assure that opportunity for full "due process" and a fair opportunity to present and resolve any disagreements or disputes that you have with management is given to all tenants and applicants.

This procedure applies to both applicants and tenants of their RAD Developer properties. All tenants are encouraged to use it without concern that it will reflect on their status as a tenant.

"Complainant" is defined as a tenant whose rights, duties, welfare, or status are or may be adversely affected by management's action or failure to act and who files a grievance with

management with respect to such action or failure to act. Complainant is referred to in this procedure as “complainant,” “you” or “tenant.”

**“Grievance” is defined as any dispute with respect to management action or failure to act in accordance with lease requirements, or any management action or failure to act involving the interpretation or application of management regulations, policies, or procedures which adversely affects the rights, duties, welfare, or status of the complainant.**

#### **18-IV.B. RIGHT TO A GRIEVANCE HEARING**

If you believe you have a grievance, for example that management has acted so that your rights or status are adversely affected, or you believe that management has not complied with the terms of the residential lease it entered into with you, then you are entitled to a hearing in accordance with this grievance and appeal procedure.

You may also request a hearing if you have a complaint about another tenant concerning your or others’ health and safety or maintenance and management of the project.

If you applied for a unit and were rejected, you also have the right to request a hearing.

The grievance and appeal procedure does not apply if:

1. You have been given a notice to vacate because you or a member of your household engaged in:
  - a. criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises, other residents or management employees;
  - b. violent or drug-related criminal activity on or near the premises; or
  - c. criminal activity that resulted in felony conviction of a household member.
2. You do not have a right to an informal hearing for class grievances or for disputes between residents not involving management or SFHA.

Your tenancy will not terminate and management will not file an eviction complaint against you until the time to request a hearing expires and you did not request a hearing; or if you requested a hearing, a complaint will not be filed until the informal and formal hearing procedure have been completed. In the case of a proposed adverse action other than an eviction, the management shall not take the adverse action until the time for you to request a grievance hearing has expired, and (if you timely requested a hearing) the grievance hearing has been completed.

#### **18-IV.C. RENT OR OTHER CHARGES OWING**

During the hearing process, you must continue to pay all rent and charges not in dispute as they become due.

If you fail to pay rent and charges not in dispute, the hearing officer may determine that you have waived your right to a formal hearing. If the hearing officer decides that you have waived your right to a hearing, you may resolve your grievance in court.

#### **18-IV.D. REQUESTING A HEARING**

Present your request for an informal hearing on time. You must personally make a request for an informal hearing either orally or in writing to the RAD Property Manager at your site's administrative office, so that together we may agree to a date and time to discuss your grievance informally. You must present your grievance within a reasonable time, not to exceed ten (10) working days after the grievance or dispute arose. Your request must include a simple statement of your grievance or dispute.

#### **18-IV.E. THE INFORMAL HEARING**

The goal of the informal hearing is to settle the problem without the need for a formal hearing or court proceedings. If you have a complaint and request a hearing, you will have an informal hearing with an individual who did not make or approve the decision or a subordinate of this person. Once requested, the informal hearing must be held between you and management within 15 calendar days after your request. Furthermore, management is obliged to give you its decision on the matter in writing within 15 calendar days of the hearing. If the decision is not in your favor or the problem is not settled, you are entitled to request a formal hearing. The written decision will also include the procedures you must follow if you want to appeal the decision in a formal hearing.

While you can present your grievance orally, it is better also to state your grievance in writing. The grievance may be simply stated, and it is best if you also state action or relief you seek.

We will prepare a written, dated, and signed summary of our discussion and answer to your grievance within 15 calendar days. We will mail or deliver one copy to you and keep one in your file. Our answer shall specify 1) the names of the hearing participants, including the tenant and management staff, 2) the date of the hearing, 3) the nature of the grievance, 4) the proposed disposition of the grievance and the specific reasons therefore, 5) your right to a formal hearing, 6) the procedure by which you may request a formal hearing if you are not satisfied with the proposed disposition and 7) the date by which to file the request for the formal hearing.

#### **18-IV.F. THE FORMAL HEARING**

If you are dissatisfied with management's decision at the informal hearing, you have a right to a formal hearing. An impartial person, (someone other than a person who made or approved the decision or a subordinate of this person will conduct the formal hearing. An impartial hearing officer will be selected from the rotating list of hearing officers established by SFHA after consultation with the resident organizations. An attorney who has represented any RAD developer or the SFHA may not act as a hearing officer.

Present your request for a formal hearing on time. If you want a formal hearing, you may submit a written request to your property manager within 15 calendar days after receiving the decision from the informal hearing. If you miss this 15 calendar day deadline, the decision from the informal hearing will become final. This shall not, however, constitute a waiver of your right thereafter to contest the disposition of the grievance in an appropriate judicial proceeding.

As with the informal hearing, you must simply state your complaint or grievance, the reasons why you disagree with the decision resulting from the informal hearing and action or relief you seek.

Do not miss the hearing. The hearing will be held no more than 15 calendar days after management receives your request for a hearing. You will be given at least seven (7) calendar days' notice of the hearing date. You have the right to make one request for a rescheduled time, for good cause. If you or management's representative fails to appear without prior notification, the hearing officer can either proceed with the hearing without the absent party or reschedule the hearing for a later date.

#### **18-IV.G. PROCEDURES GOVERNING THE HEARING**

The following procedures are intended to protect your right to a fair hearing and provide basic due process safeguards:

1. You can bring as much evidence to the hearing as you think you need. However, the hearing officer will determine if it relates sufficiently to the hearing to be considered.
2. You can bring someone to represent you at the hearing or a witness or observer, but you must also be present.
3. You and management can have witnesses to support your respective positions, with the right to cross-examine each other's witnesses.
4. You will be given the opportunity a reasonable time before the hearing to examine and copy at your expense all documents, records, and regulations that are relevant to the hearing. Any documents not made available for review may not be relied upon by management at the hearing.
5. The hearing will be private.
6. Either party may request that the hearing be recorded at their own expense. Any party may purchase a copy.
7. At the hearing, you must present your side of the dispute and state what you want done. It will then be management's burden to justify its actions. If the hearing relates to an eviction or lease termination, management must also prove "good



cause," as defined in the Program Regulations. Good cause includes, but is not limited to, nonpayment of rent, noncompliance with the terms of the lease, subletting, and remaining on the property after your tenancy is terminated.

8. Those present at the hearing must conduct themselves in an orderly fashion and follow the rules laid out by the hearing officer. Failure to do so is sufficient grounds for the hearing officer to terminate the hearing.
9. Until the hearing officer sends you a written decision, neither management nor the owner will file an eviction action against you in court.

### ***Consideration of Circumstances***

In determining whether to deny or terminate assistance or evict because of action or failure to act by members of the family:

- (i) Management and the hearing officer must consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial, termination of assistance or eviction on other family members who were not involved in the action or failure.
- (ii) Management or the hearing officer may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. Management or the hearing officer may determine that the other members of a participant family may continue receiving assistance.
- (iii) In determining whether to deny admission, terminate assistance or to evict due to illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the management and hearing officer shall consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the management or hearing officer may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.
- (iv) If the family includes a person with disabilities, decision concerning such action is subject to consideration of reasonable accommodation in accordance with 24 C.F.R., part 8.
- (v) Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault or stalking. The management and owner's admission, termination and eviction actions must be consistent with fair housing and equal opportunity provisions of 24 C.F.R. § 5.105, and with the requirements of 24 C.F.R. part 5, subpart L, protection for victims of domestic violence, dating violence, sexual assault or stalking.
- (vi) In the case of a proposed eviction, eviction must always be considered a last resort and

alternatives to eviction must be considered. In non-payment of rent cases, a fair and reasonable payment plan must be offered. Considerations of health, safety and quiet enjoyment must be balanced with a consideration that residents may have no other housing options and that they may not have complete control over all household members and guests.

#### **18-IV.H. HEARING DECISION**

The hearing officer must send a written decision to all parties within 15 calendar days of the request for the hearing. The decision will be based solely upon a preponderance of the evidence presented at the hearing and in conformance with applicable laws and/or regulations. In general all evidence is admissible. Even though hearsay is generally admissible hearsay evidence alone cannot be used as the sole basis for the decision.

The decision should follow a format of: Hearing information (date, parties present, etc.), Statement of reasons for the hearing, Summary of evidence, Finding of facts, Conclusions and Order.

Provided that the decision is consistent with the applicable laws and regulations, it will be binding on all the parties. If the decision is in your favor, management must promptly take all actions necessary to carry out the decision or refrain from any action prohibited by the decision. If the decision is not in your favor, you must promptly comply with the decision, terminate your tenancy and move, if required, or take your complaint to court.

A copy of the decision with all names and identified references shall be provided to and maintained on file by SFHA and made available for inspection by another complainant, a hearing officer or SFHA.

#### **18-IV.I. UNRESOLVED GRIEVANCES OR ADDITIONAL APPEALS**

If the parties and hearing officer are unable to resolve the grievance or any party wishes to make an additional appeal, either party may direct their complaint to the local responsible agency for review and recommendation.

For housing matters relating to Section 8, you may contact the San Francisco Housing Authority, ATTN: Special Programs, 1815 Egbert Avenue, San Francisco, CA 94124

For matters relating to discrimination based upon race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, familial status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status, height, or association with members of such classes, may contact the California Department of Fair Employment and Housing, (800) 884-1684 and/or the San Francisco Human Rights Commission (SFHRC), 25 Van Ness Avenue, San Francisco, CA 94102. You may also contact the SFHRC if you are an applicant with a criminal history and believe that your rights under the Fair Chance Ordinance, Article 49 of the SF Police Code have been violated or an applicant or tenant with a claim of discrimination based upon source of income.

Upon a written request from the local or state agency for interpretation, the SFHA shall be the final authority for purposes of interpretation of these procedures.

#### **18-IV.J. RIGHT TO GO TO COURT**

Participation in any of the procedures described above will not waive, or affect in any manner, any rights you or management may have to any judicial proceedings that may thereafter be brought on the matter.

#### **18-IV.K. NOTICE OF EVICTION**

The management's notice of eviction or notice to vacate must provide adequate written notice, which shall not be less than:

1. A reasonable period of time not to exceed 30 days, if the health or safety of other tenants, SFHA employees or management employees, or persons residing in the immediate vicinity of the premises is threatened, or in the event of any drug-related or violent criminal activity or any felony conviction by a tenant or immediate household member;
2. 14 days in the case of nonpayment of rent, and
3. 30 days in any other case, except that if State or local law provides for a shorter period of time, such shorter period shall apply

The management must provide SFHA with a copy of any owner eviction notice and the SFHA shall also provide the tenant a notice of lease termination with time periods not less than listed above.

Any notice of eviction or notice to vacate must contain the following information.

1. The reasons for the eviction with enough specificity to permit the tenant to prepare a defense;
2. A statement of the right to request an informal and formal grievance hearing (including the deadline for requesting the hearing) or if the tenant is not entitled to a hearing the basis for excluding the tenant from the procedures;
3. A statement of the opportunity to examine prior to any hearing or trial any relevant documents, records, or regulations, including the tenant file, directly relating to the eviction or termination, if the management does not make the documents available to the tenant, management may not rely on the document at the hearing or at trial;
4. The rights of tenants pursuant to the requirements of 24 C.F.R. part 5, subpart L, protections for victims of domestic violence, dating violence, sexual assault or stalking, and
5. The right to request a reasonable accommodation based upon your disability, in accordance with 24 C.F.R. part 8.

## **18-IV.L. INCORPORATED INTO TENANT LEASE AND SFHA ADMINISTRATIVE PLAN**

This Appeal and Grievance Procedure is a required attachment to all tenant leases and is incorporated therein. The Procedure also must be incorporated into the SFHA Administrative Plan.

## **18-IV.M. LANGUAGE ACCESS**

Grievance hearings will be conducted in a manner consistent with Title VI of the Civil Rights Act of 1964 and HUD's Title VI Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007). Management has an obligation to provide meaningful language assistance to individuals who are limited English proficient (LEP). Being LEP means that you have difficulty communicating (reading, writing, speaking) in or understanding English.

Therefore, if you are LEP, management will make reasonable efforts to provide you with interpretation services, free of charge. Additionally, management will make reasonable efforts to provide you with free translated copies of any documents used in the hearing by management.

Failure by management to take reasonable steps to provide interpretation services or translated copies of documents, consistent with Title VI and HUD's Title VI Guidance, will result in the postponement of the hearing.

### ***1. Interpreters***

If you require an interpreter for your grievance hearing, you or someone representing you may request an interpreter by providing seven (7) day(s) notice to management. Management will then make reasonable efforts to secure a qualified interpreter to provide interpretation services for the purposes of the hearing, at no charge to you.

A "qualified interpreter" is someone who has a demonstrated ability to interpret that goes beyond merely stating that they are bilingual or multilingual, but who has a formal certification or other significant experience as an interpreter in state or federal court or other tribunal. Interpreters should have working knowledge of common terms used in grievance hearings.

You are strongly encouraged to use the free, qualified interpreter assistance provided to you. The use of friends, neighbors, relatives, or others without formal interpretation training as interpreters is highly discouraged. Minor children will not be allowed to act as interpreters.

### ***2. Translation***

Reasonable efforts will be made to provide you with translated copies of any documents used in the hearing by management. These documents will be provided to you at least five (5) calendar day(s) before the hearing. Failure to make reasonable efforts to provide translated documents in a timely manner constitutes grounds for a postponement of the hearing.

#### **18-IV.N. SERVICE OF NOTICE**

Unless otherwise required by state or local law or otherwise agreed to in writing service of a notice shall be in person or by U.S. Mail to management at the address provided by the management company to the tenant at the address that the management has on record.

If the notice is sent by U.S. mail, add three days to any applicable notice period noted above.

## **CHAPTER 19: EMERGENCY HOUSING VOUCHERS**

### **INTRODUCTION**

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (P.L. 117-2, hereafter referred to “the ARP”) into law, which provides over \$1.9 trillion in relief to address the continued impact of the -COVID-19 pandemic on the economy, public health, State and local governments, individuals, and businesses. Section 3202 of the ARP appropriates \$5 billion for new incremental EHV’s (Emergency Housing Vouchers), the renewal of those EHV’s, and fees for the cost of administering the EHV’s and other eligible expenses to prevent, prepare, and respond to coronavirus to facilitate the leasing of the emergency vouchers, such as security deposit assistance and other costs related to retention and support of participating owners.

This chapter sets forth the operating requirements for the EHV’s, including the administrative fees and fees for other eligible expenses; the housing assistance payments (HAP) funding renewal process; family eligibility requirements; EHV waivers, alternative requirements, and special rules, including a requirement that families are offered housing search assistance and that PHAs partner with the Continuum of Care (CoC) or other homeless or victim services providers to assist qualifying families through a direct referral process; the EHV recapture and redistribution procedures, and the prohibition on the reissuance of turnover EHV’s after September 30, 2023.

Eligibility for EHV’s is limited to individuals and families who are (1) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; (2) homeless; (3) at risk of homelessness; or (4) recently homeless and for whom providing rental assistance will prevent the family’s homelessness or having high risk of housing instability. After September 30, 2023, a PHA may not reissue any previously leased EHV, regardless of when the assistance for the formerly assisted family ends or ended.

## **PART I: ADMINISTRATIVE FEES AND FUNDING FOR OTHER ELIGIBLE EXPENSES**

### **19-I.A. OVERVIEW**

Section 3202 of the American Rescue Plan (ARP) appropriates \$5 billion for new incremental Emergency Housing Vouchers (EHVs), the renewal of those EHVs, and fees for the cost of administering the EHVs and other eligible expenses defined in this chapter to prevent, prepare, and respond to the COVID-19 pandemic. These expenses include facilitation of the leasing of the emergency vouchers, such as security deposit assistance and other costs related to retention and support of participating owners.

PHAs will be allocated administrative fee funding for EHV administrative costs and for other eligible expenses described in this chapter. These fees may only be used for EHV administration and other eligible expenses and must not be used for or applied to other PHA programs or vouchers (e.g., regular HCVs, Mainstream vouchers, etc.).

## **PART II: ELIGIBILITY**

### **19-II.A. INDIVIDUAL AND FAMILY ELIGIBILITY UNDER THE QUALIFYING CATEGORIES**

In order to be eligible for an EHV, an individual or family must meet one of four eligibility categories:

- Homeless
- At risk of homelessness
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability.

In general, the verification that the individual or family meets one of these four eligibility categories is conducted by the CoC or another partnering agency that makes direct referrals to the PHA. The CoC or other direct referral partner must provide supporting documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance.

## **19-II.B. VOUCHER TERM AND EXTENSIONS**

### **Voucher Term [24 C.F.R. § 982.303]**

The initial term must be stated on the voucher [24 C.F.R. § 982.303(a)].

#### SFHA Policy

The initial voucher term will be 180 calendar days.

The family must submit a Request for Voucher Extension form for an additional 60 days.

Requests that exceed 240 days would require a Reasonable Accommodation.

## **19-II.C. LOCAL PREFERENCES**

Under the HCV program, PHAs have established a system of local preferences for the selection of families. HUD is waiving § 982.207(a) and establishing an alternative requirement that the local preferences established by the PHA for HCV admissions do not apply to EHV's. The PHA may choose, in coordination with the CoC and other referral partners, to establish separate local preferences for EHV's, or may simply choose to not establish any local preferences for the EHV waiting list.

#### SFHA Policy

The SFHA has selected the following local preferences for the selection of families for EHV's are as follows:

1. Individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking;
2. Homeless

The preference system prioritizes the order in which families on the EHV waiting list are referred but does not allow the PHA to refuse to accept a referred family that meets one of the four EHV eligibility categories, or otherwise delay issuance of an available voucher to that eligible family in order to "hold" the voucher for a future referral of a preference holder.

## **19-II.D. RESTRICTIONS ON PHA DENIAL OF ASSISTANCE TO AN EHV APPLICANT**

HUD waived §982.552 and § 982.553 and established an alternative requirement with respect to mandatory and permissive prohibitions of admissions for EHV applicants.

### **Mandatory Prohibitions pursuant to PIH Notice 2021-15:**

(1) Admission will be denied if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing to EHV applicants.

(2) Admission will be denied to the program if any member of the household is subject to a



lifetime registration requirement under a State sex offender registration program to EHV applicants.

**In accordance with PIH Notice 2021-15, Admissions will not be denied when:**

- Any member of the family has been evicted from federally assisted housing has ever terminated assistance under the program for any member of the family.
- The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family breached an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA.
- The family would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with §982.553(a)(3).
- The PHA determines that any household member is currently engaged in, or has engaged in, during a reasonable time before the admission, drug-related criminal activity.

All other Permitted Reasons for Denial of Assistance listed in section 3-III.C. are applicable.

**EXHIBIT 19-I DEFINITIONS OF QUALIFYING CATEGORIES**

The following definitions always apply with respect to EHV eligibility, regardless of whether the PHA may have established another definition for any of these terms in its PHA administrative plan.

**Individuals and Families Who Are Homeless**

The meaning of “homeless” is as such term is defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)), which is codified in HUD’s Continuum of Care Program regulations at 24 CFR 578.3 and reads as follows:

*Homeless* means:

1. An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
  - ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or
  - iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

2. An individual or family who will imminently lose their primary nighttime residence, provided that:
  - i. The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - ii. No subsequent residence has been identified; and
  - iii. The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing.
3. Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
  - i. Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
  - ii. Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
  - iii. Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
  - iv. Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment.

## **Individuals or families who are at-risk of homelessness**

The meaning of “at-risk of homelessness” is as such term is defined in section 401(1) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(1)), which is codified in HUD’s Continuum of Care Program regulations at 24 CFR 578.3 and reads as follows:

*At risk of homelessness.*

1. An individual or family who:

- i. Has an annual income below 30 percent of median family income for the area, as determined by HUD;
- ii. Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “Homeless” definition above; and
- iii. Meets one of the following conditions:
  - (A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;
  - (B) Is living in the home of another because of economic hardship;
  - (C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;
  - (D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;
  - (E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;
  - (F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or
  - (G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan.

2. A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

3. A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

**Individuals or Families Who Are Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking**

This category is composed of any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking. This includes cases where a HUD-assisted tenant reasonably believes that there is a threat of imminent harm from further violence if they remain within the same dwelling unit, or in the case of sexual assault, the HUD-assisted tenant reasonably believes there is a threat of imminent harm from further violence if they remain within the same dwelling unit that they are currently occupying, or the sexual assault occurred on the premise during the 90- day period preceding the date of the request for transfer.

**Domestic Violence** includes felony or misdemeanor crimes of violence committed by:

- a. a current or former spouse or intimate partner of the victim (the term “spouse or intimate partner of the victim” includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship),
- b. a person with whom the victim shares a child in common,
- c. a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- d. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- e. 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.

**Dating Violence** means violence committed by a person:

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  1. The length of the relationship;
  2. The type of relationship; and

3. The frequency of interaction between the persons involved in the relationship.

**Sexual Assault** means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's individual safety or the safety of others; or
2. Suffer substantial emotional distress.

**Human Trafficking** includes both sex and labor trafficking, as outlined in the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7102). These are defined as:

*Sex trafficking* means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; (and)

*Labor trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

### **Individuals or Families Who Are Recently Homeless**

This category is composed of individuals and families determined by the CoC or its designee to meet the following definition.

*Recently Homeless* is defined as individuals and families who have previously been classified by a member agency of the CoC as homeless but are not currently homeless as a result of homeless assistance (financial assistance or services), temporary rental assistance or some type of other assistance, and where the CoC or its designee determines that the loss of such assistance would result in a return to homelessness or the family having a high risk of housing instability.

Examples of households that may be defined as recently homeless by the CoC include, but are not limited to, participants in rapid rehousing, and permanent supportive housing.