

**GOVERNMENT OF PUERTO RICO  
DEPARTMENT OF HOUSING  
PUERTO RICO PUBLIC HOUSING ADMINISTRATION**

**ADMISSIONS AND CONTINUED OCCUPANCY POLICY  
(ACOP)**

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## **CHAPTER I: OVERVIEW OF THE PROGRAM PLAN**

### **ARTICLE I.1: EXPLANATORY MEMORANDUM**

The Puerto Rico Public Housing Administration (PRPHA) is the entity responsible for establishing the public policy as promulgated by virtue of the faculty conferred by the Law Number 66 of August 17, 1989, as amended, known as the "Puerto Rico Housing Administration Organic Act" to establish the public policy regarding the administration of public housing in the Government of Puerto Rico.

It is a governmental Agency of the Commonwealth of Puerto Rico, created and authorized by local law to develop and operate the Public Housing Program for very low and low-income families, according to the limits of income established by HUD. The PRPHA receives its operating subsidy for the Public Housing Program from the Department of Housing and Urban Development (HUD).

The PRPHA has entered an Annual Contributions Contract (ACC) with HUD to administer the Public Housing Program. Therefore, the PRPHA must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to implement federal requirements and to ensure consistency in the operation of the Program.

### **ARTICLE I.2: TITLE**

This Regulation shall be known as the "Admissions and Continued Occupancy Policy (ACOP)".

### **ARTICLE I.3: LEGAL BASIS**

This regulation is adopted pursuant to the following legal provision:

- 24 CFR Part 5: General HUD Program Requirements

- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 135: Economic Opportunities for low and verylow-income persons
- 24 CFR Part 901: Public Housing Management Assessment Program
- 24 CFR Part 902: Public Housing Assessment System (PHAS)
- 24 CFR Part 903: Public Housing Agency Plans
- 24 CFR Part 905: The Public Housing Capital Fund
- 24 CFR Part 906: Public Housing Homeownership Program
- 24 CFR Part 908: Electronic Transmission of Required Family Data
- 24 CFR Part 941: Public Housing Development
- 24 CFR Part 943: Public Housing Agency
- 24 CFR Part 945: Designated Housing-Public-Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families
- 24 CFR Part 960: Admission to, and Occupancy of, Public Housing
- 24 CFR Part 963: Public Housing-Contracting with Residents-Owned Businesses
- 24 CFR Part 964: Tenant Participation and Tenant Opportunities in Public Housing
- 24 CFR Part 965: PRPHA-Owned or Leased Projects - General Provisions
- 24 CFR Part 966: Public Housing Lease and Grievance Procedures
- 24 CFR Part 968: Public Housing Modernization
- 24 CFR Part 969: PRPHA-Owned Projects-Continued Operation as Low-Income Housing after Completion of Debt Service
- 24 CFR Part 971: Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required by Law
- 24 CFR Part 972: Conversion of Public Housing to Tenant Based Assistance
- 24 CFR Part 984: Section 8 and Public Housing Family Self-Sufficiency Program
- 24 CFR Part 990: The Public Housing Operating Fund Program

- Section 504 of The Rehabilitation Act of 1973: Nondiscrimination on the Basis of Disability
- Titles II and III of the Americans with Disabilities Act of 1990 (ADA)
- Title VII of The Civil Right Act of 1964
- Title VIII of The Civil Right Act of 1968
- Architectural Barriers Act of 1968.
- Age Discrimination Act of 1975
- The Violence Against Women Act, (VAWA)
- Executive Orders 11063 and 13988.
- Act No. 38-2017," Government of Puerto Rico Uniform Administrative Procedure Act" as amended.
- Act. No. 82-2023, "Ley sobre la Política Pública Informal del Estado Libre Asociado de Puerto Rico", as amended.
- Act. No. 121-2019 "Carta de Derechos y la Política Pública del Gobierno a favor de los Adultos Mayores", as amended.
- Artículo 632, Código de Enjuiciamiento Civil de Puerto Rico de 1933, (32 L.P.R.A. § 2836)

#### **ARTICLE I.4 - PURPOSES**

The provisions of this Regulation are based on the public policy of the PRPHA, with the purpose, among others, to improve the quality of life in public housing developments and to promote community activities, personal and family development of the residents in public housing developments.

#### **ARTICLE I.5: APLICABILITY**

The provision of this Regulation is applicable to all applicants, participants and administration of the Puerto Rico public housing program.

## **ARTICLE I.6: THE PUERTO RICO PUBLIC HOUSING ADMINISTRATION**

### **A. OVERVIEW**

The PRPHA was created by Law Number 66 of August 17, 1989, as amended. Conforming to the Law, the PRPHA was given faculties and was authorized to establish the policies for the administration of the Public Housing Program. The vision of the PRPHA will serve as a fundamental instrument of service to ensure community development and promote activities which could meet the needs of housing applicants and tenants, with an emphasis on meeting the requirements. Also promote the achievement of higher quality living standards.

As established by the PRPHA organic Act., the Governing Board shall be the Government body of the PRPHA duly constituted from time to time.

The Governing Board will be composed of seven (7) members as follows:

1. Secretary of the Department of Housing (Chairman);
2. Secretary of the Department of Labor and Human Resources;
3. Secretary of the Department of Family;
4. Executive Director of the Puerto Rico Housing Finance Authority;
5. Three (3) members, two (2) of those members must be tenants of different PRPHA housing projects and one (1) representatives from the private sector appointed by the Secretary of Housing and will the approval of the Governor of the Commonwealth of Puerto Rico with background and or professional experience, without limitation, in one or more of the following areas: Social Work, Psychology, Mental Health, Sociology, Family Planning, Accounting, Management or Public Administration, Business, Physical Education, Urbanism or Planning.

The administration of the Public Housing Program and the functions and responsibilities of the PRPHA staff must comply with the requirements of HUD, this Admission and Continued Occupancy Policies (ACOP), and local laws of

the Commonwealth of Puerto Rico.

## **B. ORGANIZATION AND STRUCTURE OF THE PRPHA**

The Public Housing Program is funded by the federal government and administered by the PRPHA for the Commonwealth of Puerto Rico and is governed by a Governing Board.

The Governing Board establishes policies under which the PRPHA conducts business and ensures that those policies are followed by the PRPHA staff. The Governing Board is responsible for preserving and expanding the Agency's resources and assuring the Agency's continued viability and success. The formal procedures of the PRPHA are taken through written resolutions, adopted by the Governing Board and entered into the official records of the PRPHA.

The principal staff member of the PRPHA is the Administrator, who is selected and hired by the Governor of the Commonwealth of Puerto Rico in consultation with the Board members. The Administrator oversees the day-to-day operations of the housing administration and is directly responsible for carrying out the established policies. The Administrator's duties include hiring, training, and supervising the PRPHA's staff, as well as budgeting and conducting financial planning for the PRPHA. Additionally, the Administrator oversees ensuring compliance with federal and local laws, as well as the public housing program mandates.

## **C. MISSION AND OBJECTIVES**

The PRPHA mission is to effectively administer the resources of the Public Housing Program, promote services for the economic self-sufficiency of the tenants, and contribute towards a better quality of life in Puerto Rico.

To achieve this mission, the PRPHA will:

1. Recognize residents as its ultimate customer;
2. Deliver a competitive management and excellent services;

3. Seek problem solving partnerships with residents as well as the public and private sector;

**D. Use available and accepted resources to effectively manage and operate the Public Housing Program.****COMMITMENT TO ETHICS AND SERVICE**

As a public service agency, the PRPHA is committed to providing effective service to all public housing applicants, tenants, and the public in general.

To provide superior service, the PRPHA resolves to:

1. Administer applicable federal and local laws, regulations and notices to achieve high ratings in compliance measurement indicators while maintaining efficiency in Program operation to ensure fair and consistent treatment of clients served.
2. Provide decent, safe, and sanitary housing in good repair in compliance with the program National Standard of the Physical Inspections Real State (NSPIRE) - for very low and low-income families.
3. Achieve a mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.
4. Encourage self-sufficiency of participant families and assist in the expansion of family opportunities. This includes being facilitators to make viable that the families obtain services of education, social and economics services, services of recreation and other services relating to the human needs.
5. Promote fair housing and the equal opportunity principle to families interested in participating in the Public Housing Program, regardless their race, ethnicity, national origin, religion, ethnic background, and disabilities.
6. Create positive public awareness and expand the level of family and community support in accomplishing the PRPHA's mission.
7. Attain and maintain a high level of standards and professionalism in

- day- to-day management of all program components.
8. Administer an efficient, high-performing Agency through continuous improvement of the PRPHA's support systems and commitment to our employees and the professional development of these.
  9. To preserve, improve, and expand the public housing inventory through the capital funds finance program, public and private grants, low-income housing tax credits, and other financial resources approved by HUD.
  10. Maintaining informed the tenants about the requirements and regulations of the Program and to notify the participants on the effect of the rules.

## **ARTICLE I.7: THE PUBLIC HOUSING PROGRAM**

### **A. HISTORY OF THE PROGRAM**

The United States Housing Act of 1937 (the "Act") is responsible for the creation of federal housing program initiatives, known as Public Housing Program. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance, and the development of affordable housing for low-income residents.

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

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

The Quality Housing and Work Responsibility Act of 1998 (QHWRA), have the purpose to provide management guidelines to the Public Housing Program to provide tenants with greater choices. It also allowed the PRPHA to implement additional remedies to replace or revitalize severely distressed

public housing developments. The highlights of the Reform Act include: the establishment of flat rents; the requirement for public housing agencies to develop five-year and annual plans; information verification; a requirement that forty percent (40%) of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and tenant self-sufficiency incentives.

## **B. PUBLIC HOUSING PROGRAM BASICS**

HUD publishes regulations to implement public housing laws enacted by Congress. HUD contracts with the PRPHA to administer programs in accordance with HUD regulations and provides an operating subsidy to the PRPHA. The PRPHA must create written policies that are consistent with HUD regulations. The Admissions and Continued Occupancy Policies (ACOP) are part of these regulations and procedures. The ACOP must be approved by the PRPHA's Board of Government.

The job of the PRPHA pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. The PRPHA screens families for public housing and, if they are found eligible and accepted, the PRPHA offers the family a unit. If the family accepts the offer, the PRPHA will enter a contract with the family. When the family subscribes to the Lease becomes a tenant of the Public Housing Program.

Since the PRPHA owns the public housing developments, the PRPHA is the landlord. The PRPHA must comply with all the legal and management responsibilities of a landlord, in addition to administering the program in accordance with HUD rules and regulations and PRPHA policies and procedures.

## **C. PUBLIC HOUSING PARTNERSHIPS**

Relationships between partnerships are defined by federal regulations and by contract. These contracts outline the roles and responsibilities of each



party. Federal regulations further identify the important obligations of the parties involved. To make the program work is necessary to know the roles and responsibilities of each of the parties to interacting among if the key aspects of the public housing relationships are:

1. Congress appropriates funds;
2. HUD funds PHAs;
3. Program Regulations and Annual Contribution Contract provide PRPHA Operating Subsidy;
4. PRPHA administer the program;
5. The PRPHA and Family enter a Lease.

HUD has the responsibility to develop regulations, program requirements, notices, and other guidelines to implement housing legislation enacted by Congress. It also shall allocate operating subsidies and capital funds to the PRPHA, provide technical assistance, and monitor the PRPHA's compliance with the Public Housing Program requirements.

The PRPHA owns and manages the public housing developments, administers the public housing program by means of contractual agreements with HUD. Have the following responsibilities:

1. establish local policies and procedures;
2. evaluate the applications of interesting families to determine their eligibility to the Program;
3. maintain waiting lists and selection the family for admission;
4. maintain housing units and make repairs;
5. screen families;
6. offer units;
7. maintain properties in a safe, decent and sanitary standard;
8. ensure families qualify for the program and comply with program rules;
9. collect rents;
10. lease enforcement;

11. ensure that family comply with the regulations;
12. provide services to the families;
13. comply with Fair Housing and Equal Opportunity requirements, the Violence Against Women Act (VAWA), HUD's rules and regulations, the Annual Contribution Contract, ACOP, and other federal and local laws.

The tenant's responsibilities are included in the public housing lease:

1. comply with the terms of the lease;
2. provide complete and accurate information to the PRPHA;
3. assist to scheduled appointments;
4. allow inspection of the housing unit;
5. take responsibility over the care of the unit;
6. not participate in drug related or other criminal activities;
7. use the housing unit solely for residency;
8. immediately notify the PRPHA of any family changes or circumstances that may affect their participation in the program;
9. not commit fraud or program abuse;
10. and other establish by PRPHA.

## **ARTICLE I.8: THE ADMISSION AND CONTINUED OCCUPANCY POLICIES**

### **A. OVERVIEW AND PURPOSE OF THE POLICY**

The ACOP is the PRPHA's written statement of policies used to carry out the Public Housing Program in accordance with federal law and regulations, and HUD requirements. The ACOP also contains policies that support the objectives contained in the PRPHA's Annual Plan and Five Years Plan.

All issues related to public housing not addressed in this ACOP are governed by federal regulations, HUD handbooks and guidebooks, notices and applicable state and local laws. The policies in this ACOP have been designed to ensure compliance with the consolidated ACC and all HUD-

approved applications for program funding. The PRPHA is responsible for complying with all changes in HUD regulations pertaining to public housing. If such changes conflict with this plan, HUD regulations will have precedence. In case of the housing units under the regulations and requirement of the mixed income/mixed finance and low-income housing tax credit (LIHTC) under the section 42 of the IRS, authorize by HUD the Regulatory and Operating Agreement and Management Agreement for Mixed Income Development; the Management Agreement or Management Plan will govern. This regulation should apply in a supplementary manner to the units included in this article.

The ACOP is designed to demonstrate that the PRPHA is managing its Public Housing Program in a manner that reflects its commitment to improving the quality of housing available to its customers, and its capacity to manage housing in a manner that demonstrates its responsibility to the public trust. In addition, this ACOP is designed to achieve the following objectives:

1. To provide improved living conditions for very low and low-income families while maintaining rent payments at an affordable level;
2. To operate a socially and financially sound public housing agency that provides decent, safe, and sanitary housing within a drug free, suitable living environment for its customers;
3. To avoid concentrations of economically and socially deprived families in any one or all the PRPHA's public housing developments;
4. To lawfully deny the admission of applicants, or the continued occupancy of residents, whose habits and practices reasonably may be expected to adversely affect the health, safety, comfort or welfare of other residents or the physical environment of the community, or create a danger to the PRPHA's employees;
5. To attempt to have a resident body in each development composed

- of families with a broad 'range of incomes and rent-paying abilities that are representative of the range of incomes and rent paying abilities of low- income families in the PRPHA's jurisdiction;
6. To provide opportunities for upward mobility of families that desire to achieve self-sufficiency;
  7. To ensure compliance with Title VI of the Civil Rights Act of 1964 and all other applicable Federal laws and regulations so that admissions and continued occupancy are conducted without regards to race, color, religion, sex, national origin, disability or familial status

## **B. CONTENTS OF THE POLICY**

1. The organization of the waiting list. Include the procedure of selection of families and assignment of units; the procedures of admission, to remove or eliminate applicants of the Waiting List; and the procedure for close and reopening the Waiting List (Chapters IV and V);
2. Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter XII);
3. Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters III and V);
4. Procedures for verifying the information the family has provided (Chapter VII);
5. The method for achieving deconcentration of poverty and income-mixing of public housing developments (Chapter IV);
6. Grievance procedures (Chapter XIV);
7. Policies governing family annual recertification;
8. Policies concerning family payment to the PRPHA of amounts the family owes the PRPHA (Chapter XV and XVI);
9. Interim redeterminations of family income and composition (Chapter IX);
10. Policies regarding community service requirements (Chapter XI);

11. Policies and rules about safety and ownership of pets in public housing (Chapter X).

### **C. UPDATING AND REVISING THE POLICY**

The PRPHA will revise this ACOP as needed to comply with changes made to HUD's regulations and local laws. The original policy and any changes may be posted for comment and must be approved by the PRPHA Board Members, and the pertinent sections included in the Agency Plan, and a copy provided to HUD.

The PRPHA will review the ACOP annually and update as necessary, to reflect changes in federal regulations, local laws, PRPHA operations, or when needed to ensure staff consistency in operation and services.

## **CHAPTER II: FAIR HOUSING AND EQUAL OPPORTUNITY**

### **A. OVERVIEW**

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 procedures. The responsibility for further nondiscrimination pertains to all areas of the PRPHA's public housing operations.

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

Article II.1: Nondiscrimination. This article presents the groups of laws and regulations governing the responsibilities of the PRPHA regarding nondiscrimination.

Article II.2: Policies Related to Persons with Disabilities. This article discusses the rules and policies of the public housing program related to reasonable accommodation for persons accessible 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.

Article II.3: Improving Access to services for persons with Limited Spanish Proficiency. This article details the obligations of the PRPHA to ensure meaningful access to the public housing program and its activities by persons with Limited Spanish Proficiency (LSP). This article incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited Spanish Proficient Persons published January 22, 2007, in the *Federal Register*.

## **ARTICLE II.1: NONDISCRIMINATION**

### **A. OVERVIEW**

The federal laws require PRPHA to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing based on race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The PRPHA 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:

1. Title VI of the Civil Rights Act of 1964;
2. 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);
3. Executive Orders 11063 and 13988;
4. Section 504 of the Rehabilitation Act of 1973;
5. The Age Discrimination Act of 1975;

6. Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern);
7. 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;
8. The Violence against Women Act (VAWA);
9. 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.

## **B. NONDISCRIMINATION**

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

The PRPHA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin (called “protected classes”). Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18. The PRPHA will not discriminate based on marital status, gender identity, or sexual orientation [FR Notice 02/03/12; Executive Order 13988].

The PRPHA will not use any of these factors to ensure compliance with nondiscrimination policies:

1. Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the public housing program;
2. Provide housing that is different from that provided to others;
3. Subject anyone to segregation or disparate treatment;

4. Subject anyone to sexual harassment;
5. Restrict anyone's access to any benefit enjoyed by others in connection with the housing program;
6. Treat a person differently in determining eligibility or other requirements for admission;
7. Steer an applicant or tenant toward or away from a particular area based on any of these factors;
8. Deny anyone access to the same level of services;
9. Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program;
10. Discriminate in the provision of residential real estate transactions;
11. Discriminate against someone because they are related to or associated with a member of a protected class;
12. 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.

### **C. PROVIDING INFORMATION TO FAMILIES**

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

### **D. DISCRIMINATION COMPLIANTS**

#### **1. General Housing Discrimination Complaints**

If an applicant or tenant family believes that any family member has been discriminated against by the PRPHA, the family should advise the PRPHA in writing. Within thirty (30) business days of receiving the complaint, the PRPHA will investigate and attempt to remedy discrimination complaints made against the PRPHA. The PRPHA will also



advise the family of their right to file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The PRPHA should make every reasonable attempt to determine whether the applicant or tenant family's assertions have merit and take any warranted corrective action.

In all cases, the PRPHA will advise the family that they may file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act. The fair housing poster must be posted in a conspicuous and accessible location in PRPHA lobbies and will reference how to file a complaint with FHEO. The PRPHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter XVI.)

## **2. Complaints under the Equal Access Final Rule [Notice PIH 2014-20]**

The Notice PIH 2014-20 requires an articulated complaint process for allegations of discrimination under the Equal Access Final rule. The Equal Access Final Rule requires that PRPHA provide equal access regardless of marital status, gender identity, or sexual orientation. The PRPHA will be informed of these obligations by the HUD Field Office or FHEO when an Equal Access complaint investigation begins. Applicants or tenant families who believe that they have been subject to unlawful discrimination based on marital status, gender identity, or sexual orientation under the Equal Access Rule may notify the PRPHA in a writing statement.

Within thirty (30) business days of receiving the complaint, the PRPHA will provide a written notice to those alleged to have violated the rule. The PRPHA will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing

discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

Within thirty (30) business days following the conclusion of the PRPHA's investigation, the PRPHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

The PRPHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter XVI.) The PRPHA will attempt to remedy discrimination complaints made against the PRPHA and will investigate all allegations of discrimination.

### **3. VAWA Complaint Processing [Notice FHEO 2023-01]**

A complainant may, not later than one year after an alleged VAWA violation has occurred or terminated, file a complaint with FHEO alleging such violation. If there is a violation that began prior to a year before the complaint is filed, but it continues into the one-year period, HUD will accept the complaint. FHEO will investigate the complaint if it is timely and FHEO otherwise has jurisdiction. If a complaint is filed more than one year after the alleged violation occurred or terminated, FHEO may, but is not required to, investigate the allegations under the additional authority and procedures described in FHEO 2023-01. Complaints do not need to allege a violation of the Fair Housing Act for FHEO to accept and investigate the complaint.

The applicants or tenant families who wish to file a VAWA complaint against the PRPHA may notify the PRPHA in a complete written statement.

The PRPHA will advise the family of their right to file a VAWA complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The

PRPHA will inform the family that not later than one year after an alleged VAWA violation has occurred or terminated, applicants and tenants who believe they have been injured by a VAWA violation or will be injured by such a violation that is about to occur may file a VAWA complaint using FHEO's online complaint form via mail or email.

The PRPHA will attempt to remedy complaints made against the PRPHA and will investigate all allegations of discrimination. The PRPHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter XVI.)

## **ARTICLE II.2: POLICIES RELATED TO PERSONS WITH DISABILITIES [24 CFR 8] [24 CFR 966.7(B)]**

### **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 PRPHA will ensure that persons with disabilities have full access to the PRPHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program.

The PRPHA will provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

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

following language: "If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority."

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

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

## **B. DEFINITION OF REASONABLE ACCOMMODATION**

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

The federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the PRPHA 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.

### **1. Types of Reasonable Accommodations**

When it is reasonable (see definition above), the PRPHA shall accommodate the needs of a person with disabilities. Examples include but are not limited to:

- a. Permitting applications and reexaminations to be completed by

- mail;
- b. Providing "large print" forms;
- c. Conducting home visits;
- d. Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability;
- e. Installing a ramp into a dwelling or building;
- f. Installing grab bars in a bathroom;
- g. Installing visual fire alarms for hearing impaired persons;
- h. Allowing a PRPHA-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.;
- i. Providing a designated handicapped-accessible parking space subject to availability in each development;
- j. Allowing an assistance animal;
- k. Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with PRPHA staff;
- l. Displaying posters and other housing information in locations throughout the PRPHA's office in such a manner as to be easily readable from a wheelchair.

### **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 PRPHA 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 will explain in writing what type of accommodation is needed to provide the person with the disability full access to the PRPHA's programs and services.

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

#### **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 reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing accommodation, the PRPHA 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 PRPHA's programs and services.

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

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the PRPHA, the PRPHA 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 PRPHA will follow the verification policies provided in Chapter VI. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter XVII (Program Administration). In addition to the general requirements that

govern all verification efforts, the following requirements apply when verifying a disability:

1. 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].
2. The PRPHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PRPHA may not inquire about the nature or extent of any disability.
3. Medical records will not be accepted or retained in the participant file.
4. If the PRPHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PRPHA will dispose of it. In place of the information, the PRPHA 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].

**E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [JOINT STATEMENT OF THE DEPARTMENTS OF HUD AND JUSTICE: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT, NOTICE PIH 2010-26]**

The PRPHA will approve a request for 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 accommodation.
3. The requested accommodation is reasonable, meaning it would not

impose an undue financial and administrative burden on the PRPHA, or fundamentally alter the nature of the PRPHA's operations.

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

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

After a request for accommodation is presented, the PRPHA will respond, in writing, within ten (10) business days.

If the PRPHA denies a request for accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the PRPHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter XIV).

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

If the PRPHA believes that the family has failed to identify a reasonable



alternative accommodation after interactive discussion and negotiation, the PRPHA will notify the family, in writing, of its determination within thirty (30) business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal the PRPHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter XIV).

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

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

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

The PRPHA will make available the require method of communication to meet the needs of persons with hearing impairments,.

To meet the needs of people 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 PRPHA 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.

#### **G. PHYSICAL ACCESSIBILITY**

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

1. Notice PIH 2010-26;

2. Section 504 of the Rehabilitation Act of 1973;
3. The Americans with Disabilities Act of 1990;
4. The Architectural Barriers Act of 1968;
5. The Fair Housing Act of 1988.

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

1. This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern the PRPHA's responsibilities regarding physical accessibility.
2. Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally funded housing programs.
3. The PRPHA Plan provides information about self-evaluation, needs assessment, and transition plans.

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

Newly constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the public housing program.

#### **H. DENIAL OR TERMINATION OF ASSISTANCE**

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

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

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

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

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

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## **ARTICLE II.3: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED SPANISH PROFICIENCY (LSP)**

### **A. OVERVIEW**

Language for Limited Spanish Proficiency Persons (LSP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the public housing program. In certain circumstances, failure to ensure that LSP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI, Civil Rights Act, 1964, against discrimination based on national origin. This article incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

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

LSP persons are defined as persons who do not speak Spanish as their primary language and who have a limited ability to read, write, speak or understand Spanish. For the purposes of this Admissions and Continued Occupancy Policy, LSP persons are public housing applicants and resident families, and parents and family members of applicants and resident families. In order to determine the level of access needed by LSP persons, the PRPHA will balance the following four factors: (1) the number or proportion of LSP persons eligible to be served or likely to be encountered by the public housing program; (2) the frequency with which LSP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to

the PRPHA and costs. Balancing these four factors will ensure meaningful access by LSP persons to critical services while not imposing undue burdens on the PRPHA.

## **B. ORAL INTERPRETATION**

The PRPHA will offer competent interpretation services free of charge, upon request, to the LSP person. As an example, the PRPHA will utilize a language line for telephone interpreter services.

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

Where feasible and possible, according to its language assistance plan (LAP), the PRPHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

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

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

## **C. WRITTEN TRANSLATION**

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

To comply with written-translation obligations, the PRPHA will take the following steps:

The PRPHA will provide written translations of vital documents for each eligible LSP language group that constitutes 5 percent (5%) or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.

If there are fewer than 50 persons in a language group that reaches the 5 percent (5%) trigger, the PRPHA may not translate vital written materials, but will provide written notice in the primary language of the LSP language group of the right to receive competent oral interpretation of those written materials, free of cost.

#### **D. IMPLEMENTATION PLAN**

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

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

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

If the PRPHA determines it is appropriate to develop a written LSP plan, the following five steps will be taken: (1) Identifying LSP individuals who need

language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LSP persons; and (5) monitoring and updating the LSP plan.

## **CHAPTER III: ELIGIBILITY**

### **A. OVERVIEW**

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

To be eligible for the public housing program the applicant family must:

1. Qualify as a family as defined by HUD and the PRPHA.
2. Have income at or below HUD-specified income limits.
3. Qualify based on citizenship or the eligible immigrant status of family members.
4. Provide social security number information for household members as required.
5. Consent to the PRPHA's collection and use of family information as provided for in PRPHA-provided consent forms.
6. Not currently be receiving a duplicative subsidy or present certification or form HUD 50058/50059 of move out action effective during the next thirty (30) days or up to thirty (30) days after signed the lease.
7. Meet net asset and property ownership restriction requirements.

The PRPHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PRPHA. This Chapter contains three articles:

Article III.1: Definitions of Family and Household Members. This article contains HUD and the PRPHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Article III.2: Basic Eligibility Criteria. This article discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

Article III.3: Denial of Admission. This article covers factors related to an applicant's past or current conduct (e.g., criminal activity) that can cause the PRPHA to deny admission as well as the asset limitation for public housing.

## **ARTICLE III.1: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS**

### **A. OVERVIEW**

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

### **B. FAMILY AND HOUSEHOLD [24 CFR 5.105(a)(2), 24 CFR 5.403, FR NOTICE 02/03/12, NOTICE PIH 2014-20, NOTICE PIH 2023-27, AND FR NOTICE 2/14/23]**

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

#### **1. Family**

To be eligible for admission, an applicant must qualify as a family. *Family* as defined by HUD, includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; an



otherwise eligible youth **who has attained at least eighteen (18) years** of age and not more than twenty-four (24) years of age and who has left foster care, or will leave foster care within ninety (90) days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless **at age sixteen (16) or older**; 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, and the remaining member of a tenant family. The PRPHA 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. 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 everyone's income and other resources will be available to meet the needs of the family.

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

## **2. Household**

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

## **C. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY**

### **1. Family Breakup**

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

- a. If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PRPHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking see section Chapter XVI of this ACOP.)
- b. If a court determines the disposition of property between members of the assisted family, the PRPHA is bound by the court's determination of which family members continue to receive assistance.
- c. In the absence of a judicial decision or an agreement among the original family members, the PRPHA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the PRPHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, and provides documentation in accordance with Chapter XVI of this ACOP; (4) any possible risks to family members as a result of criminal activity, and (5) the

recommendations of social service professionals.

- d. When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may submit a new application with a new application date if the waiting list is open.
- e. If a family breaks up into two otherwise eligible families while living in public housing, only one of the new families will retain occupancy of the unit.

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

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

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see Chapter VI, for the policy on “Caretakers for a Child.”

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

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

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

## **E. SPOUSE, COHEAD, AND OTHER ADULT**

A family may have a spouse or cohead, but not both [HUD-50058 IB, p. 13]. *Spouse* means the marriage partner of the head of household. A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse if is married to the head of household.

A *cohead* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one cohead. Minors who are emancipated under state law may be designated as coheads.

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

## **F. DEPENDENTS AND MINORS [24 CFR 5.603]**

A *minor* is a member of the family, other than the head of family or spouse, who is under eighteen (18) years of age.

A *dependent* is a family member who is under eighteen (18) years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter VI.

## **G. JOINT CUSTODY OF DEPENDENTS**

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

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

#### **H. FULL-TIME STUDENT [24 CFR 5.603]**

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

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

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

- 1. Elderly Persons-** An elderly person is a person who is at least 62 years of age.
- 2. Near-Elderly Persons-** A near-elderly person is a person who is 50-61 years of age.
- 3. Elderly Family-** An elderly family is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because these families qualify for the elderly family allowance and the medical allowance as described in Chapter VII and may qualify for a particular type of development as noted in Chapter IV.

## **J. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR Notice 02/03/12]**

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

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

- 2. Disabled Family**- is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance and the medical allowance as described in Chapter VI and may qualify for a particular type of development as noted in Chapter IV.

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

## **K. GUESTS [24 CFR 5.100]**

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

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

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

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last twenty (20) consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

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

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

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

#### **L. FOSTER CHILDREN AND FOSTER ADULTS [24 CFR 5.603]**

A *foster adult* is a member of the household who is eighteen (18) years of age or older and meets the definition of a foster adult under state law. In

general, a foster adult is a person who is eighteen (18) years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

A *foster child* is a member of the household who meets the definition of a foster child under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

Foster children and foster adults that are living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, pp. 13-14].

When a member of an assisted family is temporarily placed in foster care (as confirmed by the state child welfare agency), the member is still counted as a family member in the unit from which they were removed. This means that a foster child or foster adult could be considered an assisted family member in one household while also being a foster child or adult in another household and receiving consideration in both family's unit size.

The PRPHA will allow to reside in the unit a foster child or foster adult and if their designation on the unit represents an overcrowd unit the family will be transfer to a unit that meet the occupancy standards.

#### **M. ABSENT FAMILY MEMBERS**

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



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

Generally, an individual who is or is expected to be absent from the public housing unit for one hundred eighty (180) consecutive days or less is considered temporarily absent and continues to be considered a family member, this includes families that request permission to spend less of one hundred eighty (180) consecutive days. Generally, an individual who is or is expected to be absent from the public housing unit for more than one hundred eighty (180) consecutive days is considered permanently absent and no longer a family member, this includes unit abandonment.

The PRPHA will consider unit abandonment and will proceed as Chapter XIII with the process of lease termination. Exceptions to this general policy are discussed below:

### **a. Absent Students**

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

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

The PRPHA will consider a child temporarily absent from the home because of placement in foster care are considered members of the family.

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

**c. Absent Head, Spouse, or Cohead**

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

**d. Individuals Confined for Medical Reasons**

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

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

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

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

**N. LIVE-IN AIDE**

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

The PRPHA must approve a live-in aide, if needed as a reasonable accommodation for a person with disabilities in accordance with [24 CFR 8]. A live-in aide is considered a household member but not a family member. The income of the live-in aide is not counted in determining the annual income of the family [24 CFR 5.609(c)(5)]. Relatives may be approved as live-in aides if they meet all the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

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

Within ten (10) calendar days of receiving a request for a live-in aide, including all required documentation related to the request, the PRPHA will notify the family of its decision in writing.

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

1. The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
2. The person has a history of drug-related criminal activity, violent criminal activity, or is included in the sex offender registry; or
3. The person currently owes rent or other amounts to the PRPHA or to another PRPHA in connection with Section 8 or public housing assistance

under the 1937 Act.

## **ARTICLE III.2: BASIC ELIGIBILITY CRITERIA**

### **A. INCOME ELIGIBILITY AND TARGETING**

#### **1. Income Limits**

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

#### **2. Types of Low-Income Families [24 CFR 5.603(b)]**

- a. *Low-income family.* A family whose annual income does not exceed eighty percent (80%) of the median income for the area, adjusted for family size.
- b. *Very low-income family.* A family whose annual income does not exceed fifty percent (50%) of the median income for the area, adjusted for family size.
- c. *Extremely low-income family.* A family whose annual income does not exceed the federal poverty level or thirty percent (30%) of the median income for the area, whichever number is higher.

The area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than thirty percent (30%), fifty percent (50%), or eighty percent (80%) of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD also publishes over-income limits annually, but these are not used at admission. Over-income limits will be discussed in Chapter XII.

### **3. Using Income Limits for Eligibility [24 CFR 960.201 and Notice PIH 2023-27]**

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

### **4. Using Income Limits for Targeting [24 CFR 960.202(b)]**

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

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

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

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status 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 PRPHA's Limited Spanish Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in Spanish.

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

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member eighteen (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.

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

In general, citizens and nationals are required to submit only a signed declaration that claims their status. The PRPHA can request additional documentation of their status, such as a passport.

## **3. Eligible Noncitizens**

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

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or ("FAS"), are eligible for housing assistance under section 141 of the

Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

#### **4. Ineligible Noncitizens**

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

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

#### **5. Mixed Families**

A family is eligible for admission as long as at least one (1) 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 VI for a discussion of how rents are prorated, and Chapter XIV for a discussion of grievance hearing procedures.

#### **6. Ineligible Families [24 CFR 5.514(d), (e), and (f)] [24 CFR 5.512(a)]**

The PRPHA will not provide assistance to a family before the verification of at least one (1) family member as a citizen, national, or eligible noncitizen.

When the PRPHA 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 twenty (20) calendar days of the determination.

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

## **7. Time Frame for Determination of Citizenship Status [24 CFR 5.508(g)]**

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

For new occupants joining the resident family the PRPHA 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 PRPHA must grant such an extension for no more than thirty (30) days [24 CFR 5.508(h)].



Each family member is required to submit evidence of eligible status only one (1) time during continuous occupancy.

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

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

**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 aged sixty-two (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 PRPHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in [24 CFR 5.216].

**D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.232]**

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886 or form HUD-9886A, Authorization for the Release of Information Privacy Act Notice, the form HUD-52675, Debts Owed to Public Housing Agencies and Terminations,

and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Specifically, Chapter VII provides detailed information concerning the consent forms and verification requirements. The consent form remains effective until the family is denied assistance or assistance is terminated.

The PRPHA will deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the PRPHA to obtain information that the PRPHA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b) and 24 CFR 5.232(a)].

## **E. EIV SYSTEM SEARCHES [EIV FAQs; EIV System Training 9/30/20; and Notice PIH 2023-27]**

### **1. Existing Tenant Search**

Prior to admission to the program, the PRPHA must search for all household members using the EIV Existing Tenant Search module. The PRPHA must review the reports for any SSA matches involving another PRPHA or a multifamily entity and follow up on any issues identified. The PRPHA must provide the family with a copy of the Existing Tenant Search results if requested. If the family member is currently receiving assistance for another PHA or housing program must present certification or form HUD 50058/50059 of move out action effective during the next thirty (30) days or up to thirty (30) days after signed the lease.

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

The PRPHA will contact the other PHA or owner identified in the report to confirm that the family has moved out or will move out from the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation.

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

All adult household members must sign the form HUD-52675, Debts Owed to Public Housing and Terminations as part of the eligibility determination. Prior to admission to the program, the PRPHA must search for each adult family member in the Debts Owed to PHAs and Terminations module. Any new members added to the household after admission will be required to sign the form HUD-52675 as part of eligibility determination to be added to the household. If any information on debts or terminations is returned by the search, the PRPHA will determine if this information warrants a denial in accordance with the policies in this chapter.

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

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

For each new admission, the PRPHA is required to review the EIV Income and IVT Reports to confirm and validate family reported income within one hundred twenty (120) days of the HUD program submission date of the new admission. The PRPHA must print and maintain copies

of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within sixty (60) days of the EIV Income or IVT report dates.

### **ARTICLE III.3: DENIAL OF ADMISSION**

#### **A. OVERVIEW**

A family that does not meet the eligibility criteria discussed in this chapter must be denied admission.

In addition, HUD requires or permits the PRPHA to deny admission based on certain types of current or past behaviors of family members as discussed in this article and included in Exhibit 3-2 Types of Criminal Activity or Offense/Drug Abuse. The PRPHA's authority in this area is limited by the Violence against Women Act (VAWA), which prohibits the denial of admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking [see 24 CFR 5.2005(b)].

While the regulations state that the PRPHA must prohibit admission for certain types of criminal activity and give the PRPHA the option to deny for other types of previous criminal history, more recent HUD rules and OGC guidance must also be taken into consideration when determining whether a particular individual's criminal history merits denial of admission.

This part covers the following topics:

1. Required denial of admission;
2. The asset limitation in public housing;
3. Other permitted reasons for denial of admission;
4. Screening;
5. Criteria for deciding to deny admission;
6. Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking;

7. Notice of eligibility or denial.

#### **B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]**

The PRPHA are required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if the PRPHA has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

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

1. The PRPHA will admit an otherwise-eligible family who was evicted from federally assisted housing within the past three years for drug-related criminal activity, if the PRPHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the PRPHA, or the person who committed the crime is no longer living in the household.
2. The PRPHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].
3. The PRPHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right

to peaceful enjoyment of the premises by other residents.

In determining reasonable cause, the PRPHA 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 or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity. The PRPHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

4. 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.
5. Any household member is subject to a lifetime registration requirement under a state lifetime sex offender registration program.

### **C. RESTRICTION ON ASSISTANCE BASED ON ASSETS [24 CFR 5.618]**

There are two circumstances under which a family is ineligible for the program based on asset ownership.

First, assistance may not be provided to any family if the family's net assets exceed \$100,000.00 (adjusted annually by HUD).

Second, the family has real property that is suitable for occupancy by the family as a residence and the family has:

1. A present ownership interest in the real property;
2. A legal right to reside in the real property; and
3. The effective legal authority to sell (based on state or local laws of the jurisdiction where the property is located) real property.

However, the real property restriction does not apply in the following circumstances:

1. Any property for which the family is receiving assistance for a manufactured home under [24 CFR 982.620] or under the HCV

Homeownership Program;

2. Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;
3. Any family that is offering the property for sale; or
4. Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
  - a. When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PRPHA must comply with all the confidentiality requirements under VAWA. The PRPHA must accept self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.

A property is considered suitable for occupancy unless the family demonstrates that it:

1. Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
2. Is not sufficient for the size of the family; which means that the real property is overcrowded based on the PRPHA's occupancy standards in Chapter V.
3. Is geographically located to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PRPHA or owner);
4. Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
5. Is not property that a family may reside in under the State or local laws

of the jurisdiction where the property is located.

#### **D. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION**

The PRPHA will deny admission for the reasons discussed in this section.

##### **1. Criminal Activity [24 CFR 960.203(c)]**

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

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 admission:

- a. Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].
- b. Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].
- c. Criminal activity that may threaten the health, safety, or welfare of other tenants [24 CFR 960.203(c)(3)].
- d. Criminal activity that may threaten the health or safety of PRPHA staff, contractors, subcontractors, or agents.
- e. Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

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

- a. Any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the



past three (3) years.

- b. A record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

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

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

The PRPHA will deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy. In the event of the receipt of unfavorable information with respect to an applicant, the PRPHA must consider the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). As discussed in this chapter, the PRPHA 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.

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

- a. Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past three (3) years.
- b. Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past three years which may adversely affect the health, safety, or welfare of other tenants.
- c. Owes rent or other amounts to this or any other PRPHA or owner in connection with any assisted housing program.
- d. Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission,

expenses, family composition or rent.

- e. Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program in the last three years.
- f. Owes rent or other amounts to any PRPHA in connection with Section 8, public housing, or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

When denying admission due to family debts as shown in HUD's EIV system, the PRPHA will provide the family with a copy of the EIV Debt Owed to PRPHA and Termination report.

If the family wishes to dispute the information in the report, the family must contact the PRPHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter and all applicable verification to the PRPHA to support the family's claim. The PRPHA will consider the information provided by the family prior to issuing a notice of denial.

- g. Has engaged in or threatened violent or abusive behavior toward PRPHA personnel. *Abusive or violent behavior towards PRPHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny admission, the PRPHA will consider the factors discussed in this chapter. Upon consideration of such factors, the PRPHA may, on a case-by-case basis, decide not to deny admission.

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

## **E. SCREENING**

### **1. Screening for Eligibility**

The PRPHA will obtain criminal conviction records from local law enforcement agencies for all adult household members to screen applicants for admission to the public housing program. This authority assists the PRPHA in complying with HUD requirements and PRPHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. To obtain access to the records the PRPHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903]. The PRPHA will not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, the PRPHA will request the applicant's information from the National Crime Information Center (NCIC).

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

The PRPHA will use the Dru Sjodin National Sex Offender and the local sex offender registration database to screen applicants for admission.

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

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

## **2. Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]**

The PRPHA will request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, the PRPHA may require each applicant to submit for all household members who are at least eighteen (18) years of age, and for each family head, spouse, or cohead regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform the PRPHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use or has successfully completed a supervised drug or alcohol rehabilitation program.

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

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

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

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

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

- a. Policy A: The PRPHA must submit a request for information to a drug abuse treatment facility for all families before they are admitted. The request must be submitted for each proposed household member who is at least eighteen (18) years of age, and for each family head, spouse, or cohead regardless of age.
- b. Policy B: The PRPHA must submit a request for information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a sole basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents.

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

### **3. Screening for Suitability as a Tenant [24 CFR 960.203(c)]**

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

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

- a. Payment of rent and utilities;
- b. Caring for a unit and premises;
- c. Respecting the rights of other residents to the peaceful enjoyment of their housing;
- d. Criminal activity that is a threat to the health, safety, or property of others;
- e. Behavior of all household members as related to the grounds for denial as detailed in Chapter III;
- f. Compliance with any other essential conditions of tenancy.

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

PRPHA has a variety of resources available to them for determination of the suitability of applicants. The PRPHA will reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

To determine the suitability of applicants the PRPHA may verify applicant history for the past three (3) years. Such background checks will include:

- a. Past Performance in Meeting Financial Obligations, Especially Rent.

- b. PHAs and landlord references for the past three (3) years, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the PHAs/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. PHAs and landlords will be asked if they would rent to the applicant family again.
- c. Utility company references covering the monthly charges for utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in their name. (Use of this inquiry will be reserved for applicants applying for units where there are tenant-paid utilities.)
- d. If an applicant has no rental payment history the PRPHA will check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may.
- e. Applicants with no rental payment history will also be asked to provide the PRPHA with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available. The applicant will also be required to complete a checklist documenting their ability to meet financial obligations.
- f. If previous landlords or the utility company do not respond to requests from the PRPHA, the applicant may provide other documentation that demonstrates their ability to meet financial obligations (e.g. rent receipts, cancelled checks, etc.)
- g. Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the

Unit or the Development

- h. PRPHA and landlord references for the past three (3) years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.
- i. Police and court records within the past three (3) years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction. A record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying activity.
- j. A personal reference will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available. In these cases, the applicant will also be required to complete a checklist documenting their ability to care for the unit and to avoid disturbing neighbors.
- k. Home visits may be used to determine the applicant's ability to care for the unit.

## **F. CRITERIA TO DENY ADMISSION**

### **1. Evidence**

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

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact



sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

## **2. Consideration of Circumstances [24 CFR 960.203(c)(3) and (d)]**

The PRPHA will consider all relevant circumstances when deciding whether to deny admission based on a family's history except in the situations for which denial of admission is mandated.

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

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

- a. The seriousness of the case, especially with respect to how it would affect other residents' safety or property;
- b. The effects that denial of admission may have on other members of the family who were not involved in the action or failure to act;
- c. 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 a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking;
- d. 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;
- e. While a record or records of arrest will not be used as the sole basis for denial, an arrest may trigger an investigation to determine

whether the applicant engaged in disqualifying criminal activity. As part of its investigation, the PRPHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PRPHA may also consider:

- i. Any statements made by witnesses, or the applicant not included in the police report;
  - ii. Whether criminal charges were filed;
  - iii. Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal;
  - iv. Any other evidence relevant to determining whether the applicant engaged in disqualifying activity.
- f. Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.
- g. Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs.
- h. 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.
- i. The PRPHA 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.

#### **G. REMOVAL OF A FAMILY MEMBER FROM THE APPLICATION**

Should the PRPHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, as a condition of receiving assistance, a family may agree to remove the culpable family member from the application. If the family is

unwilling to remove that individual from the household, the PRPHA will deny admission to the family [Notice PIH 2012-28]. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit. After admission to the program, the family must present evidence of the former family member's current address upon PRPHA request.

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

#### **H. REASONABLE ACCOMMODATION [PH OCC GB, PP. 58-60]**

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

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

#### **I. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND HUMAN TRAFFICKING**

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

Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

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

## **1. Notification**

VAWA requires provide to 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.

The PRPHA acknowledges that a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the PRPHA's policies. While the PRPHA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the applicant may inform the PRPHA that their status as a victim is directly related to the grounds for the denial. The PRPHA will request that the applicant provide enough information to the PRPHA to allow the PRPHA to make an objectively reasonable determination, based on all

circumstances, whether the adverse factor is a direct result of their status as a victim.

The PRPHA will include in its notice of denial information about the protection against denial provided by VAWA in accordance with Chapter XVI of this ACOP, a notice of VAWA rights, and a copy of the form HUD-5382. The PRPHA will request in writing that an applicant wishing to claim this protection notify the PRPHA within fourteen (14) business days.

## **2. Documentation**

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

If an applicant claims the protection against denial of admission that VAWA provides to victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PRPHA will request in writing that the applicant provide documentation supporting the claim in accordance with Chapter XVI of this ACOP.

### **b. Perpetrator Documentation**

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

- i. A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit.
- ii. 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 their belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

#### **J. NOTICE OF ELIGIBILITY OR DENIAL**

The PRPHA will notify an applicant family of its final determination of eligibility in accordance with the policies in Chapter IV.

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

If, based on a criminal record or sex offender registration information an applicant family appears to be ineligible, the PRPHA 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 twenty (20) calendar days to dispute the accuracy and relevance of the information. If the family does not contact the PRPHA to dispute the information within that twenty (20) calendar days period, the PRPHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal hearing process.

Notice requirements related to denying admission to noncitizens are contained in Chapter III.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, stalking or human trafficking are contained in Chapter III.

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

### **A. OVERVIEW**

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

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

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

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

The policies outlined in this chapter are organized into three sections, as follows:

Article IV.1: The Application Process. This article provides an overview of the application process and discusses how applicants can obtain and submit applications. It also specifies how the PRPHA will handle the applications it receives.

Article IV.2: Managing the Waiting List. This article presents the policies that govern how the PRPHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process the PRPHA will use to keep the waiting list current.

Article IV.3: Tenant Selection. This article describes the policies that guide the PRPHA in selecting families from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that the PRPHA has the information needed to make a final eligibility determination.

Article IV. 4: Order of Selection. This article describes the order on which the applicants and residents enter in the waiting list.

## **B. LIMITED SPANISH PROFICIENCY**

The PRPHA is required to take reasonable steps to ensure meaningful access to their programs and activities by persons with Limited Spanish Proficiency [24 CFR 1]. Chapter II provides a full discussion on the PRPHA's policies related to ensuring access to people with limited Spanish proficiency (LSP).



## **ARTICLE IV.1: APPLICATION PROCESS**

### **A. OVERVIEW**

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

### **B. APPLYING FOR ASSISTANCE**

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

Depending upon the length of time between the date of application and the availability of housing, the PRPHA may use a one- or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within sixty (60) days of the date of application. When the family reaches the first positions of the waiting list the family must provide all the information necessary for the PRPHA establish family eligibility and the amount of rent the family will pay.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least sixty (60) days from the date of application. Under the two-step application process, the family will be

required to provide all the information necessary to establish family eligibility and the amount of rent the family will pay when selected from the waiting list.

Families may obtain application forms from the PRPHA's website or from the PRPHA's office during normal business hours. Families may also request – by telephone or by mail – that an application form be sent to the family via first class mail or via email.

Completed applications must be returned to the PRPHA by mail, electronically via email, by fax, or submitted in person during normal business hours. The PRPHA will also offer the option to schedule an appointment or drop off applications.

Applications must be filled out completely to be accepted by the PRPHA for processing. If an application is incomplete, the PRPHA will notify the family of the additional information required.

### **C. ACCESSIBILITY OF THE APPLICATION PROCESS**

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

### **D. DISABLED POPULATIONS [24 CFR 8; PH OCC GB, P. 68]**

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

### **E. PLACEMENT ON THE WAITING LIST [24 CFR 960.208(a); PH Occ GB, p. 41]**

The PRPHA will review each completed application received and will send written notification to applicants confirming the inclusion on the waiting list.

When the family is determined to be ineligible, the PRPHA must notify the family in writing.

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

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

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

## **ARTICLE IV.2: MANAGING THE WAITING LIST**

### **A. OVERVIEW**

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

In addition, HUD imposes requirements on how the PRPHA may structure its waiting list and how families must be treated if they apply for public housing at a PRPHA that administers more than one (1) assisted housing program.

## **B. ORGANIZATION OF THE WAITING LIST**

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

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

1. Name;
2. Unit size required (number of family members);
3. Amount and source of annual income;
4. Accessibility requirement, if any;
5. Date and time of application;
6. Household type (family, elderly, disabled);
7. Admission preference, if any;
8. Race and ethnicity of the head of household;
9. The specific site(s) selected (only if PRPHA offers site-based waiting lists).

The PRPHA will adopt and maintain site-based waiting lists for each of its properties.

The applicants are allowed to select three (3) housing sites. This selection may be changed by the applicant at any time before application is processed by the PRPHA staff. Applicants are not permitted to change their site selection(s) after the application is processed.

The applicants who reject screening or a unit offer in the project selected, for any reason, including because they prefer a different site, will be removed from the site-based waitlist, and must reapply if the waitlist is opened. However, an applicant may reject the offer with no penalty if an offer is made under the deconcentration policy.

It is the Applicant's responsibility to contact the PRPHA in writing or in-person to update their application (e.g., contact information, family composition and preference change).

The applicants will be electronically assigned to the site-based waiting list waiting list in sequence based upon:

1. Type and size of unit needed (i.e., accessible, or non-accessible unit, bedroom size);
2. Income tiers: By Federal law at least forty percent (40%) of the families admitted from the Waiting List in any twelve (12) month period must be Extremely Low Income. The remaining sixty percent (60%) of the families admitted from the Waiting List may be Very Low Income or Lower Income with annual incomes between thirty-one and eighty percent (31%-80%) of the Area Median Income.
  - a. **Extremely Low Income:** Annual income less than thirty percent (30%) of Area Median Income;
  - b. **Very Low Income/Lower Income:** Annual income between thirty-one and eighty percent (31% and 80%) of Area **Median Income:**
    - i. Within income tiers by ranking preference (or no-preference);
    - ii. Within each category of ranking preferences by date and time of application or application number.
3. Refusing a unit without good cause or failing to respond to a unit offer will result in the applicant's name being removed (withdrawn) from the waiting list from the rejected project.
4. Refusing a unit with good cause will result in the applicant's name being returned to the waiting list with their original placement on the waiting list. Good cause is determined by the PRPHA. Examples of good cause include, but are not limited to:
  - a. An Applicant or transferring Tenant cannot move at the time of the offer and presents verification that acceptance of the offer of a suitable vacancy will result in undue hardship.
  - b. The unit is not ready for move-in on the date projected for move-in. "Ready for move-in" means the unit has no National Standard of the

Physical Inspections Real State (NSPIRE) deficiencies and is clean.

- c. The unit is not accessible to a source of employment, education or job training, children's daycare, or educational program for children with disabilities<sup>1</sup>. The location of the unit 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 daycare or an educational program for children with disabilities.
- d. The family demonstrates that accepting the offer will place a family member's life, health, or safety in jeopardy. The family must provide documentation of domestic violence, sexual violence, dating violence, sexual assault, stalking, or hate crimes, and/or other situations of non-random violence that put a Tenant's life in danger.
- e. A health professional verifies at the time of the unit offer with supporting documentation of temporary hospitalization or recovery from illness of the head of household, other household members (each as listed on final application or lease), or live-in aide necessary to the care of the head of household.
- f. The unit has lead-based paint, and the family has children under the age of seven and/or a household member(s) has a medical condition(s) that could be negatively impacted by living in a unit with lead-based paint.
- g. The unit is not accessible for a disabled member of the applicant's household.
- h. The unit has accessibility features not needed by the applicant household.

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<sup>1</sup> If the applicant has a child participating in such a program.

## **C. OPENING AND CLOSING THE WAITING LIST [PH Occ GB, p. 31].**

### **1. Closing the Waiting List**

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

### **2. Reopening the Waiting List**

If the waiting list has been closed, it may be reopened at any time. The PRPHA will announce the reopening of the waiting list at least ten (10) business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.

The notice will inform applicants of the date, time, method, and place applications can be obtained and submitted, how blank applications may be obtained (e.g., from what addresses, community sites, and websites), all methods by which applications will be accepted (e.g., in person, by phone, by fax, by email), a point of contact who can answer questions, any limitations on who may apply, and any other information the applicant may need to successfully submit the application. The PRPHA will describe its prioritization system, that this system will be used to place applicants on the waiting list.

To ensure that public notices broadly reach potential applicants in all communities throughout the housing market area, the PRPHA will distribute public notices to local community-based organizations, such as social service agencies and religious institutions; distribute the notice

online through the PRPHA's website or social media platforms and other online platforms for local housing news; and make use of any local newspapers of general circulation, minority media, and other suitable means.

The PRPHA will give public notice by publishing the relevant information using one (1) or more of the following media outlets:

*PRPHA official Website, Newspapers or other available public media.*

#### **D. FAMILY OUTREACH [24 CFR 903.2(d); 24 CFR 903.7(a) and (b)]**

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

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

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

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

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



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

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

#### **E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

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

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

#### **F. UPDATING THE WAITING LIST**

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

##### **1. Purging the Waiting List**

The decision to remove an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation.

If the applicant did not respond to the PRPHA's request for information or updates because of the family member's disability, the PRPHA must, upon the family's request, reinstate the applicant family to their former position on the waiting list as a reasonable accommodation [24 CFR 8.4(a), 24 CFR 100.204(a), and PRPHA Occ GB, p. 39 and 40]. See Chapter II for further information regarding reasonable accommodation.

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

To update the waiting list, the PRPHA will send an update request via postal mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program.

As part of the initial pre-application or application, the PRPHA will ask the family for their preferred methods of communication, which may include mail, phone, email, or contact through a representative or service provider.

This update request will be sent to the last address that the PRPHA has on record for the family as well as any additional contact methods identified by the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, by email, or by fax. Responses should be postmarked or received by the PRPHA not later than ten (10) business days from the date of the PRPHA letter.

If the family fails to respond within ten (10) business days, the family will be removed from the waiting list without further notice.

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

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have ten (10) business days to respond from the date the letter was re-sent. If the family fails to respond within this time frame, the family will be removed from the waiting list without further notice.

When a family is removed from the waiting list during the update process for failure to respond, the PRPHA will send a notification via postal mail and email indicating the family has thirty (30) calendar days period to respond with their interest to continue with application. No informal hearing will be offered in such cases. Such failures to act on the part of the applicant prevent the PRPHA from making an eligibility determination; therefore, no informal hearing is required.

If a family is removed from the waiting list for failure to respond, the PRPHA may reinstate the family if the lack of response was due to the PRPHA error, to circumstances beyond the family's control, as a result of a family member's disability, or as a direct result of status as a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including an adverse factor resulting from such abuse.

## **2. Removal from the Waiting List**

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

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

If a family is removed from the waiting list because the PRPHA has determined the family is not eligible for admission, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the

family was removed from the waiting list and will inform the family how to request an informal hearing regarding the PRPHA's decision (see Chapter XIV) [24 CFR 960.208(a)].

### **ARTICLE IV.3: TENANT SELECTION**

#### **A. OVERVIEW**

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

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

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

#### **B. SELECTION METHOD**

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

## 1. Local Preferences [24 CFR 960.206]

The PRPHA is 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 PRPHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PRPHA plan and the consolidated plan and must be based on local housing needs and priorities that can be documented by generally accepted data sources [24 CFR 960.206(a)].

The PRPHA will aggregate the local preferences using a system in which preference will receive an allocation of points.

The PRPHA has two (2) preference levels: Category 1 and Categories A, B, and C. Categories A, B, and C are equal (non-hierarchic and non-weighted) preferences. The preferences are available to qualifying families if they are verified to qualify at the time of certification. Families qualifying for preferences will be by date and time of application. The preferences are not aggregated – a family that qualifies for two preferences is not in a higher waiting list position than a family that qualifies for a single preference:

**a. Category 1:** The Violence Against Women Act (VAWA) preference and Family Unification. Any individual or family who:

**i. VAWA**

Is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; and has no other

residence; and lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

**ii. Family Unification**

Families for whom the lack of housing is a primary factor in either:

- The imminent placement of the family's child or children in out-of-home care;
- The delay in the discharge of the child or children to the family from out-of-home care; or children in custody of the government that need to be placed to avoid being homeless.

An individual or family claiming either the VAWA or Family Unification preference must be able to verify qualification.

**b. Category A:** An individual or family displaced by a declared Natural Disaster or government action other than eviction or an individual or family who is homeless, meaning:

**i. Displaced**

- An individual or family whose home was recently destroyed or rendered uninhabitable by a disaster declared by a general local government<sup>2</sup> (Federal, State, Territorial), including an individual or family who is currently housed in temporary housing and who has not found alternative housing.

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<sup>2</sup> Applicants, formerly public housing Tenants or housing choice voucher participants and victims of federally declared disasters, will be processed on an as-needed basis before other applications from the waitlist.

## ii. Homeless

- 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 and families that lose their primary residence by an emergency event.
- An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements; or
- an individual or family exiting an institution (including a hospital) where he or she resided for ninety (90) days or less or who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
- Before a homeless applicant will receive a unit offer, the PRPHA must be able to verify that the Applicant family is willing and able to comply with the PRPHA lease. This preference is not “housing first”; rather it is for individuals and families who are “housing ready<sup>3</sup>”.
- Families evicted from any housing for violent or drug-related criminal activity will not be entitled to receive the homeless preference.
- Families who have been evicted or in eviction process from non-subsidized housing for failure to pay rent will have their cases examined on an individual basis to determine eligibility for the homeless preference.

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<sup>3</sup> An Applicant will be “housing ready” when the family can document the capacity to comply with the PRPHA’s lease. This can be accomplished not merely by checking with landlords but with other reliable and credible sources such as social workers, emergency housing providers, etc.

- Families referred by Federal or local law enforcement agencies who have witnessed a crime or provided information on criminal activities to a law enforcement agency and a Federal or local law enforcement agency recommends re-housing the family to avoid or reduce the risk of violence against the family.
- Applicants that live in any subsidy housing program that is under a lease contract will not be considered homeless.
- Applicants who do not have a stable home and live with family member or from house to house will be considered homeless.

### **c. Category B: Working Family Preference**

Working families will be given preference on the waiting list subject to PRPHA meeting the HUD regulation of leasing a minimum of forty percent (40%) of new admissions to extremely low-income families during a calendar year.

A “working family” has an adult family member who is employed at a minimum of twenty (20) hours per week at the Federal minimum wage for the last one hundred twenty (120) calendar days when the applicant requests the preference.

The Applicants housed because of the Working Families or Individuals Preference must maintain employment for at least three (3) months from the date the Tenant Dwelling Lease is executed. No interim recertification will be conducted for Tenants who fail to maintain employment without good cause and will continue to be charged rent based on the employment income for a period of three (3) months.



Termination of employment with cause does not include failure to report to work, excessive absences, habitually tardy, abusive language, theft, or other behavior that directly results from the Tenant's actions.

A family with the head of household, co-head or spouse, or sole member who is a person aged sixty-two (62) or older or with disabilities as defined in this policy, according to HUD regulations, will be considered under working family preference.

**d. Category C:** Preference for families with disabled members and Veteran:

**i. Disabled Members**

A family with a documented disabled family member who does not need the features of an accessible unit for mobility, hearing, or vision loss.

**ii. Veteran** - person who served in the United States Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, or Reserve Component (National Guard and Reserve), who meet the following criteria:

- Received a discharge or release under conditions other than dishonorable (see 38 U.S.C. § 101(18)); and
- At least one day of active duty (see 38 U.S.C. § 101(21)) to include time spent in basic training for active-duty members; or
- Federal active duty for National Guard and Reserve members (not including inactive duty and active duty for training, see 38 U.S.C. § 101(22), (23)); or
- Any period of inactive duty or active duty for training during which National Guard and Reserve members received a service-connected disability resulting from a disease or

injury incurred or aggravated in line of duty (see 38 U.S.C. § 101(24)).

**e. For all One-bedroom units:**

Elderly, disabled families, and displaced persons over other single persons, provided the Age Discrimination Act of 1975 is not violated.

**C. ADMINISTRATION OF THE PREFERENCES**

1. Depending on the time an applicant may have to remain on the waiting list, the PRPHA will either verify preferences at the time of application (when the waiting list is short or nonexistent) or require that applicants certify their qualification for a preference at the time of pre-application (when the wait for admission exceeds four months). Verifying preferences is one of the earliest steps in processing applicants for admission when a family nears the top of the waiting list. If the certification exceeds more than one hundred twenty (120) days at the date of the admission the applicant must present a new one as required from PRPHA unless there is a disability that is not expected to change.
2. The PRPHA may use an application to obtain the family's certification that it qualifies for a preference. The family shall notify the PRPHA of any change that may affect their ability to qualify for a preference.
3. Applicants that are otherwise eligible and self-certified as qualifying for a preference will be placed on the waiting list in the appropriate applicant pool.
4. Applicants who self-certify a preference at the time of preapplication and cannot verify their current preference status at the time of certification will be moved into the non-preference category, based on the date and time of application.
5. Applicants who disagree with the PRPHA's preference classification may not file a grievance. The PRPHA Grievance Procedure applies only to

- Tenants, not to Applicants.
6. Applicants that do not qualify for a preference will be on the application pool based on the date and time of application.
  7. It is the applicant's responsibility to notify the PRPHA of any change in their preference status. If an Applicant's preference status changes while on the waiting list, the applicant's position on the waiting list will be adjusted to reflect the change. The Applicant will retain their original date of application when a change is made. Among applicants with the same preference, the date and time of application will be used to determine placement on the waiting list.

#### **D. ACCESSIBLE UNITS**

Qualified Applicants on the waiting list that require an accessible unit will be offered an available vacant accessible unit before it is offered to an applicant who does not need the features of the unit. The PRPHA will maintain a separate waiting list for fully accessible units.

#### **E. INCOME TARGETING REQUIREMENT [24 CFR 960.202(B)]**

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

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

#### **F. MIXED POPULATION DEVELOPMENTS [24 CFR 960.407]**

A mixed population development is a public housing development or portion of a development that was reserved for elderly families and disabled

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

#### **G. UNITS DESIGNATED FOR ELDERLY [24 CFR 945]**

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

Among the designated developments, the PRPHA must also apply any preferences that it has established. If there are not enough elderly families to occupy the units in a designated elderly development, the PRPHA may allow near-elderly families to occupy the units [24 CFR 945.303(c)(1)] in accordance with designation approved by HUD.

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

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

This protection does apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project [24 CFR 945.303(d)(3)]. The PRPHA received HUD approval for site-based waiting lists at its senior-designated housing properties.

The applicants are allowed to select three (3) senior-designated housing sites. This selection may be changed by the Applicant at any time before application is processed.

The applicants are not permitted to change their site selection(s) after the application has been processed. Applicants who reject screening or a unit offer for any reason, including because they prefer a different site, will be removed from the site-based waitlist, and must reapply if the waitlist is opened. However, an Applicant may reject the offer with no penalty if an offer is made under the deconcentration policy.

All senior housing applicants will be placed on the waitlist for the site they selected. When a unit becomes available (e.g., studio apartment or a one-bedroom apartment), the unit will be offered to the first eligible family. If the family fails to respond to a unit offer or declines the unit or screening for a unit without good cause, including rejection based on unit size, the applicant will be removed from the waiting list.

Refusing a unit or a screening for a unit with good cause will result in the Applicant's name being returned to the waiting list with their original date of application on the waiting list. The PRPHA will determine good cause. This applies only to the rejected unit preference waiting list. Site based waiting lists for senior designated housing properties may apply the preferences included in this chapter.

## **H. DECONCENTRATION OF POVERTY AND INCOME-MIXING [24 CFR 903.1 AND 903.2]**

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

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

Developments subject to the deconcentration requirement are referred to as 'covered developments' and include general occupancy (family) public housing developments. The following developments are not subject to deconcentration and income mixing requirements: developments operated by the PRPHA with fewer than one hundred (100) public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by the PRPHA with only one (1) general occupancy development; developments approved for demolition or for conversion to tenant-based public housing; and developments approved for a mixed-finance plan using HOPE VI or public housing funds [24 CFR 903.2(b)].

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

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

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

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

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

**Step 4.** The PRPHA with covered developments having average incomes outside the EIR must then determine whether these developments are consistent with its local goals and annual plan.

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

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

1. Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities.

2. Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments.
3. Establishing a preference for admission of working families in developments below the EIR.
4. Skipping a family on the waiting list to reach another family to further the goals of deconcentration.
5. Providing other strategies permitted by statute and determined by the PRPHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and PRPHA strategic objectives.

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

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

#### **ARTICLE IV.4: ORDER OF SELECTION [24 CFR 960.206(E)(1)(I)]**

The PRPHA system of preferences may select families according to the date and time of application.

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

When selecting applicants from the waiting list, the PRPHA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. The PRPHA will offer the unit to the highest-



ranking applicant who qualifies for that unit size or type, or that requires the accessibility features.

By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application or higher preference status. Factors such as deconcentration or income mixing, and income targeting will also be considered in accordance with HUD requirements and the PRPHA policy.

#### **A. NOTIFICATION OF SELECTION**

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

The PRPHA will notify the family by postal mail when it is selected from the waiting list.

The notice will inform the family of the following:

1. Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview;
2. Who is required to attend the interview?
3. Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation;
4. Documents that must be provided at the interview to document eligibility for a preference, if applicable;
5. Other documents and information that should be brought to the interview.

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

## **B. APPLICANT INTERVIEW**

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

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PRPHA 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 determined by the PRPHA [Notice PIH 2018-24].

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

The PRPHA requires the selected families from the waiting list to participate in an eligibility interview.

The head of household and the spouse/cohead will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/cohead may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the PRPHA.

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

Pending disclosure and documentation of social security numbers, the PRPHA will allow the family to retain its place on the waiting list for ten (10)

business days. If not, all household members have disclosed their SSNs at the next time a unit becomes available, the PRPHA will offer a unit to the next eligible applicant family on the waiting list.

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

The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, the PRPHA 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 ten (10) business days of the interview (Chapter VII provides details about longer submission deadlines for items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (see Chapter III).

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

Interviews will be conducted in Spanish. For Limited Spanish Proficient (LSP) Applicants, the PRPHA will provide translation services in accordance with the PRPHA's LSP plan.

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

### **C. FINAL ELIGIBILITY DETERMINATION [24 CFR 960.208]**

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

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

The PRPHA will notify a family in writing of their eligibility within ten (10) business days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.

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

If the PRPHA determines that the family is ineligible, the PRPHA will send written notification of the ineligibility determination within ten (10) business

days of the determination. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal hearing (see Chapter XIV).

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

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

## **CHAPTER V: OCCUPANCY STANDARDS AND UNIT OFFERS**

### **A. OVERVIEW**

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

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

Policies in this chapter are organized in two parts.

Article V.1: Occupancy Standards. This article contains the PRPHA's standards for determining the appropriate unit size for families of different sizes, compositions, and types.

Article V.2: Unit Offers. This article contains the PRPHA's policies for making unit offers and describes actions to be taken when unit offers are refused.

## **ARTICLE V.1: OCCUPANCY STANDARDS**

### **A. OVERVIEW**

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

### **B. DETERMINING UNIT SIZE**

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

The PRPHA will use the same occupancy standards for each of its developments. Generally, two (2) people are expected to share a bedroom. This policy does not take the age or relationship of family members into account. Families are assigned unit sizes based on the number of family members, and the family decides who shares a bedroom.

The following principles govern the size of a unit for which a family will qualify. Units will be assigned so that:

1. A head of household (leaseholder) shall not be required to share a bedroom unless the head of household is married, in a consensual relationship, or otherwise agrees to share a bedroom.
2. If the applicant or a member of the applicant's household certifies that

she is pregnant, unborn children will be counted in determining unit size and income limits when the family supplies documentation of pregnancy.

3. Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide's family.
4. Single person families will be allocated a zero or one bedroom.
5. Children related to a household member by birth, adoption, or court awarded custody will be considered when determining unit size.
6. Foster children will be considered when determining unit size. The family may add foster children to the household if it does not overcrowd the unit based on the PRPHA's occupancy standards.
7. Children away at school, but for whom the unit is considered the primary residence, and children temporarily placed outside the home, will be considered when determining unit size.
8. Children in the process of being adopted will be considered when determining unit size.
9. Children who will live in the unit less than fifty percent (50%) of the time will not be considered when determining unit size.

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

<b>BEDROOM SIZE</b>	<b>MINIMUM NUMBER OF PERSONS</b>	<b>MAXIMUM NUMBER OF PERSONS</b>
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

## **C. EXCEPTIONS TO OCCUPANCY STANDARDS**

### **1. Types of Exceptions**

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

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

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

Requests from applicants to be placed on the waiting list for a unit size smaller than designated by the occupancy standards will be approved as long as the unit is not overcrowded according to local code, and the family agrees not to request a transfer for a period of two (2) years from the date of admission, unless they have a subsequent change in family size or composition.

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



## **D. PROCESSING OF EXCEPTIONS**

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

In the case of a request for exception as a reasonable accommodation, the PRPHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the PRPHA will consider the exception request any time the resident indicates that accommodation is needed whether a formal written request is submitted.

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

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

## **ARTICLE V.2: UNIT OFFERS (24 CFR 1.4(B)(2)(II); 24 CFR 960.208)**

### **A. OVERVIEW**

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

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

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

## **B. NUMBER OF OFFERS**

The PRPHA has adopted Plan A to offering units to applicants. This plan must be applied as follow:

1. The family will be eligible for one (1) unit offer, from each waiting list they selected, unless they require reasonable accommodation.
2. Unit offer will be based on the family's position on the waiting list and their stated preferences.
3. In cases that more than one of one (1) unit becomes available, the PRPHA will offer the unit that is ready for occupancy.

## **C. TIME LIMIT FOR UNIT OFFER ACCEPTANCE OR REFUSAL**

Applicants must accept or refuse a unit offer within two (2) business days of the date of the unit offer. If the applicant accepts the offer, they have up to forty-eight (48) hours to sign the lease.

Offers made by telephone will be confirmed by a written letter to the Applicant.

## **D. REFUSALS OF UNIT OFFERS**

### **1. Good Cause for Unit Refusal**

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

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

disabilities.

- b. The family demonstrates to the PRPHA satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders; other court orders; risk assessments related to witness protection from a law enforcement agency; or documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking in accordance with Chapter XVI of this ACOP. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.
- c. 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.
- d. 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 thirty (30) day notice to move.
- e. The unit has lead-based paint and the family includes children under the age of six.
- f. The unit is not ready for move-in on the date projected for move-in. "Ready for move-in" means the unit has no National Standard of the Physical Inspections Real State (NSPIRE) deficiencies and is clean.

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

In addition, an elderly or disabled family may decline an offer for designated housing. Such a refusal must not adversely affect the

family's position on or placement on the public housing waiting list [24 CFR 945.303(d)].

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

## **2. Unit Refusal without Good Cause**

When an Applicant rejects the final unit offer without good cause, the PRPHA will remove the applicant's name from the waiting list and send notice to the family of such removal.

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

## **E. ACCESSIBLE UNITS [24 CFR 8.27]**

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

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

1. First, to a current resident of another unit of the same development, or other public housing development under the PRPHA's control, who has a disability that requires the special features of the vacant unit and is occupying a unit not having such features, or if no such occupant exists, then.
2. Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.
3. Families that require an accessible unit may be over-housed in such unit if there are no resident or applicant families of the appropriate size who also require the accessible features of the unit.

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

## **CHAPTER VI: INCOME AND RENT DETERMINATIONS [24 CFR Part 5, Subparts E and F; 24 CFR 960, Subpart C]**

### **A. OVERVIEW**

A family's annual income is used to determine their income eligibility for the public housing program and is also used to calculate the amount of the family's rent payment. The PRPHA 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 PRPHA policies related to these topics in three parts as follows:

Article VI.1: Annual Income. HUD regulations specify the sources of income which are excluded from the family's annual income.

Article VI.2: Assets. HUD regulations specify the types of assets which are excluded from a family's annual income.

Article VI.3: Adjusted Income. Once annual income has been established, HUD regulations require the PRPHA to subtract from annual income any of five mandatory deductions for which a family qualifies and allow the PRPHA to adopt additional permissive deductions.

Article VI.4: Calculating Rent. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included here are flat rents and the family's choice of rent.

### **ARTICLE VI.1: ANNUAL INCOME**

## **A. OVERVIEW [24 CFR 5.609]**

Annual income includes:

1. All amounts, not specifically excluded in [24 CFR 5.609(b)];
2. All amounts received from all sources (other than those specifically excluded in [24 CFR 5.609(b)]) by each member of the family who is eighteen (18) years of age or older or is the head of household or spouse;
3. Unearned income (other than those sources specifically excluded in [24 CFR 5.609(b)]) by or on behalf of each dependent who is under eighteen (18) years of age; and
4. Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds \$50,000.00 (amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.

In addition to this general definition, the regulations at [24 CFR 5.609(b)] provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous versions of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. To that end, generally, all income is included unless it is specifically excluded by regulation.

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. [24 CFR 5.603(b)(1)] describes HUD regulations for treating specific types of assets.

The full texts of those portions of the regulations are provided in exhibits at the end of this ACOP as follows:

1. Annual Income Full Definition (Exhibit 6-1);
2. Treatment of Family Assets (Exhibit 6-2);

### 3. The Effect of Welfare Benefit Reduction (Exhibit 6-3).

The following sections, 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. Verification requirements for annual income are discussed in Chapter VII.

## **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 the household to report changes in family composition in accordance with HUD regulations and PRPHA policies in Chapter IX. 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 (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster Child or Foster Adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors	Earned income of children under eighteen (18) years of age is excluded [24 CFR 5.609(b)(3)]. All sources of unearned income, except those specifically excluded by the regulations, are included.
Full-time students eighteen (18) years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)]. All sources of unearned income, except those specifically excluded by the regulations, are included.

### **1. Temporarily Absent Family Members**

The current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define “temporarily” or “permanently” absent or specify a timeframe associated with a temporary versus a permanent absence.

Unless specifically excluded by the regulations, the income of all family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

Generally, an individual who is or is expected to be absent from the public housing unit for one hundred eighty (180) consecutive days or less is considered temporarily absent and continues to be considered a family member this includes families that request permission to spend less one hundred eighty (180) consecutive days outside the country. Generally, an individual who is or is expected to be absent from the public housing unit for more than one hundred eighty (180) consecutive days is considered permanently absent and no longer a family member. One unit family that is absent from the unit more than one hundred eighty (180) consecutive days will be notify of lease termination. Exceptions to this general policy are discussed below:

**a. Absent Students**

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

**b. Absences Due to Placement in Foster Care**



Children temporarily absent from the home because of placement in foster care (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

If a child has been placed in foster care, the PRPHA 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 continue to be counted as a family member.

**c. Absent Head, Spouse, or Cohead**

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

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#### **d. Family Members Confined for Medical Reasons**

If a family member is confined to a nursing home or hospital on a permanent basis, the PRPHA will determine that the person is no longer a member of the assisted household, and the income of that person is not counted [New PH OCC GB, Income Determinations, p. 12].

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

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

#### **e. Joint Custody of Children**

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 fifty percent (50%) or more of the time. When more than one applicant or assisted family (regardless of program) 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 PRPHA will make the determination based on available documents such as court orders, an IRS income tax return showing which family has claimed

the child for income tax purposes, school records, or other credible documentation.

**f. Caretakers for a Child**

The approval of a caretaker is at the owner and PRPHA's discretion and subject to the owner and PRPHA's screening criteria and must be eligible for the housing program. If neither a parent nor a designated guardian remains in a household receiving the assistance.

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 must present evidence that is in the process to obtain custody or legal guardianship.

**C. CALCULATING ANNUAL INCOME**

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

**1. Anticipating Annual Income [24 CFR 5.609(c)(1)]**

At initial occupancy and for an interim reexamination of family income, the PRPHA is required to use anticipated income (current income) for the upcoming twelve (12) month period following the new admission or interim reexamination effective date. Policies related to verifying income are found in Chapter VII.

When the PRPHA cannot readily anticipate income based upon current circumstances (e.g., in the case of temporary, sporadic, or variable employment, seasonal employment, unstable working hours, or suspected fraud), the PRPHA will review and analyze historical data for

patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

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

**a. Known Changes in Income**

If the PRPHA verifies an upcoming increase or decrease in income, annual income will be projected by applying each income amount to the appropriate part of the twelve (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 new admission or interim reexamination. In such a case the PRPHA would calculate annual income as follows:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

**2. Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2); Notice PIH 2023-27]**

At annual reexamination, PRPHA must first determine the family's income for the previous twelve (12) month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with PRPHA policies in Chapter IX and HUD regulations,

must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous twelve (12) month period is the amount that will be used to determine the family's rent. Policies related to conducting annual reexaminations are in Chapter IX.

#### **D. EARNED INCOME**

##### **1. Wages and Related Compensation [24 CFR 5.609(a); Notice PIH 2023-27]**

The earned income of each member of the family who is eighteen (18) years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

**a. Earned income** means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100].

**b. A day laborer** is defined as an individual hired and paid one (1) day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)].

**c. A seasonal worker** is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six (6) months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the

employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard or ballpark vendor [Notice PIH 2023-27].

The PRPHA will include in annual income the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

For persons who regularly receive bonuses or commissions, the PRPHA will verify, and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the PRPHA will use the prior year amounts. In either case the family may provide, and the PRPHA 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 PRPHA will count only the amount estimated by the employer. The file will be documented appropriately.

## **2. Military Pay**

All regular pay, special pay and allowances of a member of the Armed Forces are counted except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].

## **3. Earnings of a Minor [24 CFR 5.609(b)(3)]**

A minor is a member of the family, other than the head of household or spouse, who is under eighteen (18) years of age. Employment income earned by minors is not included in annual income. All other sources of unearned income, except those specifically excluded by the regulations, are included.

#### **4. Earned Income of Full-Time Students [24 CFR 5.609(b)(14)]**

The earned income of a dependent full-time student more than the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. Full-time status is defined by the educational or vocational institution the student is attending [New PH OCC GB, *Lease Requirements*, p. 5].

#### **E. EARNED INCOME DISALLOWANCE [24 CFR 960.255; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27]**

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating in the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full twenty-four (24) month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will be sunset on January 1, 2026, and the PRPHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

##### **1. Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the

EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

## **2. Calculation Method**

### Initial 12-Month Exclusion

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

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

## **3. Second 12-Month Exclusion**

During the second exclusion period of twelve (12) consecutive months, the PRPHA must exclude at least fifty percent (50%) of any increase in income attributable to employment or increased earnings.

## **4. Lifetime Limitation**

The EID has a two-year (24-month) lifetime maximum. The two-year (24-month) eligibility period begins while the initial exclusion period begins and ends twenty-four (24) months later. During the twenty-four (24) month period, an individual remains eligible for EID. The EID will be sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

## **F. BUSINESS AND SELF-EMPLOYMENT INCOME [24 CFR 5.609(b)(28); Notice PIH 2023-27]**

*Annual income* includes "net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses.

Expenditures for business expansion or amortization of capital indebtedness may 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."

To determine business expenses that may be deducted from gross income, the PRPHA 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 herein.

### **1. Independent Contractors**

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 2.609 (b)(24)].

An independent contractor is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)].

### **2. Business Expansion**

HUD regulations do not permit the PRPHA to deduct from gross income expenses for business expansion. Business expansion is defined as any capital expenditure 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.

### **3. Capital Indebtedness**

HUD regulations do not permit the PRPHA to deduct from gross income the amortization of capital indebtedness. *Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the PRPHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

### **4. Negative Business Income**

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

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

HUD regulations require the PRPHA 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.

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 \$2,000.00 to help a business get started, the PRPHA 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*.

### **6. Co-owned Businesses**

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of

the income is lower than its share of ownership, the family must document the reasons for the difference.

## **7. Assets Owned by a Business Entity**

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

## **G. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]**

The regulations distinguish between two categories of student financial assistance paid to both full-time and part-time students.

### **1. Types of Assistance**

Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)].

Examples of assistance under title IV of the HEA include:

- a. Federal Pell Grants;
- b. Teach Grants;
- c. Federal Work Study Programs;
- d. Federal Perkins Loans;
- e. Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or
- f. Bureau of Indian Affairs/Education student assistance programs;
- g. The Higher Education Tribal Grant;
- h. The Tribally Controlled Colleges or Universities Grant Program.

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the Federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)]. *Actual covered costs* are defined as the actual costs of:

- a. Tuition, books, and supplies;
- b. Including supplies and equipment to support students with learning disabilities or other disabilities.
- c. Room and board; and
- d. Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- a. For tuition, book, supplies, room and board, or other fees required and charged to the student by the education institution;
- b. To assist a student with the costs of higher education; or
- c. To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student's financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the PRPHA.

The financial assistance must be a grant or scholarship received from:

- a. The Federal government;

- b. A state, tribal, or local government;
- c. A private foundation registered as a nonprofit;
- d. A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- e. An institution of higher education.

The student financial assistance, does not include:

- a. Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- b. Gifts, including gifts from family or friends; or
- c. Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

#### **H. CALCULATING INCOME FROM STUDENT FINANCIAL ASSISTANCE [HOTMA STUDENT FINANCIAL ASSISTANCE RESOURCE SHEET; NOTICE PIH 2023-27]**

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, the PRPHA will exclude

the full amount of the assistance received under Title IV from the family's annual income. The PRPHA will not calculate actual covered costs in this case. If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, the PRPHA will first calculate the actual covered costs to the student in accordance with [24 CFR 5.609(b)(ii)].

The PRPHA will then subtract the total amount of the student's financial assistance from the student's actual covered costs. The PRPHA will include any amount of financial assistance more than the student's actual covered costs in the family's annual income. (Please refer to the example 1)

**Example 1**

- Actual covered costs: \$20,000.00
- Other student financial assistance: \$25,000.00
- Excluded income: \$20,000.00 (\$25,000.00 in financial assistance  
\$20,000.00 in actual covered costs) -
- Included income: \$5,000.00

When a student receives assistance from both Title IV of the HEA and from other sources, the PRPHA will first calculate the actual covered costs to the student in accordance with [24 CFR 5.609(b)(ii)]. The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student's financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under the student financial assistance" would be excluded from income. (Please refer to example 2)

**Example 2**

- Actual covered costs: \$25,000.00
- Title IV HEA assistance: \$26,000.00
- Title IV HEA assistance covers the students' entire actual covered costs.
- Other Student Financial Assistance: \$5,000.00
- Excluded income: The entire Title IV HEA assistance of \$26,000.00
- Included income: All other financial assistance of \$5,000.00

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, the PRPHA will exclude the amount of other

**Example 3**

- Actual covered costs: \$22,000.00
- Title IV HEA assistance: \$15,000.00
- The remaining amount not covered by Title IV HEA assistance is \$7,000.00 (\$22,000.00 in actual covered costs - \$15,000.00 in Title IV HEA assistance).
- Other Student Financial Assistance: \$5,000.00
- \$7,000.00 in remaining actual covered costs - \$5,000.00 in other financial assistance
- Excluded income: \$15,000.00 entire amount of the Title IV HEA Assistance + \$5,000.00 in other financial assistance
- Included income: \$0

student's financial assistance up to the amount of the remaining actual covered costs.

**Example 4**

- Actual covered costs: \$18,000.00
- Title IV HEA Assistance: \$15,000.00
- The remaining amount not covered by Title IV HEA assistance is \$3,000 (\$18,000 in actual covered costs - \$15,000.00 in Title IV HEA Assistance)
- Other student Financial Assistance: \$5,000.00
- When other student financial assistance is applied, financial assistance exceeds actual covered costs by \$2,000.00 (\$3,000.00 in actual covered costs - \$5,000.00 in other financial assistance).
- Included income: \$2,000.00 (the amount by which the financial aid exceeds the student's actual covered costs).

**I. PERIODIC PAYMENTS [Notice PIH 2023-27]**

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

Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one (1) year that can be extended. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. However, periodic payments paid at regular intervals (such as weekly,



monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income. Payments received in lieu of wages for worker's compensation are excluded, even if paid in periodic payments, if the income will last for a period of less than one (1) year.

**1. Lump-Sum Payments for the Delayed Start of a Periodic Payment [24 CFR 5.609(b)(16)]**

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income.

The PRPHA will include in annual income lump sums received because of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

When a delayed-start payment is received that is to be included and the family reports this during the period in which the PRPHA is processing an annual reexamination, the PRPHA will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time the PRPHA is processing an annual reexamination, then the PRPHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the PRPHA will conduct an interim in accordance with PRPHA policies in Chapter IX. If not, the PRPHA will consider the amount when processing the family's next annual recertification.

## **2. Retirement Accounts [24 CFR 5.609(b)(26); Notice PIH 2023-27]**

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family. An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

## **3. Social Security Benefits [Notice PIH 2023-27]**

The PRPHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PRPHA are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27]. When a family member's benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts, the PRPHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full,

the PRPHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

#### **4. Alimony and Child Support**

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family’s child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

The PRPHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement.

The PRPHA will count court-awarded amounts for alimony and child support unless the family certifies and the PRPHA verifies that the payments are not being made.

To verify that payments are not being made, the PRPHA will review child support payments over the last three months.

If payments are being made regularly, the PRPHA will use the amount received during the last twelve (12) months (excluding any lump sums received). If payments have been made for a period less than 12 months, the PRPHA will average all payments that have been made.

At new admission or interim recertification, if any lump sum payments were made in the past twelve (12) months, the PRPHA will determine the likelihood of the family receiving another similar payment within the next twelve (12) months before deciding whether this amount will be included in the calculation of annual income.

If the PRPHA determines and can appropriately verify that the family likely will not receive a similar payment, then the amount will not be considered when projecting annual income.

If the PRPHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.

If no payments have been made in the past three (3) months and there are no lump sums, the PRPHA will not include alimony or child support in annual income

#### **J. NONRECURRING INCOME [24 CFR 5.609(b)(24) and Notice PIH 2023-27]**

Nonrecurring income, which is income that will not be repeated beyond the coming year (e.g., twelve (12) months following the effective date of the certification) based on information provided by the family, is excluded from annual income. The PRPHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. See Chapter VII for PRPHA policies related to verification of nonrecurring income.

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended.

Income amounts excluded under this category may include, but are not limited to:

1. Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
2. Payments for eviction prevention;
3. Security deposits to secure housing;
4. Payments for participation in research studies (depending on the

duration); and

5. General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

1. Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
2. Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
3. Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
4. Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
5. Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to such non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income. However, the value of regular in-kind donations (such as the value of groceries) received by friends and family are included.
6. Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

#### **K. WELFARE ASSISTANCE**

Welfare assistance is counted in annual income. Welfare Assistance includes Temporary Assistance for Needy Families (TANF) and any payments

to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments.

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

The PRPHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at [24 CFR 5.615] is provided as Exhibit 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

### **2. Covered Families**

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

### **3. 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 PRPHA must include in annual income “imputed” welfare income. The PRPHA 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 because of the sanction.

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

a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

#### **4. Offsets**

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

#### **L. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19)]**

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded.

Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies or other authorized entities.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income. Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

#### **M. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25); FR Notice 2/14/23]**

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are

excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed \$50,000.00 (as annually adjusted by an inflationary factor), then income will be imputed on the net family assets pursuant to [24 CFR 5.609(a)(2)]. If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by ten percent (10%) or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three (3) months of the family's income certification period and the PRPHA or owner chooses not to conduct the examination.

#### **N. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b)]**

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



1. Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
2. Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income [Notice PIH 2023-27].
3. Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
4. Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
5. Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
6. Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
7. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
8. Payments related to aid and attendance under [38 U.S.C. 1521] to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].

9. Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].
10. Payments received by tribal members because of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members more than the first \$2,000.00 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income.
11. Replacement housing "gap" payments made in accordance with [49 CFR Part 24] that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
12. Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
13. Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses

- incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(12)(ii)].
14. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(b)(12)(i)].
  15. Amounts received under a resident service stipend not to exceed \$200.00 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PRPHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.600(b)(12)(iii)].
  16. Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, 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. The PRPHA 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 PRPHA 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.
- 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 unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)]. The PRPHA defines a *training program* as a learning process generally having a variety of components and taking place in a series of sessions over a period. 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].

End of participation in a training program must be reported in accordance with the PRPHA's interim reporting requirements (see Chapter XI).

17. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(b)(13)].
18. Adoption assistance payments for a child more than the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15)].
19. Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(b)(20)].
20. Amounts that HUD is required by federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(b) apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary [24 CFR 5.609(b)(22)].

HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on May 20, 2014. It includes:

1. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
2. Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC;
3. Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
4. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
5. Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
6. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
7. Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931);
8. Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts;
  - a. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04);
9. Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));
10. A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in *Elouise Cobell et al. v. Ken Salazar et al.*, 573 F.3d 808 (2009), United States Court of Appeals for the District of Columbia, for a period of one (1) year from the time of receipt of that payment as provided in the Claims Resolution

- Act of 2010;
11. 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 \$2,000.00 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);
  12. Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs);
  13. Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));
  14. 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.);
  15. 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;
  16. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
  17. The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
  18. Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));
  19. 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);
20. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249) (See Chapter VI for exceptions);
  21. Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
  22. 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);
  23. Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002;
  24. 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));
  25. 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;
  26. Distributions from an ABLE account, and actual or imputed interest on the ABLE account balance [See also Notice PIH 2019-09].

## ARTICLE VI.2: ASSETS

### A. OVERVIEW

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [Notice PIH 2023-27].

The regulation at [24 CFR 5.603(b)(3)] provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of *net family assets*.

Optional policies for family self-certification of assets are found in Chapter VII. Policies related to asset limitation may be found in Chapter III.

Income from assets is always anticipated, irrespective of the income examination type.

The PRPHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The PRPHA will 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 twelve (12) months, or (3) the PRPHA 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 PRPHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

If 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 PRPHA to show why



the asset income determination does not represent the family's anticipated asset income.

## **B. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(b)(2)]**

The PRPHA must include the value of any business or family assets disposed of by an applicant or participant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two (2) years preceding the date of application or reexamination, as applicable, more than the consideration received for the asset.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [Notice PIH 2023-27].

### **1. Minimum Threshold [New PH OCC GB, Income Determinations, p.24]**

The PRPHA 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 (2) years exceeds the gross amount received for the assets by more than \$1,000.00.

### **2. Separation or Divorce**

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

### **3. 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. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative

equity alone would not justify excluding the property or other investments from family assets.

#### **4. Asset Owned by a Business Entity**

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

#### **5. Family Declaration**

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

### **C. ASSET INCLUSIONS AND EXCLUSIONS**

#### **1. Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]**

All assets are categorized as either real property (e.g., land, a home) or personal property.

Personal property includes tangible items, like boats, as well as intangible items, like bank accounts.

The value of necessary items of personal property is excluded from the calculation of net family assets. Necessary items of personal property include a car used for commuting or medical devices.

HUD defines necessary personal property as items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items. Items of personal property that do not qualify as necessary personal property are classified as non-necessary personal property.

The combined value of all non-necessary items of personal property is only included in annual income when the combined total value exceeds \$50,000.00 (adjusted annually). When the combined value of all non-necessary personal property does not exceed \$50,000.00, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

While not an exhaustive list, the following table from Notice PIH 2023-27 provides examples of necessary and non-necessary personal property.

<b>Necessary Personal Property</b>	<b>Non-Necessary Personal Property</b>
Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter).	Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers,

<p>Furniture, carpets, linens, kitchenware. Common appliances. Common electronics (e.g., radio, television, DVD player, gaming system). Clothing. Personal effects that are not luxury items (e.g., toys, books). Wedding and engagement rings. Jewelry used in religious/cultural celebrations and ceremonies. Religious and cultural items. Medical equipment and supplies. Health Care-related supplies. Musical instruments used by the family. Personal computers, phones, tablets, and related equipment. Professional tools of trade of the family, for example professional books. Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities. Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</p>	<p>motorhomes, traveling trailers, all-terrain vehicles (ATVs)). Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds). Recreational boat/watercraft. Expensive jewelry without religious or cultural value, or which does not hold family significance. Collectibles (e.g., coins/stamps). Equipment/machinery that is not used to generate income for a business. Items such as gems/precious metals, antique cars, artwork, etc..</p>
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## 2. Checking and Savings Accounts [Notice PIH 2023-27]

HUD considers bank accounts as non-necessary items of personal property. Whether or not non-necessary personal property is counted toward net family assets depends on the combined value of all the family's assets.

- a. When the combined value of net family assets is greater than \$50,000.00, as adjusted by inflation, checking and/or savings accounts would be counted toward net family assets.
- b. When the combined value of all non-necessary personal property does not exceed \$50,000.00, as adjusted by inflation, all non-

necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

- c. However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

### **3. ABL Accounts [24 CFR 5.609(b)(10); Notice PIH 2019-09]**

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. The PRPHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

### **4. Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds [24 CFR 5.603(b)(1)]**

HUD considers financial investments such as stocks and bonds as non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all the family's assets.

- a. When the combined value of net family assets is greater than \$50,000.00, as adjusted by inflation, financial investments such as

stocks and bonds are considered part of net family assets. In this case, the value of the family's financial investments such as stocks and bonds would be counted toward net family assets.

- b. When the combined value of all non-necessary personal property does not exceed \$50,000.00, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues a dividend in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is \$0. The PRPHA will include interest or dividends earned by investment accounts as actual income from assets even when the earnings are reinvested.

The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

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

#### **5. Lump-Sum Additions to Net Family Assets [24 CFR 5.609(b)(24)(viii); Notice PIH 2023-27]**

Any lump-sum receipts are only counted as assets if they are retained by a family in a form recognizable as an asset. The regulations exclude income from lump-sum additions to family assets, including lottery or

other contest winnings as a type of nonrecurring income. For example, if the family receives a \$1,000.00 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) 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 in prospective monthly amounts are also excluded from income.

However, these amounts may count toward net family assets. The PRPHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by ten percent (10%) or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter IX. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the PRPHA chooses not to conduct the examination.

For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income please refer to the section above.

#### **6. Jointly Owned Assets [Notice PIH 2023-27]**

For assets owned jointly by the family and one or more individuals outside of the assisted family, the PRPHA must include the total value of the asset in the calculation of net family assets, unless:

- a. The asset is otherwise excluded;
- b. The family can demonstrate that the asset is inaccessible to them; or
- c. The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

Any income from a jointly owned asset must be included in annual income, unless:

- a. The income is specifically excluded;
- b. The family demonstrates that they do not have access to the income from that asset; or
- c. The family only has access to a portion of the income from that asset.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

#### **7. Trusts [24 CFR 5.609(b)(2) and 5.603(b)(4)]**

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second



party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

The following types of trust distributions are excluded from annual income:

- a. Distributions of the principal or corpus of the trust; and
- b. Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, *revocable* and *irrevocable*.

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Irrevocable trusts not under the control of any member of the family or household are not assets. Typically, special needs trusts are considered irrevocable. The value of the trust is not included in net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Where an irrevocable trust is excluded from net family assets, the PRPHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed. If the value of the trust is not considered part of the family's net assets, then distributions from the trust are treated as follows:

- a. All distributions from the trust's principal are excluded from income.
- b. Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

A *revocable trust* is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

The value of revocable trusts that are not under the control of the family are excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not “own” the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee. If this is the case, then distributions from the trust are treated as follows:

- a. All distributions from the trust's principal are excluded from income.
- b. Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

Revocable trusts under the control of the family or household (e.g., the grantor is a member of the assisted family or household) are considered assets and must be included in net family assets.

If the value of the trust is considered part of the family's net assets, then distributions from the trust are not considered income to the family. The PRPHA must count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns (e.g., if the trust is comprised of farmland that is not in use) and the total value of the combined net family assets exceeds \$50,000.00 (as that amount is updated for inflation), as imputed returns, as applicable.

## **8. Life Insurance [FR Notice 2/14/23 and Notice PIH 2023-27]**

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

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. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether the family receives it.

## **9. Tax Refunds [24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27]**

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of twelve (12) months after receipt by the family.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the twelve (12) months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of the account in which the federal tax refund or refundable tax credits were deposited. When the subtraction results in a negative number, then the balance of the asset is considered \$0.

If the tax refund or refundable tax credit is deposited into another excluded asset, such as a retirement account or a Coverdell Education Savings Account, then the deposit will have no effect on the balance of the asset (i.e., there is no need for the PRPHA to subtract the amount of the deposit from the value of the excluded asset).

## **10. Asset Exclusions [24 CFR 5.603(b)]**

The following are excluded from the calculations of net family assets:

- a. The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- b. The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].
  - i. *Real property* as used in this article has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
  - ii. Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; and inherited property in dispute [Notice PIH 2023-27].
- c. Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)];
- d. The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)];
- e. The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)];
- f. The value of any “baby bond” account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)];
- g. Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)];
- h. Equity in a manufactured home where the family receives assistance under [24 CFR part 982] [24 CFR 5.603(b)(3)(viii)];

- i. Equity in property under the Homeownership Option for which a family receives assistance under [24 CFR part 982] [24 CFR 5.603(b)(3)(ix)];
- j. Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- k. Federal tax refunds or refundable tax credits for a period of twelve (12) months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- l. The full amount of assets held in an irrevocable trust [Notice PIH 2023-27]; and
- m. The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [Notice PIH 2023-27].

#### **D. DETERMINING INCOME FROM ASSETS**

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [Notice PIH 2023-27].

##### **1. Net Family Assets**

Net family assets are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

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 such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations*, p. 24].

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

- a. 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).
- b. The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets [Notice PIH 2023-27].

## **2. Actual Income from Assets**

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by [24 CFR 5.609(b)].

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

The PRPHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed \$50,000.00 (adjusted annually by HUD), without taking additional steps

to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter VII of this policy.

The PRPHA may not calculate or include any imputed income from assets when net family assets total \$50,000.00 or less [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

### **3. Imputed Income from Assets**

When net family assets exceed \$50,000.00 (adjusted annually by HUD), the PRPHA may not rely on self-certification. If actual returns can be calculated, the PRPHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, the PRPHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). If the PRPHA can compute actual income from some but not all assets, the PRPHA must compute actual returns where possible and use the HUD determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

An asset with an actual return of \$0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the asset is a financial asset and there is no income generated (for example, a bank account with a zero percent (0%) interest rate or a stock that does not issue cash dividends), then the asset generates zero (0) actual asset income, and imputed income is not calculated. When a stock issues a dividend in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is consistently \$0.

## ARTICLE VI.3: ADJUSTED INCOME

### A. OVERVIEW

HUD regulations require PRPHA to deduct from annual income any of five (5) mandatory deductions for which a family qualifies and allow the PRPHA to deduct other permissive deductions in accordance with PRPHA policy. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611 *Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions*

(1) \$480.00 for each dependent (adjusted annually by HUD, rounded to the next lowest multiple of \$25.00);

(2) \$525.00 for any elderly family or disabled family (adjusted annually by HUD, rounded to the next lowest multiple of \$25.00);

(3) The sum of the following, to the extent the sum exceeds ten percent (10%) of annual income:

(i) Unreimbursed health and medical care 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; and

(4) Any reasonable childcare expenses necessary to enable a member of the family to be employed or to further his or her education.

This article covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter VII.



## 1. Anticipating Expenses

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

When calculating health and medical care expenses, the PRPHA will include those expenses anticipated to be incurred during the twelve (12) months following the certification date which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment if at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations*, p. 30]. For annual reexaminations, the PRPHA will use information for the previous 12-month period.

## **B. DEPENDENT DEDUCTION**

An allowance of \$480.00 is deducted from annual income for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25.00) [24 CFR 5.611(a)(1)]. A *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

## **C. ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$525.00 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25.00) [24 CFR 5.611(a)(2)].

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

## **D. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]**

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

This deduction is permitted only for families in which the head, spouse, or cohead is at least sixty-two (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.

### **1. Definition of Medical Expenses**

HUD regulations define health and medical care expenses at [24 CFR 5.603(b)] to mean “any costs incurred in the diagnosis, cure, mitigation,

treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed." Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

Although HUD revised the definition of health and medical care expenses to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting PRPHA to specifically align their policies with IRS Publication 502 for determining which expenses are included in HUD's mandatory deduction for health and medical care expenses. PRPHA must review each expense to determine whether it is eligible in accordance with HUD's definition of health and medical care expenses.

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

This policy applies only to families in which the head, spouse, or cohead is sixty-two (62) or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either a health and medical care or disability assistance expenses, the PRPHA will consider them health and medical care expenses unless the expenses are incurred exclusively to enable a person with disabilities to work.

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

Unreimbursed reasonable expenses for attendant care and auxiliary apparatus for each member of the family who is a person with disabilities may be deducted if they: (1) are necessary to enable a family member eighteen (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 ten percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

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

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)]. The family must identify the family members enabled to work because of the disability assistance expenses. In evaluating the family's request, the PRPHA 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.

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

When the PRPHA 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. [New PH OCC GB, *Income Determination*, p. 28].

## **2. Eligible Auxiliary Apparatus [Notice PIH 2023-27]**

Auxiliary apparatus items may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read or type, or special equipment to assist a person who is deaf or hard of hearing.

## **3. Eligible Attendant Care [Notice PIH 2023-27]**

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The family determines the type of attendant care that is appropriate for the person with disabilities. Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. 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 PRPHA 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 a 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 on each activity and/or the number of persons under care.

#### **4. Payments to Family Members**

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

#### **5. Necessary and Reasonable Expenses**

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

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

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

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

When expenses anticipated by a family could be defined as either health and medical care or disability assistance expenses, the PRPHA will consider them health and medical care expenses unless the expenses are incurred exclusively to enable a person with disabilities to work.

### **F. CHILD CARE EXPENSE DEDUCTION**

HUD defines *child care expenses* at [24 CFR 5.603(b)] as "amounts anticipated to be paid by the family for the care of children under thirteen

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

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

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

### **2. Qualifying for Deductions**

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

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

In evaluating the family's request, the PRPHA 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.

#### **b. Seeking Work**

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

**c. Furthering Education**

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

**d. Being Gainfully Employed**

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

**3. Earned Income Limit on Child Care Expense Deduction**

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

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



When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480.00 is excluded, childcare costs related to enabling a family member to work may not exceed the portion of the person's earned income that is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000.00 but because of the EID only \$5,000.00 is included in annual income, childcare expenses are limited to \$5,000.00.

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

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

#### **4. Eligible Child Care Expenses**

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

#### **5. Allowable Child Care Activities**

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays

(e.g., summer day camp, after-school sports league) are allowable forms of childcare.

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

If a childcare provider also renders other services to a family or childcare is used to enable a family member to conduct activities that are not eligible for consideration, the PRPHA will prorate the costs and allow only that portion of the expenses that is attributable to childcare for eligible activities. For example, if the care provider also cares for a child with disabilities who is thirteen (13) or older, the cost of care will be prorated. Unless otherwise specified by the childcare provider, the calculation will be based upon the number of hours spent on each activity and/or the number of persons under care.

## **6. Necessary and Reasonable Costs**

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

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

To establish the reasonableness of childcare costs, the PRPHA will use the schedule of childcare costs from a qualified local entity that either subsidizes childcare costs or licenses childcare providers. Families may

present, and the PRPHA will consider, justification for costs that exceed typical costs in the area.

## **G. HARDSHIP EXEMPTIONS [24 CFR 5.611(c), (d), and (e)]**

### **1. Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c); Notice PIH 2023-27]**

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed. Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

#### **2. Phased-In Relief**

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review. The family must receive phased-in relief if they are determined to be eligible. These families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first.

For these families, the threshold amount phased-in as follows:

- a. The family is eligible for a deduction totaling the sum of expenses that exceeds five percent (5%) of annual income for the first twelve (12) months.
- b. At the conclusion of twelve (12) months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- c. At the conclusion of twenty-four (24) months, the standard threshold amount of ten percent (10%) would be used, unless the family qualifies for relief under the general hardship relief category.

When an eligible family's phased-in relief begins at an interim reexamination, the PRPHA will need to process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive phased-in relief.

PRPHA must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period.

The PRPHA will not continue the phased-in relief for families who move from the HCV program to public housing. These families will be treated as new admissions and the sum of expenses that exceeds ten percent (10%) of annual income will be used to calculate their adjusted income.

### **3. General Relief [24 CFR 5.611(e)(2)]**

The second category is for families that can demonstrate:

- a. Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- b. The family's financial hardship is a result of a change in circumstances (as defined in PRPHA policy) that would not otherwise trigger an interim reexamination.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the phased-in relief category above.

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) or that the family's financial hardship is a result of a change in circumstances. The PRPHA defines a change in circumstances as a decrease in income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim reexamination in accordance with PRPHA policies.

Examples of circumstances constituting a financial hardship may include the following situations:

- a. The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;
- b. The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or

c. Other circumstances as determined by the PRPHA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PRPHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period. The PRPHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire.

The PRPHA will decide of whether the family qualifies within thirty (30) calendar days and will notify the family in writing of the result within ten (10) business days of the determination.

If the PRPHA denies the hardship exemption request, the PRPHA notice will also state that if the family does not agree with the PRPHA determination, the family may request a hearing.

If the family qualifies for an exemption, the PRPHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a ninety (90) day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent (5%) of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after ninety (90) days, whichever is earlier.

The family may request an extension in writing prior to the end of the hardship exemption period. The PRPHA will extend relief for an additional ninety (90) days if the family demonstrates to the PRPHA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The PRPHA will require updated

verification based on the family's current circumstances. Additional extension(s) may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PRPHA may terminate the hardship exemption if the PRPHA determines that the family no longer qualifies for the exemption.

#### **4. Child Care Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 2023-27]**

A family whose eligibility for the childcare expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the PRPHA's satisfaction that the family is unable to pay their rent because of the loss of the childcare expense deduction, and that the childcare expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the PRPHA must recalculate the family's adjusted income and continue the child care deduction.

For a family to qualify, they must demonstrate that their inability to pay rent would be because of the loss of this deduction. The PRPHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the childcare expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (childcare expenses or health and medical expenses) are more than forty percent (40%) of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the childcare expense is still necessary even though the family member is no longer employed or furthering their education. The PRPHA will consider qualification under this criterion on a case-by case basis (for example, if the family member who was employed has left their job to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PRPHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the ninety (90) day hardship exemption period.

The PRPHA will decide if whether the family qualifies within thirty (30) calendar days and will notify the family in writing of the result within ten (10) business days of the determination.

PRPHA must promptly notify families in writing if they are denied either an initial hardship exemption or an additional ninety (90) day extension of the exemption. If the PRPHA denies the request, the notice must specifically state the reason for the denial.

The family may request an extension in writing prior to the end of the hardship exemption period. The PRPHA will extend relief for an additional ninety (90) days if the family demonstrates to the PRPHA's satisfaction that the family continues to qualify for the hardship exemption. The PRPHA will require updated verification based on the family's current circumstances. Additional extensions may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PRPHA may terminate the



hardship exemption if the PRPHA determines that the family no longer qualifies for the exemption.

The PRPHA will notify the family if the hardship exemption is no longer necessary, and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide thirty (30) days' notice of a rent increase, if applicable.

#### **ARTICLE VI.4: CALCULATING RENT**

##### **A. INCOME-BASED RENT CALCULATIONS**

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

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

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

- a. Thirty percent (30%) of the family's monthly adjusted income.
- b. Ten percent (10%) of the family's monthly gross income
- c. The welfare rent (in as-paid states only);
- d. A minimum rent between \$0 and \$50.00 that is established by the PRPHA.

The PRPHA has authority to suspend and exempt families from minimum rent when a financial hardship exists.

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

The minimum rent for this locality is \$25.00.

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

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. The PRPHA will make utility reimbursements to the utility provider in compliance with Act No. 22-2017, as amended.

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

If the PRPHA establishes a minimum rent greater than zero, the PRPHA 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 PRPHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

## 1. Financial Hardship

Financial hardship includes the following situations:

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

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

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

- b. 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.
- c. Family income has decreased because of changed family circumstances, including the loss of employment.
- d. 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).

## 2. Implementation of Hardship Exemption

### a. Determination of Hardship

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

The PRPHA will determine whether the financial hardship exists and whether the hardship is temporary or long-term.

The PRPHA 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 PRPHA has established a minimum rent of \$50.			
<b>Family Share – No Hardship</b>		<b>Family Share – With Hardship</b>	
\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income
\$15	10% of monthly gross income	\$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
\$50	Minimum rent	\$50	Minimum rent
Minimum rent applies. TTP = \$50		Hardship exemption granted. TTP = \$15	

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

### **3. No Financial Hardship**

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

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

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

### **4. Temporary Hardship**

If the PRPHA determines that a qualifying financial hardship is temporary, the PRPHA will 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 PRPHA the amounts suspended. The PRPHA will enter into a repayment agreement in accordance with the PRPHA's repayment agreement policy (see Chapter XVI).

The PRPHA also may determine that circumstances have changed, and the hardship is now a long-term hardship.

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

### **5. Long-Term Hardship**

If the PRPHA determines that the financial hardship is long-term, the PRPHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first

of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

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

- a. At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- b. 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.
- c. 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.

### **C. UTILITY ALLOWANCES [24 CFR 965, Subpart E]**

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

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

#### **1. Utility Allowance Revisions [24 CFR 965.507]**

The PRPHA must review at least annually the basis on which utility allowances have been established and, if reasonably required to continue adherence to standards described in [24 CFR 965.505], must establish revised allowances.

Between annual reviews of utility allowances, the PRPHA will only revise its utility allowances due to a rate change, when required to by the regulation.

Adjustments to resident payments because of such changes must be retroactive to the first day of the month following the month in which the last rate change considered in such revision became effective. Such rate changes are not subject to the sixty (60) day notice [24 CFR 965.507(b)].

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

#### **D. PRORATED RENT FOR MIXED FAMILIES [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. Except for non-public housing over income families, the PRPHA must prorate the assistance provided to a mixed family. The PRPHA will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that are eligible. To do this, the PRPHA must:

1. Subtract the TTP from the flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.
2. Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).
3. Multiply the member maximum subsidy by the number of eligible family members.
4. Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TTP.
5. Subtract the utility allowance for the unit from the prorated TTP. This is

the prorated rent for the mixed family.

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

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

## **E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]**

### **1. Flat Rents [24 CFR 960.253(b)]**

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

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

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

### **2. Family Choice in Rents [24 CFR 960.253(a) and (e)]**

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

The annual PRPHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

The PRPHA will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.



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

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

Except for non-public housing over-income families, a family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. Upon determination by the PRPHA that a financial hardship exists, the PRPHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

#### **a. Reasons for financial hardship include:**

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

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

#### **4. Flat Rents and Earned Income Disallowance [A&O FAQs]**

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

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

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

### **CHAPTER VII: VERIFICATION [24 CFR 960.259, 24 CFR 5.230, NOTICE PIH 2023-27]**

#### **A. OVERVIEW**

The PRPHA 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 to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance.

The PRPHA must follow the verification guidance provided by HUD in Notice PIH 2023-27 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PRPHA policies.

Article VII.1: General Verification Requirements. Describe the general verification process.

Article VII.2: Verifying Family Information. Provides more detailed requirements related to family information.

Article VII.3: Verifying Income and Assets. Provides information on income and assets, and

Article VII.4: Verifying Mandatory Deductions. Covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by the PRPHA.

## **ARTICLE VII.1: GENERAL VERIFICATION REQUIREMENTS**

### **A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259; 24 CFR 5.230; and Notice PIH 2023-27]**

#### **1. Consent Forms**

The family must supply any information that the PRPHA or HUD determines is necessary to the administration of the program and must consent to PRPHA verification of that information [24 CFR 960.259(a)(1)]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD 9886-A, this form does not release all the information necessary for the administration of the program. The PRPHA will develop its own release forms to cover all other necessary information.

#### **2. Form HUD-9886-A [24 CFR 5.230(b)(1), (b)(2), (c)(4), and (c)(5); Notice PIH 2023-27]**

All adult applicants and tenants must sign form HUD 9886-A, Authorization for Release of Information. All adult family members (and the head and spouse/cohead regardless of age) are required to sign the Form HUD 9886-A at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886-A be signed only once. On or after January 1, 2024 (regardless of the PRPHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886-A at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886-A will not be submitted to the PRPHA except under the following circumstances:

- a. When any person 18 years or older becomes a member of the family,
- b. When a current member of the family turns 18 between annual recertification. The family will be notified in writ that they are required to sign the required Consent to the Release of Information Forms HUD-9886-A within 10 business days of turning 18 years of age.
- c. As required by HUD or the PRPHA in administrative instructions.

The purpose of form HUD-9886-A 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 PRPHA 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).

The PRPHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the PRPHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance or assistance is terminated.

### **3. Penalties for Failing to Consent [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, the PRPHA must deny admission to applicants and terminate the lease of tenants [24 CFR 5.232(a)]. The family may request a hearing in accordance with the PRPHA's grievance procedures. PRPHA will not process interim or annual reexaminations of income without the family's executed consent forms.

The PRPHA has established a policy that revocation of consent to access initial records will result in denial of admission or termination of assistance in accordance with PRPHA policy. For a family to revoke their consent, the family must provide written notice to the PRPHA within ten (10) business days. The PRPHA will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, the PRPHA will notify the local HUD office.

#### **B. VERIFICATION HIERARCHY [Notice PIH 2023-27]**

The PRPHA will obtain third-party verification of:

1. Reported family annual income;
2. The value of net family assets when the net value exceeds \$50,000 (as adjusted annually);
3. Expenses related to deductions from annual income; and
4. Other factors that affect the determination of adjusted income.

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 PRPHA to use the most reliable form of verification that is available and to document the reasons when the PRPHA uses a lesser form of verification.

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. The PRPHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed.

In order of priority, the hierarchy is:

1. Highest: Level 6: Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system

2. Highest: Level 5: Up-front Income Verification (UIV) using a non-EIV system
3. High: Level 4: Written third-party verification from the source, also known as "tenant-provided verification" or EIV plus self-certification
4. Medium: Level 3: Written third-party verification form
5. Medium: Level 2: Oral third-party verification
6. Low: Level 1: Self-certification (not third-party verification)

Each of the verification methods is discussed in subsequent sections below.

### **1. File Documentation**

The PRPHA 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 PRPHA has followed all the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

### **C. LEVEL 5 AND 6 VERIFICATIONS: UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to the PRPHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits for several individuals. PRPHA will use UIV sources before or during a family reexamination. UIV will be used to the extent that these systems are available to the PRPHA.

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 PRPHA has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through the PRPHA's informal review/hearing processes.

## **D. UPFRONT INCOME VERIFICATION USING HUD'S ENTERPRISE INCOME VERIFICATION (EIV) SYSTEM**

PRPHA will use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during annual and streamlined reexaminations of family composition and income in accordance with [24 CFR 5.236] and Notice PIH 2023-27.

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families.

The income validation tool (IVT) in EIV provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with other departments.

The following policies apply to the use of HUD's EIV system.

### **1. EIV Income and IVT Reports**

The PRPHA will obtain an EIV Income and IVT report for each family any time the PRPHA conducts an annual reexamination. The PRPHA will not use the EIV Income and IVT reports during any interim reexaminations unless is necessary. The EIV Income and IVT Reports are also not available for program applicants at admission, therefor one hundred twenty (120) after admission the PRPHA will obtain an EIV to verify the accuracy of the reported income while admission.

When required to use the EIV Income Report, for the report to be considered current, the PRPHA must pull the report within 120 days of the effective date of the annual reexamination.

The EIV Income Report will be used to verify and calculate income at annual reexamination if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information in EIV.



Income and IVT reports will be retained in resident files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of tenancy.

When the PRPHA determines through EIV reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter XV, Program Integrity.

## **2. New Hires Report [Notice PIH 2023-27]**

The New Hires Report identifies participant families who have had new employment within the last six months. The report is updated monthly. The PRPHA will review this information at the annual reexamination.

## **3. No Income Reported by HHS or SSA Report [Notice PIH 2023-27]**

This report is a tool for the PRPHA to identify participants who passed the SSA identity test, but no income information was reported by either HHS or SSA records. This scenario does not mean that they tenant does not have any income. The PRPHA will obtain written, third-party verification of any income reported by the tenant. The PRPHA will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.

The PRPHA will re-verify the status of tenants identified on the report quarterly. Based on the information provided by the family and in EIV, the PRPHA may require that family members provide verifications or sign release forms to obtain additional verification.

When the PRPHA determines through this report and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter XV, Program Integrity.

#### **4. EIV Identity Verification Report**

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to HUD data for a match on social security number, name, and date of birth.

The PRPHA will use EIV's Identity Verification Report monthly to improve the availability of income information in EIV and if the identity verification has failed by reviewing EIV's *Identity Verification Report* monthly. [Notice PIH 2023-27].

When identity verification for a resident fails, a message will be displayed within the EIV system, and no income information will be displayed. The PRPHA will attempt to resolve discrepancies by obtaining appropriate documentation from the tenant. When the PRPHA determines that discrepancies exist as a result of PRPHA errors, such as spelling errors or incorrect birth dates, it will correct the errors promptly.

#### **5. Deceased Tenants Reports [Notice PIH 2012-4 and Notice PIH 2023-27]**

The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased. The PRPHA will review the report monthly.

When the Deceased Tenants Report identifies an individual as being deceased, PRPHA must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The PRPHA must conduct a home visit to determine if anyone is residing in the unit.

The PRPHA are required to list the move-out date for the family as of the date on which the family or designee of the deceased tenant's estate returned the keys and signed a vacate notice; the date the public housing lease was terminated; or the date the PRPHA legally regained possession of the unit, whichever occurs first.

When the only remaining, household member is the live-in aide, the live-in aide is not entitled or eligible for continued occupancy. The PRPHA will not designate the live-in aide as the new head of household or change the relation code on Form HUD-50058.

#### **6. Other EIV Reports [Notice PIH 2023-27]**

The PRPHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

#### **7. Upfront Income Verification Using Non-HUD Systems**

The PRPHA will inform all applicants and residents of its use of the following UIV resources:

- a. The PRPHA will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.
- b. The PRPHA will re-verify the status of tenants identified in the report quarterly. Based on the information provided by family and in EIV, the PRPHA may require that family members provide verifications or sign release forms to obtain additional verification.
- c. When the PRPHA determines through this report and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter XV, Program Integrity.

#### **E. LEVEL 4 VERIFICATION [NOTICE PIH 2023-27]**

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

##### **1. EIV + Self-Certification**

The PRPHA will use the EIV as written third-party verification of employment income and will be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is

accurate and representative of current income. The PRPHA will use an average of the last two quarters of income listed in EIV to determine income from employment. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with the amount in EIV, the amount is not reflective of current income, or if less than two quarters are available in EIV, the PRPHA will use written third-party verification from the source as outlined below. The family must be provided with the information from EIV.

The PRPHA will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

## **2. Written Third-Party Verification from the Source**

Written, third-party verification from the source is also known as “tenant-provided verification.” To qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within one hundred twenty (120) days of the date received by the PRPHA. Documents should be supplied by the family or received from a third-party source.

The PRPHA 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. If the PRPHA determines that third-party documents provided by the family are not acceptable, the PRPHA will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

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. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

When paystubs are used, at minimum, the PRPHA will require two current and consecutive pay stubs when calculating income using third-party verification from the source. At the PRPHA's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the PRPHA will request additional paystubs or a payroll record. For new income sources or when two pay stubs are not available, the PRPHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

When verification of assets is required, PRPHA will obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

In general, the PRPHA will use third-party verification from the source in the following circumstances:

- a. At annual reexamination when EIV + self-certification is not used, or the family disputed the EIV-report employment income.
- b. For all new admissions; and
- c. For all interim reexaminations.

#### **F. LEVEL 3 VERIFICATION: WRITTEN, THIRD-PARTY FORM [Notice PIH 2023-27]**

This type of verification is a form developed by the PRPHA and used uniformly for all families when needed to collect information from a third-party source. This is known as "traditional third-party verification." The PRPHA sends

a PRPHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset). The PRPHA will use written third-party verification when higher forms are unavailable or are rejected by the PRPHA or when the family is unable to provide acceptable verification. The PRPHA may skip this level of verification and may instead substitute oral third-party verification before moving to self-certification.

However, on a case-by-case basis, the PRPHA may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.

#### **G. LEVEL 2: ORAL THIRD-PARTY VERIFICATION [Notice PIH 2023-27]**

For third-party oral verification, the PRPHA will contact the sources, identified by UIV techniques or by the family, by telephone or in person.

The PRPHA will attempt to obtain written third-party verification with the form developed by the PRPHA. Third-party oral verification may be used when requests for written third-party verification forms have not been returned within 10 business days.

However, if the PRPHA chooses to obtain oral third-party verification, the PRPHA will document in the file the date and time of the telephone call or visit, the name of the person contacted and the telephone number, as well as the information confirmed. If there is no success when attempting to do an oral third-party verification the PRPHA will accept a self-certification.

#### **H. LEVEL 1: SELF-CERTIFICATION [Notice PIH 2023-27]**

Non-third-party verification consists of a signed statement of reported income and/or expenses. This verification method should be used as a last resort when the PRPHA has not been successful in obtaining information via all other required verification techniques. 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 PRPHA.

Self-certification, however, is an acceptable form of verification when:

1. A source of income is fully excluded;
2. Net family assets total \$50,000 or less
3. The family declares that they do not have any present ownership in any real property;
4. A family states that they have non-recurring income that will not be repeated in the coming year; and/or

When the PRPHA was required to obtain third-party verification but instead relied on self-certification, the family's file must be documented to explain why third-party verification was not available.

The PRPHA when using self-certification technique will require the family to certify that a family member does not receive a particular type of income or benefit. HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

The self-certification must be made in a format acceptable to the PRPHA and must be signed by the family member whose information or status is being verified. All self-certifications will include the following language:

"I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to five (5) years, fines, and civil and administrative penalties (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)."

## ARTICLE VII.2: VERIFYING FAMILY INFORMATION

### A. VERIFICATION OF LEGAL IDENTITY

The PRPHA will require families to furnish verification of legal identity for each household member.

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicle identification card U.S. military discharge (DD 214) Current U.S. passport Current government employer identification card with picture	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 will be required.

If none of these documents can be provided and at the PRPHA'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 PRPHA and be signed by the family member whose information or status is being verified.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the PRPHA has reason to doubt the identity of a person representing themselves to be a tenant or a member of a tenant family.



## **B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2023-27]**

The family must provide documentation of a valid Social Security number (SSN) for each member of the household, except for individuals who do not contend eligible immigration status. Exemptions also include existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

The PRPHA will accept the following documentation, prior to admission as acceptable evidence of the social security number:

1. An original SSN card issued by the Social Security Administration (SSA)
2. An original SSA-issued document, which contains the name and SSN of the individual
3. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual
4. Will make a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Social security numbers will be verified only once during continuously assisted occupancy. Once the individual's verification status is classified as "verified," the PRPHA will keep the copies of documentation accepted as evidence of social security numbers.

While PRPHA must attempt to gather third-party verification of SSNs prior to admission as listed above, PRPHA also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the PRPHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the PRPHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the PRPHA must

obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

The PRPHA will only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, is illegible, or if the document appears to be forged. The PRPHA will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PRPHA within ninety (90) days.

If an applicant family includes a child under 6 years of age who joined the household prior to the date of program admission, an otherwise eligible family may be admitted and must provide documentation of the child's SSN within 90 days. A 90-day extension will be granted if the PRPHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a resident request to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PRPHA will not add the new household member until such documentation is provided.

When a resident request to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within ninety

(90) calendar days of the child being added to the household. A 90-day extension will be granted if the PRPHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period the PRPHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

### **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.

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PRPHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification. Age must be verified only once during continuously assisted occupancy.

### **D. FAMILY RELATIONSHIPS**

Applicants and tenants are required to identify the relationship of each household member to the head of household. Family relationships are verified to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships. Definitions of the primary household relationships are provided in the Eligibility chapter.

#### **1. Marriage**

Certification by the head of household is normally sufficient verification. If the PRPHA has reasonable doubts about a marital relationship, the PRPHA will require the family to document the marriage with a marriage certificate or other documentation to verify that the couple is married.

## **2. Separation or Divorce**

Certification by the head of household is normally sufficient verification. If the PRPHA has reasonable doubts about a divorce or separation, the PRPHA will require the family to provide documentation of the divorce or separation with a certified copy of a divorce decree, signed by a court officer; a copy of a court-ordered maintenance or other court record; or other documentation that shows a couple is divorced or separated.

If no court document is available, documentation from a community-based agency will be accepted.

## **3. Absence of Adult Member**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill), if the PRPHA so requests.

## **4. Foster Children and Foster Adults**

The PRPHA will require a certification from the Administration of Families and Children or a court decision that requires the placement of the individual with the family.

## **E. VERIFICATION OF STUDENT STATUS**

The PRPHA 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:

1. The family claims full-time student status for an adult other than the head, spouse, or cohead, or
2. The family claims a childcare deduction to enable a family member to further their education.

## **F. DOCUMENTATION OF DISABILITY**

The PRRPHA must verify the existence of a disability to allow certain income disallowances and deductions from income. The PRPHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PRRPHA will not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PRPHA receives a verification document that provides such information, the PRPHA will not place this information in the tenant file. Under no circumstances will the PRPHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' Web site at [www.os.dhhs.gov](http://www.os.dhhs.gov).

The PRPHA will make the following inquiries, provided it makes them of all applicants, whether they are persons with disabilities [VG, p. 24]:

1. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
2. Inquiry to determine whether an applicant is qualified for housing available only to persons with disabilities or to persons with a particular type of disability
3. Inquiry to determine whether a housing applicant is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
4. Inquiry about whether a housing applicant is an illegal user or addicted to a controlled substance
5. Inquiry about whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

### **a. Family Members Receiving SSA Disability Benefits**

For family members claiming disability who receive disability payments from the SSA, the PRPHA will attempt to obtain information about disability benefits through HUD's Enterprise Income Verification

(EIV). If the EIV reflect that the family member receives disability benefits from the SSA it will be sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions.

If documentation is not available through HUD's EIV system, the PRPHA will request a current (dated within the last 120 days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, the PRPHA will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from [www.ssa.gov](http://www.ssa.gov). Once the family receives the benefit verification letter, they will be required to provide the letter to the PRPHA.

**b. Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets or does not meet the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability.

**G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility

chapter for detailed discussion of eligibility requirements. This chapter discusses HUD and PRPHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously assisted occupancy [24 CFR 5.508(g)(5)]

### **1. 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 PRPHA will request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

### **2. Eligible Immigrants**

#### **a. Documents Required**

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals. The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this ACOP summarizes documents non-citizen family members must provide.

#### **b. PRPHA Verification** [HCV GB, pp 5-3 and 5-7]

For family members aged 62 or older who claim to be eligible immigrants, proof of age is required in the manner described this chapter of this ACOP. No further verification of eligible immigration

status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PRPHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

The PRPHA will follow all USCIS protocols for verification of eligible immigration status.

## **H. VERIFICATION OF PREFERENCE STATUS**

The PRPHA must verify any preferences claimed by an applicant that determined their placement on the waiting list. The PRPHA offers a preference for working families, family unification, displaced, homeless, applicant with a disabled family member, one-bedroom units and veteran, the PRPHA will follow documentation requirements:

- 1. Working family-** The PRPHA may verify that the family qualifies for the working family preference based on the family's submission of the working member's most recent paycheck stub indicating that the working member works at least 20 hours per week. The paycheck stub must have been issued to the working member within the last thirty days. The PRPHA may also seek third party verification from the employer of the head, spouse, cohead or sole member of a family requesting a preference as a working family.
- 2. Unification family -** Written documentation from the Administration of Families and Children.
- 3. Displaced:**
  - a. For governmental action: Written documentation must be provided by a government agency and approved by a supervisor.
  - b. For natural disaster: Written documentation must be provided by a government agency and approved by a supervisor
  - c. Written FEMA documentation that housing assistance program is ending (does not include failure to comply with FEMA program rules)



#### **4. Homeless:**

Written documentation from Continuum of Care, homeless shelter, social worker. Written verification from law enforcement that the family must be rehoused because they are a witness to a crime. In addition, a letter from the owner of the home certifying that the applicant is living in their home temporarily.

**5. Verify disabled family member preference:** A disabled family member who does not need the features of an accessible unit for mobility, hearing or vision loss. 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 able to know about the individual's disability may provide verification of a disability.

**6. One-bedroom units:** documentation that the applicant is elderly, disabled or displaced.

**7. Domestic Violence:** The PRPHA also offers a preference for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking. To verify that applicants qualify for the preference, the PRPHA will follow documentation requirements outlined in Chapter XVI.

**8. Veteran:** The PRPHA will request discharge document (Form 214) or veteran identification from the Department of Veterans Affairs.

### **ARTICLE VII.3: VERIFYING INCOME AND ASSETS**

Chapter VI of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any income reported by the family must be verified. This article provides the PRPHA policies that supplement the general verification procedures specified in Article VII.1 of this chapter.

## **A. EARNED INCOME**

### **1. Tips**

Unless tip income is included in a family member's W-2 by the employer, written verification of employment or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year or tips anticipated to be received in the coming year.

### **2. Wages**

When the PRPHA requires third-party verification of wages, for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

## **B. BUSINESS AND SELF EMPLOYMENT INCOME**

The PRPHA will obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

Business owners and self-employed persons will be required to provide:

1. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.).
2. 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.

For self-employed individuals who claim they do not have to file tax returns, the PRPHA will obtain a completed copy of IRS Form 4506-T and Form AS 2781.1, Certification of Reasons for which that Taxpayer is not Requires by Law to File the Individual Income tax Return, of the Treasury Department of Puerto Rico, to verify that no return has been filed.

For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash),

the PRPHA will provide a format for the individual to declare their income and expenses. The PRPHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as Schedule C of the individual's tax return and the corresponding IRS Form 1099 or 1099-K or copy of the Withholding Tax Voucher, Form 480, of the Treasury Department or Puerto Rico.

The business owner/self-employed person will be required to submit the information requested and to certify its accuracy at all future reexaminations. At any reexamination the PRPHA will 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 PRPHA 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 PRPHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

## **C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

### **1. Social Security/SSI Benefits**

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the PRPHA will request from the applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 120 calendar days) for each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PRPHA inform the applicant to request a benefit verification letter from SSA's website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The PRPHA must obtain the original benefit

letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

For participants, the PRPHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

If the participant agrees with the amount reported in EIV, the PRPHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. PRPHA will use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as \$450.80 and EIV displays the amount as \$450.00. The PRPHA must use the EIV-reported amount unless the participant disputes the amount.

If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the PRPHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PRPHA should inform the participant to request a benefit verification letter from SSA's website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The PRPHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

#### **D. ALIMONY OR CHILD SUPPORT [Notice PIH 2023-27]**

The PRPHA will count a family's child support or alimony income based on payments received, not the amounts to which the family is entitled by court or

agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family.

Verification will be obtained in the following order of priority:

1. Copies of the receipts and/or payment stubs for the twelve (12) months prior to PRPHA 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

#### **E. NONRECURRING INCOME [Notice PIH 2023-27]**

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. The PRPHA will request a third-party verification that state the income will not be repeated in the coming year or as a last resource the PRPHA will accept a self-certification from the family stating that the income will not be repeated in the coming year.

#### **F. ASSETS AND INCOME FROM ASSETS**

##### **1. Net Family Assets [24 CFR 5.603]**

At admission and reexam, for families with net assets totaling \$50,000.00 or less (adjusted annually), the PRPHA will accept the family's self-certification that the family's assets do not exceed \$50,000.00 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income. This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed \$50,000), may generate asset income. PRPHA

must clarify during the self-certification process which assets are included/excluded from net family assets. All family members 18 years of age and older must sign the family's declaration. The PRPHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question. The PRPHA requires the family to obtain third-party verification of all assets, regardless of the amount, at least once every three (3) years.

When net family assets have a total value over \$50,000.00, the PRPHA will not rely on the family's self-certification. Third-party verification of assets is required when net family assets exceed \$50,000.00, adjusted annually by HUD.

When verification of assets is required, PRPHA will obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, the PRPHA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

## **2. Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)]**

The PRPHA will determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters III and XIII. At admission and reexam, the PRPHA will accept a self-certification from the family that the family does not have any present ownership in any real property that is suitable for occupancy and must be signed by all family members 18 years of age and older.

The PRPHA reserves the right to request additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the PRPHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PRPHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

#### **G. 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 PRPHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. The PRPHA will verify the value of assets disposed of only if:

1. The PRPHA does not already have a reasonable estimation of its value from previously collected information, or
2. The amount reported by the family in the certification appears obviously in error.

#### **H. NET INCOME FROM RENTAL PROPERTY**

For Net income from rental income property the family must provide:

1. A current executed lease for the property that shows the rental amount or certification from the current tenant
2. A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income).
3. If schedule E was not prepared, the PRPHA 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.

#### **I. FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS [Notice PIH 2023-27]**

The PRPHA will verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000.

#### **J. RETIREMENT ACCOUNTS**

The PRPHA will accept an original document from the entity holding the account dated no earlier than twelve (12) months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

#### **K. INCOME FROM EXCLUDED SOURCES [Notice PIH 2023-27] [24 CFR 5.609(b)]**

The PRPHA will accept the family's self-certification as verification of fully excluded income. The PRPHA may request additional documentation if necessary to document the income source and will explain why third-party verification is not available. *Fully excluded income* is defined as income where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any *Federal Register* notice on mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds).

For partially excluded income, the PRPHA 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).



A detailed discussion of excluded income is provided in Chapter VI.

#### **L. ZERO INCOME REVIEWS [Notice PIH 2023-27]**

A *zero-income review* is an assessment, sometimes periodic, performed by the PRPHA of the income of a family who claims that they do not receive income from any source, including from assets. The PRPHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc. are not being received by families claiming to have zero annual income. The PRPHA will also require that each family member who claims zero income status complete a zero-income form. If any sources of income are identified on the form, the PRPHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The PRPHA will only conduct interims in accordance with PRPHA policy in Chapter IX.

#### **M. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]**

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are included [24 CFR 5.609(b)(9)(ii)].

The PRPHA will request written third-party verification of both the source and the amount of student financial assistance. 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, unless the student's only source of assistance is assistance under Title IV of the HEA, the PRPHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the PRPHA is unable to obtain third-party written verification of the requested information, the PRPHA will pursue other forms of verification following the verification hierarchy.

#### **ARTICLE VII.4: VERIFYING MANDATORY DEDUCTIONS**

##### **A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the PRPHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

###### **1. Dependent Deduction**

The PRPHA will verify that:

- a. Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or cohead of the family and is not a foster child
- b. Any person aged 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full-time student

See Chapter VII for a full discussion of this deduction.

###### **2. Elderly/Disabled Family Deduction**

The PRPHA will verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities. See the Eligibility chapter for a definition of elderly and disabled families and Chapter VI for a discussion of the deduction.

## **B. HEALTH AND MEDICAL CARE EXPENSE DEDUCTION**

Policies related to medical expenses are found in Chapter VI. The amount of the deduction will be verified following the standard verification procedures described in Article VII.1.

The PRPHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) ([Pub. L. 104-191](#), 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. The PRPHA will not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the PRPHA must redact all personally identifiable information [FR Notice 2/14/23].

### **1. Amount of Expense**

Medical expenses will be verified through:

- a. Written third-party documents provided by the family, such as the PRPHA printouts or receipts.
- b. The PRPHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PRPHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming twelve (12) months.
- c. Written third-party verification forms if the family is unable to provide acceptable documentation.
- d. If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming twelve (12) months.

If the PRPHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or

severity of the person's disability, the PRPHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PRPHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PRPHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26]. In addition, the PRPHA must verify that:

- a. The household is eligible for the deduction.
- b. The costs to be deducted are qualified health and medical care expenses.
- c. The expenses are not paid for or reimbursed by any other source.
- d. Costs incurred in past years are counted only once.

## **2. Eligible Household**

The health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. The PRPHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter VII.

## **3. Qualified Expenses**

To be eligible for the health and medical care expense deduction, the costs must qualify as medical expenses. See Chapter VI for the PRPHA's policy on what counts as a medical expense.

## **4. Unreimbursed Expenses**

To be eligible for the health and medical care expense deduction, the costs must not be reimbursed by another source. 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.

## **5. Expenses Incurred in Past Years**

When anticipated costs are related to on-going payment of medical bills incurred in past years, the PRPHA will verify:

- a. The anticipated repayment schedules
- b. The amounts paid in the past, and
- c. Whether the amounts to be repaid have been deducted from the family's annual income in past years

## **C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in Chapter VI. The amount of the deduction will be verified following the standard verification procedures described in Article VII.1.

The PRPHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) ([Pub. L. 104-191](#), 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. The PRPHA will not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the PRPHA must redact all personally identifiable information [FR Notice 2/14/23].

The type of expenses are as follows:

### **1. Attendant Care**

Expenses for attendant care will be verified through:

- a. Written third-party documents provided by the family, such as receipts or cancelled checks.
- b. Third-party verification form signed by the provider, if family-provided documents are not available.
- c. If third-party verification is not possible, written family certification as

to costs anticipated to be incurred for the upcoming 12 months.

If the PRPHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PRPHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PRPHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PRPHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

## **2. Auxiliary Apparatus**

Expenses for auxiliary apparatus will be verified through:

- a. 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 twelve (12) months.
- b. Third-party verification form signed by the provider, if family-provided documents are not available.
- c. If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming twelve (12) months.

In addition, the PRPHA must verify that:

- a. The family member for whom the expense is incurred is a person with disabilities (as described above).
- b. The expense permits a family member, or members, to work (as described in Chapter VI).

c. The expense is not reimbursed from another source (as described in Chapter VI).

### **3. 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 PRPHA will verify that the expense is incurred for a person with disabilities.

### **4. Family Member(s) Permitted to Work**

The PRPHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

The PRPHA 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 chapter VI). 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.

### **5. Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

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.

## **D. CHILDCARE EXPENSES**

Policies related to childcare expenses are found in Chapter VI. The amount of the deduction will be verified following the standard verification procedures described in Article I. In addition, the PRPHA must verify that:

### **1. Eligible Child**

To be eligible for the childcare deduction, the costs must be incurred for the care of a child 12-year-old or younger including foster child.

### **2. Unreimbursed Expense**

The family and the care provider will be required to certify that the childcare expenses are not paid by or reimbursed to the family from any source.

### **3. Pursuing an Eligible Activity**

The PRPHA 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 pursuing those activities.

#### **a. Information to be Gathered**

The PRPHA 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.



## **b. Seeking Work**

Whenever possible the PRPHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the PRPHA 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 PRPHA any reports provided to the other agency.

In the event third-party verification is not available, the PRPHA will provide the family with a form on which the family member must record job search efforts. The PRPHA will review this information at each subsequent reexamination for which this deduction is claimed.

## **c. Furthering Education**

The PRPHA will request third-party documentation to verify that the person permitted to further their education by the childcare is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

## **d. Gainful Employment**

The PRPHA will seek third-party verification of the work schedule of the person who is permitted to work by the childcare. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

## **4. Allowable Type of Child Care**

The PRPHA will verify that the type of childcare selected by the family is allowable, as described in Chapter VI.

The PRPHA will verify that the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal

services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PRPHA will verify that the childcare provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

## **5. Reasonableness of Expenses**

Only reasonable childcare costs can be deducted. The actual costs the family incurs will be compared with the PRPHA'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 PRPHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

## **Chapter VIII: LEASING AND INSPECTIONS [24 CFR 5, Subpart G; 24 CFR 966, Subpart A]**

### **A. OVERVIEW**

Public housing leases are the contractual basis of the legal relationship between the PRPHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD regulations.

HUD regulations require the PRPHA to inspect each dwelling unit prior to move-in, at move-out, and annually during the period of occupancy. In addition, the PRPHA may conduct additional inspections in accordance with PRPHA policy.

This chapter is divided into two parts as follows:

Article VIII.1: Leasing. This article describes pre-leasing activities and the PRPHA's policies pertaining to lease execution, lease modification, and payments under the lease.

Article VIII.2: Inspections. This article describes the PRPHA's policies for inspecting dwelling units and notifying families of HUD REAC NSPIRE inspections.

## **ARTICLE VIII.1: LEASING**

### **A. OVERVIEW**

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that the PRPHA may not renew the lease if the family has violated the community service requirement and if the family is determined to be over income for 24 consecutive months [24 CFR 966.4(a)(2)].

The PRPHA adopted and implemented smoke-free policies, as required by HUD and State Law.

This article contains regulatory information on leasing, where applicable, as well as the PRPHA's leasing policies.

For policies on lease requirements for families whose incomes have exceeded the over-income limit for 24 consecutive months, see Chapter XIII., Over-Income Families.

### **B. LEASE ORIENTATION**

After unit acceptance but prior to occupancy, a PRPHA representative will conduct a lease orientation with the family. The head of household or spouse is required to attend.

### **C. ORIENTATION AGENDA**

When families attend the lease orientation, they will be provided with:

1. A copy of the lease
2. A copy of the PRPHA's grievance procedure

3. A copy of the PRPHA's schedule of maintenance charges
4. 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
5. A copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12
6. A copy of the form HUD-5380, VAWA Notice of Occupancy Rights
7. A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
8. A copy of the PRPHA's smoke free policy
9. The HUD pamphlet on lead-based paint entitled, "Protect Your Family from Lead in Your Home."

Topics to be discussed and explained to all families include:

1. Applicable deposits and all other charges
2. Review and explanation of lease provisions
3. Unit maintenance requests and work orders
4. The PRPHA's interim reporting requirements
5. Review and explanation of occupancy forms
6. Community service requirements
7. Family choice of rent
8. VAWA protections
9. Smoke-free policies

#### **D. SMOKE- FREE POLICY**

All properties owned, built, acquired, or rehabilitated by PRPHA are smoke-free. Due to the increased risk of fires, increased maintenance costs, and known health effects of secondhand smoke, smoking is prohibited in all areas of the property, including all buildings, all common areas, inside dwelling units, garages, parking areas, and within 25 feet of the building(s) including

entryways, porches, balconies, and partitions. Vaping on PRPHA property is also prohibited. Tenants are responsible for ensuring family members and guests comply with this rule. Smoking means inhaling, exhaling, burning, carrying, or possessing a lighted cigar, cigarette, pipe, or tobacco product, marijuana, plant, or other smoking device that contains tobacco product, marijuana, or a plant, including nicotine vapors (vaping). Violation of the smoke-free policy will be considered a lease violation.

#### **E. EXECUTION OF LEASE**

The lease must be executed by the tenant and the PRPHA, except for automatic renewals of a lease [24 CFR 966.4(a)(3)].

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one PRPHA unit to another.

The lease must state the composition of the household as approved by the PRPHA (family members and any PRPHA-approved live-in aide) [24 CFR 966.4(a)(1)(v)]. See Chapter VIII for policies regarding changes in family composition during the lease term.

The head of household, spouse or cohead, and all other adult members of the household will be required to sign the public housing lease no more than 48 hours after admission. The head of household will be provided a copy of the executed lease and the PRPHA will retain a copy in the resident's file.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to PRPHA assistance. The live-in aide is only approved to live in the unit while serving as the care attendant for the family member who requires the care.

#### **F. MODIFICATIONS TO THE LEASE**

The lease may be modified at any time by written agreement of the tenant and the PRPHA [24 CFR 966.4(a)(3)].

##### **1. Modifications to the Lease Form [24 CFR 966.4(l)(2)(iii)(E)] [24 CFR 966.3]**

When the PRPHA proposes to modify or revise schedules of special charges or rules and regulations, the PRPHA will post a copy of the notice in the central office and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

The PRPHA will give at least thirty (30) days advance notice of the proposed changes and an opportunity to comment on the changes. The PRPHA should also consider any comments before formally adopting a new lease.

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy in accordance with the policies in Chapter XIII.

## **2. Other Modifications**

The lease will be amended to reflect all changes in family composition. A new lease will be signed to reflect any change in family composition.

Policies governing when and how changes in family composition must be reported are contained in Chapter IX, Reexaminations.

## **G. PAYMENTS UNDER THE LEASE**

### **1. Rent Payments [24 CFR 966.4(b)(1)]**

Families must pay the amount of the monthly tenant rent determined by the PRPHA in accordance with HUD regulations and other

requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease will specify the initial amount of the tenant rent at the beginning of the initial lease term, and the PRPHA will give written notice stating any change in the amount of tenant rent and when the change is effective.

The tenant rent is due and payable at the PRPHA-designated location on the first of every month or in the date that the contract lease indicates. If the first falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.

If a family's tenant rent changes, the PRPHA will notify the family of the new amount and the effective date by sending a "Notice of Rent Adjustment" which will become an attachment to the lease.

## **2. Charges for returned checks [24 CFR 966.4(b)(3)]**

A late fee will be charged when a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of \$25.00 will be charged to the family. The fee will be due and payable 14 days after billing.

## **3. Maintenance and Damage Charges**

If the PRPHA charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges [24 CFR 966.4(b)(2)].

When applicable, families will be charged for maintenance and/or damages according to the PRPHA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices

of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the PRPHA may not act for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.

## **ARTICLE VIII.2: INSPECTIONS**

### **A. OVERVIEW**

The PRPHA is obligated to maintain safe and habitable dwelling units and to make necessary repairs to dwelling units [24 CFR 966.4(e)]. The National Standards for the Physical Inspection of Real Estate (NSPIRE) are the standard under which HUD housing units, including those under the public housing program, are inspected. NSPIRE ensures that residents of public housing live in safe, habitable dwellings, and the items and components located inside, outside, and within the units are functionally adequate, operable, and free of health and safety hazards [24 CFR 5.703(a)]. Further, units must comply with state and local code requirements (such as fire, mechanical, plumbing, carbon monoxide, property maintenance, and residential code) [24 CFR 5.703(f)] as well as with all requirements related to the evaluation and control of lead-based paint hazards [24 CFR 5.703(e)(2)].

Under NSPIRE, public housing units are subject to three types of inspections: annual self-inspections, NSPIRE Inspections (which are used to assess and score the PRPHA under the Public Housing Assessment System (PHAS), and NSPIRE Plus Inspections (which are triggered by poor property conditions). HUD regulations also require the PRPHA to inspect each public housing unit prior to move-in and at move-out. The PRPHA may require additional inspections, in accordance with PRPHA policy. This part contains the PRPHA's policies governing inspections by the PRPHA and HUD, notification of unit entry, and inspection repair timelines. This section discusses inspections conducted by the



PRPHA (including annual self-inspections) and inspections conducted by HUD REAC.

## **B. PRPHA-CONDUCTED INSPECTIONS**

The PRPHA is obligated to maintain dwelling units and the project in safe and habitable condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

### **Types of PRPHA-Conducted Inspections**

#### **1. Move-In Inspections [24 CFR 966.4(i)]**

The lease must require the PRPHA and the family to inspect the dwelling unit prior to occupancy to determine the condition of the unit and equipment in the unit. The head of the household or any adult family member authorized by the head may attend the initial inspection and sign the inspection form. A copy of the initial inspection, signed by the PRPHA and the tenant, must be provided to the tenant and retained in the resident file.

#### **2. Move-Out Inspections [24 CFR 966.4(i)]**

The PRPHA must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if they wish, unless the tenant vacates without notice to the PRPHA. When applicable, the PRPHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within ten (10) business days of conducting the move-out inspection.

#### **3. Self-Inspections [24 CFR 5.707]**

Annually PRPHA will self-inspect their properties, including all units, to ensure units are maintained in accordance with NSPIRE standards in 24 CFR 5.703. As part of the self-inspection process, PRPHA must ensure that

deficiencies previously cited and repaired because of an NSPIRE inspection have not subsequently failed.

The PRPHA must maintain the results of self-inspections for three years (3) and must provide the results to HUD upon request.

#### **4. Quality Control Inspections**

The purpose of quality control inspections is to assure that all defects were identified in the original inspection, and that repairs were completed and within an acceptable time frame. Supervisory quality control inspections will be conducted in accordance with the PRPHA's maintenance plan.

#### **5. Special Inspections**

The PRPHA and the Management Agent staff may conduct a special inspection for any of the following reasons:

- a. Housekeeping
- b. Unit condition
- c. Suspected lease violation
- d. Preventive maintenance
- e. Routine maintenance
- f. There is reasonable cause to believe an emergency exists

#### **6. Other Inspections**

Building exteriors, grounds, common areas and systems will be inspected according to the PRPHA's maintenance plan.

## **7. Notice of Entry**

### **a. Non-emergency Entries [24 CFR 966.4(j)(1)]**

The PRPHA may enter the unit, with reasonable advance notification to perform routine inspections and maintenance, make improvements and repairs, or to show the unit for re-leasing. A written statement specifying the purpose of the PRPHA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

For regular annual self-inspections, the family will receive at least two weeks' written notice of the inspection to allow the family to prepare the unit for the inspection.

Entry for repairs requested by the family will not require prior notice. Resident-requested repairs presume permission for the PRPHA to enter the unit.

Except for emergencies, management will not enter the dwelling unit to perform inspections where a pet resides unless accompanied for the entire duration of the inspection by the pet owner or responsible person designated by the pet owner in accordance with the pet policies in Chapter X.

### **b. Emergency Entries [24 CFR 966.4(j)(2)]**

The PRPHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, the PRPHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

## **8. Scheduling of PRPHA-Conducted Inspections**

Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify the PRPHA at least twenty-four (24) hours prior to the scheduled inspection. The PRPHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. The PRPHA may request verification of such cause.

## **9. Attendance at Inspections [24 CFR 966.4(i)].**

The tenant must be present at the inspections required by the PRPHA. If the tenant cannot attend, they must authorize any adult family member. The inspector will conduct the inspection and leave a copy of the inspection report in the unit.

## **10. Repairs**

Correction timeframes differ depending on whether repairs are considered emergency or non-emergency repairs.

## **11. Emergency Repairs [24 CFR 966.4(h)]**

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify the PRPHA of the damage, and the PRPHA must make repairs within a reasonable time frame. Under NSPIRE, the PRPHA must correct all Life-Threatening and Severe deficiencies within 24 hours.

If the damage was caused by a household member or guest, the PRPHA must charge the family for the reasonable cost of repairs. The PRPHA may also take lease enforcement action against the family.

If the PRPHA cannot make repairs quickly, the PRPHA must offer the family standard alternative accommodations.

## **12. Non-emergency Repairs**

The PRPHA will correct deficiencies resulting in a non-emergency work order identified during a PRPHA conducted inspection within 15 business days of the inspection date. If the PRPHA is unable to make repairs within that period due to circumstances beyond the PRPHA's control (e.g., required parts or services are not available, weather conditions, etc.) the PRPHA will notify the family of an estimated date of completion.

The family must allow the PRPHA access to the unit to make repairs. Except for emergencies, management will not enter the dwelling unit to perform repairs where a pet resides unless accompanied for the entire duration of the repair by the pet owner or responsible person designated by the pet owner in accordance with the pet policies in Chapter X.

## **13. Resident-Caused Damages**

Damages to the unit beyond wear and tear will be billed to the tenant in accordance with the policies of the Maintenance and Damage Charges.

Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.

## **14. Housekeeping**

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, the PRPHA will provide proper notice of a lease violation.

A reinspection will be conducted within 30 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a reinspection is considered a violation of the lease and may result in termination of tenancy in accordance with Chapter XIII.

Notices of lease violation will also be issued to residents who purposely disengage the unit's smoke detector and/or carbon monoxide alarm. Only one warning will be given. A second incidence will result in lease termination.

### **C. NSPIRE INSPECTIONS [24 CFR 5.705(C); NOTICE PIH 2023-16]**

During an NSPIRE inspection, REAC inspectors will inspect areas and associated items or components that are listed in the regulations as affirmative requirements and those included within the NSPIRE standards. For most properties, the frequency of NSPIRE inspections is determined by the date of the prior inspection and the score received.

#### **1. Notice to Residents [Notice PIH 2023-16]**

The PRPHA will provide all residents with at least seven days' notice of an NSPIRE inspection. Notice will be provided through multiple communication methods, including by posted notice on each resident's door and through email where applicable. All materials, notices, and communications to families regarding the inspection will be clearly communicated and provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act (Section 504) and HUD's Section 504 regulation, and Titles II or III of the Americans with Disabilities Act (ADA) and implementing regulations.

#### **2. 24-Hour Corrections [24 CFR 5.711(c); Notice PIH 2023-16]**

The PRPHA will correct all Life-Threatening and Severe deficiencies within 24 hours. Correcting the deficiency means the PRPHA will resolve or sufficiently address the deficiency in a manner that it no longer poses a severe health or safety risk to residents, or the hazard is blocked until permanent repairs can be completed. A correction could include controlling or blocking access to the hazard by performing a temporary relocation of the resident while repairs are made.

While the PRPHA will complete all repairs expeditiously, if a permanent repair is not possible within 24-hours, the PRPHA will correct the deficiency by performing an interim repair to remove the health and safety hazard. If the correction is temporary or professional services or materials are unavailable within 24 hours, the PRPHA will provide a target date for permanent correction. Such interim repairs will be fully completed within a reasonable timeframe approved by HUD.

The family must allow the PRPHA access to the unit to make repairs.

### **3. Non-emergency Repairs**

Under NSPIRE, the PRPHA must correct Moderate deficiencies within 30 days and Low deficiencies within 60 days, or as otherwise provided in the NSPIRE standards. Repairs should be permanent fixes, unless otherwise approved by HUD in writing. HUD may also prescribe timelines in Corrective Action Plans as defined in 24 CFR 902.3 or Corrective Action Agreements as described in 24 CFR 902.105.

If the PRPHA is unable to make repairs within the periods identified in the NSPIRE standards due to circumstances beyond the PRPHA's control (e.g., required parts or services are not available, weather conditions, etc.), the PRPHA will provide HUD with a timeframe for completing permanent repairs and obtain HUD approval. The PRPHA will also notify the family of an estimated date of completion.

The family must allow the PRPHA access to the unit to make repairs. Except for emergencies, management will not enter the dwelling unit to perform repairs where a pet resides unless accompanied for the entire duration of the repair by the pet owner or responsible person designated by the pet owner in accordance with the pet policies in Chapter X.

## CHAPTER IX: REEXAMINATIONS [24 CFR 960.257, 960.259, 966.4]

### A. OVERVIEW

Except for non-public housing over income families, the PRPHA is required to reexamine each family's income and composition periodically, and to adjust the family's rent accordingly. PRPHA adopt policies for conducting annual and interim reexaminations that are consistent with regulatory requirements and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)].

The frequency with which the PRPHA must reexamine the income and composition of a family depends on whether the family pays income-based rent or flat rent. HUD requires the PRPHA to offer all families the choice of paying income-based rent or flat rent at least annually. The PRPHA's policies for offering families a choice of rents are located in Chapter VI.

This chapter discusses both annual and interim reexaminations.

Article IX.1: Annual Reexaminations for Families Paying Income Based Rents.

This article discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.

Article IX.2: Reexaminations for Families Paying Flat Rents. This article contains the PRPHA's policies for conducting full reexaminations of family income and composition for families paying flat rents.

Article IX.3: Interim Reexaminations. This article includes HUD requirements and PRPHA policies related to when a family may and must report changes that occur between annual reexaminations.

Article IX.4: Recalculating Tenant Rent. After gathering and verifying required information for an annual or interim reexamination, the PRPHA must recalculate the tenant rent. While the basic policies that govern these



calculations are provided in Chapter VI, this article describes the policies that affect these calculations during a reexamination.

Article IX.5: Non-Interim Reexamination Transactions. This article describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

## **ARTICLE IX.1: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME-BASED RENTS 24 CFR 960.257**

### **A. OVERVIEW**

For those families who choose to pay income-based rent, the PRPHA will conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. Except for over-income families, who must have their income reviewed at 12 and 24 months, for flat rent families. For any non-public housing over income families, the PRPHA may not conduct an annual reexamination of family income. Policies related to the reexamination process for families paying flat rent are in Article IX.2 of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, the PRPHA must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point for the purposes of lease enforcement or eviction.

The PRPHA required us to obtain all the information necessary to conduct reexaminations. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

This part contains the PRPHA's policies for conducting annual reexaminations.

## **B. SCHEDULING ANNUAL REEXAMINATIONS [24 CFR 960.257(a)(1)]**

The PRPHA established a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12-month period.

Generally, the PRPHA will schedule annual reexaminations to coincide with the family's anniversary date. The PRPHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date. *Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

The PRPHA may also schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

## **C. NOTIFICATION OF AND PARTICIPATION IN THE ANNUAL REEXAMINATION PROCESS**

The PRPHA is required to obtain information needed to conduct annual reexaminations. PRPHA should give tenants who were not provided the opportunity to provide contact information at the time of admission the option to complete Form HUD-92006 at this time. The PRPHA should provide the family with the opportunity to update, change, or remove information from the HUD-92006 at the time of the annual reexamination [Notice PIH 2009-36].

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the PRPHA to request a reasonable accommodation (See Chapter II).

Notification of annual reexamination interviews will be sent by postal mail and email if provided by the tenant and will contain the date, time, and

location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the PRPHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview the PRPHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without PRPHA approval, the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter XIII.

An advocate, interpreter, or other assistant may assist the family in the interview process.

#### **D. CONDUCTING ANNUAL REEXAMINATIONS**

The terms of the public housing lease require the family to furnish information regarding income and family composition as may be necessary for the redetermination of rent, eligibility, and the appropriateness of the dwelling size [24 CFR 966.4(c)(2)].

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 PRPHA-designated reexamination form as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview or any stated deadline must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of

their lease and may be terminated in accordance with the policies in Chapter XIII.

The information provided by the family generally must be verified in accordance with the policies in Chapter VII unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

1. Legal identity
2. Age
3. Social security numbers
4. A person's disability status
5. Citizenship or immigration status

#### **E. CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24 CFR 5.609(c)(2) and Notice PIH 2023-27]**

The PRPHA will determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations. In determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with PRPHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered. Income from assets is always anticipated.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The PRPHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter VI for PRPHA policies on when the COLA is applied and Chapter VII on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

**Step 1:** The PRPHA determines annual income for the previous 12-month period by reviewing the following information:

- a. The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- b. The income reported on the most recent HUD-50058; and
- c. The amount of prior-year income reported by the family on the PRPHA's annual reexamination paperwork.

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

- a. If there was an interim reexamination performed, the PRPHA must use the annual income from the interim to determine the family's total annual income, provided there are no additional changes.
- b. If the PRPHA did not perform an interim or there have been changes since the last reexamination, the PRPHA moves to Step 3.

**Step 3:** If there were changes in annual income not processed by the PRPHA since the last reexamination, the PRPHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the PRPHA may use documentation of prior-year income to calculate the annual income. For example, the PRPHA may use the following documentation:

- a. EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- b. Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the PRPHA, for example:
  - i. Year-end statements
  - ii. Paycheck with year-to-date amounts
  - iii. Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the PRPHA notes discrepancies between EIV and what the family reports, the PRPHA must follow the verification hierarchy (described in Chapter VII) to document and verify income. Exhibit 9-1 provides detailed examples of how the PRPHA calculates income from different sources at annual reexamination using the above method.

## **F. OTHER CONSIDERATIONS**

### **1. Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PRPHA may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are in Chapter XII.

### **2. Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy in Chapter XIII.

Each household member aged 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

At the annual reexamination, the PRPHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The PRPHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the PRPHA proposes to terminate assistance based on lifetime sex offender registration information, the PRPHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter XIII.)

### **3. Compliance with Community Service**

For families who include nonexempt individuals, the PRPHA will determine compliance with community service requirements once every 12 months [24 CFR 960.257(a)(3)].

See Chapter XI for the PRPHA's policies governing compliance with the community service requirement.

## **G. EFFECTIVE DATES**

As part of the annual reexamination process, the PRPHA will make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

In general, an increase in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least thirty (30) days in advance.

If less than thirty (30) days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If the PRPHA 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 PRPHA but will always allow for the thirty (30) day notice period.

If the family causes a delay in processing the annual reexamination, increases in the tenant rent will be applied retroactively to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter XVI.

In general, a decrease in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

## **ARTICLE IX.2: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS [24 CFR 960.253(F)]**

### **A. OVERVIEW**

HUD requires that the PRPHA offer all families the choice of paying income-based rent or flat rent at least annually. The PRPHA's policies for offering families a choice of rents are located in Chapter VI.

For families who choose flat rents, the PRPHA must conduct a reexamination of family composition and family income annually. However, these regulations are not applicable to over-income families. Once an over-income determination is made, the PRPHA must conduct an interim reexamination at 12 and 24 months, as applicable, to determine if the family remains over-income [Notice PIH 2023-03].



As it does for families that pay income-based rent, the PRPHA must also review compliance with the community service requirement for families with nonexempt individuals.

This article contains the PRPHA's policies for conducting reexaminations of families who choose to pay flat rents.

## **B. FULL REEXAMINATION OF FAMILY INCOME AND COMPOSITION**

### **1. Frequency of Reexamination**

For families paying flat rents, the PRPHA will conduct a full reexamination of the family annually.

However, for flat rent families who become over-income, this policy will not apply. The PRPHA will instead conduct an interim reexamination at 12 and 24 months following the initial over-income determination as needed to verify the family remains over-income. The family will continue to be given a choice between income-based and flat rent at each annual reexamination during the over-income grace period.

If the family is subsequently determined to no longer be over-income: If the determination is the result of an annual reexamination, the family will be given a choice between income-based or flat rent at reexam. If the family selects flat rent, the PRPHA will resume reexamination of family income and composition annually.

If determination is because of an interim reexamination, the PRPHA will conduct an annual reexamination for the family at their next scheduled annual date. If the family selects flat rent, the PRPHA will resume reexamination of family income and composition annually. Families will only be given the choice between income-based and flat rent at the annual reexamination.

### **2. Reexamination Policies**

In conducting full reexaminations for families paying flat rents, the PRPHA will follow the policies used for the annual reexamination of

families paying income-based rent as set forth in Sections 9-I.B through 9-I.E above.

**ARTICLE IX.3: INTERIM REEXAMINATIONS [24 CFR 960.257(B); 24 CFR 966.4; AND NOTICE PIH 2023-27]**

**A. OVERVIEW**

Family circumstances may change during the period between annual reexaminations. HUD and PRPHA policies define the types of information about changes in family circumstances that must be reported, and under what circumstances the PRPHA must process interim reexaminations to reflect those changes.

A family may request an interim determination of family income or composition because of any changes since the last determination. The PRPHA must conduct any interim reexamination within a reasonable period after the family request or when the PRPHA becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the PRPHA generally should conduct the interim reexamination not longer than 30 days after the PRPHA becomes aware of changes in income.

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations. When the PRPHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

## **B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION [Notice PIH 2023-27]**

### **1. Reporting**

The PRPHA will require all families paying income-based rent as well as flat rent, must report all changes in family and household composition that occur between annual reexaminations (or annual updates) within 10 business days of the change.

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are in Chapter XII.

### **2. New Family Members Not Requiring Approval [24 CFR 966.4(a)(1)(v)].**

The addition of a family member because of birth, adoption, or court-awarded custody does not require PRPHA approval. However, the family is required to promptly notify the PRPHA of the addition.

### **3. New Family and Household Members Requiring Approval**

Except for children who join the family because of birth, adoption, or court-awarded custody, a family must request PRPHA approval to add a new family member [24 CFR 966.4(a)(1)(v)] or other household member (live-in aide or foster child) [24 CFR 966.4(d)(3)].

Families must request PRPHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or a total of thirty (30) cumulative calendar days during any 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the PRPHA prior to the individual moving into the unit.

If adding a person to a household (other than a child by birth, adoption, or court-awarded custody) will require a transfer to a larger size unit (under the transfer policy in Chapter XII), the PRPHA will approve

the addition only if the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by the PRPHA. Exceptions will be made on a case-by-case basis.

The PRPHA will not approve the addition of a new family or household member unless the individual meets the PRPHA's eligibility criteria (see Chapter III) and documentation requirements (See Chapter VII)

If the PRPHA determines that an individual does not meet the PRPHA's eligibility criteria or documentation requirements, the PRPHA 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 PRPHA will make its determination within ten (10) business days of receiving all information required to verify the individual's eligibility.

#### **4. Departure of a Family or Household Member**

If a household member ceases to reside in the unit, the family must inform the PRPHA within ten (10) business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

The PRPHA will process an interim reexamination if the family's adjusted income decreases because of a family member permanently moving out of the unit.

### **C. CHANGES AFFECTING INCOME OR EXPENSES**

This section only applies to families paying income-based rent. Families paying flat rent are not required to report changes in income or expenses.

Interim reexaminations for changes in income or expenses may be scheduled either because the PRPHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

The PRPHA must estimate the income of the family for the upcoming 12-month period to determine family income for an interim reexamination [24 CFR 5.609(c)(1)]. Policies for projecting income are found in Chapter VI.

**1. Interim Decreases [24 CFR 960.257(b)(2) and Notice PIH 2023-27]**

A family may request an interim determination of family income for any change since the last determination. The PRPHA will conduct an interim reexamination any time the family's adjusted income has decreased by any amount.

If net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then PRPHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

**2. Interim Increases [24 CFR 960.257(b)(3) and Notice PIH 2023-27]**

**a. Increases Less than 10 Percent**

The PRPHA will not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

**b. Increases 10 Percent or Greater**

When a family reports an increase in their earned income between annual reexaminations, the PRPHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination.

The PRPHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The PRPHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date.

However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the PRPHA policies in Chapter XV.

**c. Concurrent Increases in Earned and Unearned Income [Notice PIH 2023-27]**

When the family reports an increase in both earned and unearned income at the same time, the PRPHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The PRPHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations. For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the PRPHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the PRPHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the PRPHA would refer to PRPHA policy to determine whether an interim was required.

**d. Cumulative Increases [Notice PIH 2023-27]**

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point the PRPHA must conduct an interim reexamination in accordance with PRPHA policy.

**e. Public Housing Over-Income Families [24 CFR 960.507(c); Notice PIH 2020-3; and Notice PIH 2023-27]**

Regardless of changes in adjusted income, in some circumstances the PRPHA is required to conduct an interim reexamination to determine whether a family's income continues to exceed the public housing over-income limit. PRPHA are required to conduct income examinations of public housing families who have been determined to exceed the over-income limit at specific intervals. When a PRPHA makes an initial determination that a family is over-income during an interim reexamination, the PRPHA must conduct a second interim reexamination 12 months after the over-income determination, and then again 12 months after the second over-income determination, unless the family's income falls below the over-income limit during the 24-month period. This continued evaluation of the family's over-income status requires the PRPHA to notify any family that exceeds the over-income limit that they remain over the income limit, even if the family is paying the flat rent [24 CFR 960.253]. An interim income reexamination to determine if a public housing family remains over-income does not reset the family's normal annual reexamination date.

**f. Family Reporting [24 CFR 960.257(b)(5)] [Notice PIH 2023-27]**

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the

last three months of the certification period. Families must report changes in income within ten (10) business days of the date the change takes effect. The family must notify all changes to the PRPHA in writing.

Within thirty (30) business days of the family reporting the change, the PRPHA will determine whether the change will require an interim reexamination.

If the change will not result in an interim reexamination, the PRPHA will note the information in the tenant file but will not conduct an interim reexamination. The PRPHA will send the family a written notification within thirty (30) business days of making this determination informing the family that the PRPHA will not conduct an interim reexamination.

If the change will result in an interim reexamination, the PRPHA will determine the documentation the family will be required to submit based on the type of change reported and PRPHA policies in Chapter VII. The PRPHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within ten (10) business days of receiving a request from the PRPHA. This time frame may be extended for good cause with PRPHA approval. The PRPHA will accept required documentation by mail, email, fax, or in person, however in some cases original documentation will be required. The PRPHA will conduct the interim within a reasonable period based on the amount of time it takes to verify the information.

#### **D. EFFECTIVE DATES**

##### **1. Changes Reported Timely [24 CFR 960.257(b)(6) and Notice PIH 2023-27]**

If the family reports a change in family income or composition timely in accordance with PRPHA policies:



- a. For rent increases, the PRPHA must provide the family with 30 days' advance written notice. The rent increase is effective on the first of the month after the end of that thirty (30) day notice period.
- b. Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

**2. Changes Not Reported Timely [24 CFR 960.257(b)(6)(ii) and (iii) and Notice PIH 2023-27]**

If the family failed to report a change in family income or composition timely in accordance with PRPHA policies:

- a. For rent increases, the PRPHA will implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- b. For rent decreases, the PRPHA will apply the decrease on the first of the month following completion of the interim reexamination.

However, the PRPHA will apply the results of the interim reexamination retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to PRPHA management operations. The PRPHA will decide to apply decreases retroactively on a case-by-case basis.

When the PRPHA applies the results of interim decreases retroactively, the PRPHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with PRPHA policies.

## **ARTICLE IX.4: RECALCULATING TENANT RENT**

### **A. OVERVIEW**

For those families paying income-based rent, the PRPHA will recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. While the basic policies that govern these calculations are provided in Chapter VI, this part lays out policies that affect these calculations during a reexamination.

### **B. CHANGES IN UTILITY ALLOWANCES [24 CFR 965.507, 24 CFR 966.4]**

The tenant rent calculations must reflect any changes in the PRPHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter XVI discusses how utility allowance schedules are established.

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

### **C. NOTIFICATION OF NEW TENANT RENT**

The public housing lease requires the PRPHA to give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective [24 CFR 966.4(b)(1)(ii)].

When the PRPHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PRPHA's schedule of Utility Allowances for families in the PRPHA's, or determines that the tenant must transfer to another unit based on family composition, the PRPHA will notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PRPHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PRPHA's grievance procedure [24 CFR 966.4(c)(4)].

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

#### **D. DISCREPANCIES**

During an annual or interim reexamination, the PRPHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PRPHA may discover errors made by the PRPHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter XV.

### **ARTICLE IX.5: NON-INTERIM REEXAMINATION TRANSACTIONS [NOTICE PIH 2023-27]**

#### **A. OVERVIEW**

Families may experience changes within the household that do not trigger an interim reexamination under PRPHA policy and HUD regulations, but which HUD still requires the PRPHA to report via Form HUD-50058. These are known as *non-interim reexamination transactions*. In these cases, PRPHA will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

1. Adding or removing a hardship exemption for the childcare expense deduction;
2. Updating or removing the Phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (families will begin receiving a 24-month Phased-in relief at their next annual or interim reexamination, whichever occurs first);
3. Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
4. Adding or removing a minimum rent hardship;

5. Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
6. Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12-month EID period.
7. Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
8. Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
9. Adding/updating a family or household member's Social Security number; and
10. Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

PRPHA must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.

## **CHAPTER X: PETS [24 CFR 5, Subpart C; 24 CFR 960, Subpart G]**

### **A. OVERVIEW**

This chapter explains the PRPHA's policies on the keeping of pets and describes any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of the PRPHA to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of the PRPHA.

The chapter is organized as follows:

Article X.1: Assistance Animals. This article explains the difference between assistance animals, including service and support animals, and pets, and contains policies related to the designation of an assistance animal as well as their care and handling.

Article X.2: Pet policies for all developments. This article includes pet policies that are common to both elderly/disabled developments and general occupancy developments.

Article X.3: Pet-Related Damages During Occupancy. This article discusses the expense of damage by a pet on the unit or program.

**ARTICLE X.1: ASSISTANCE ANIMALS [SECTION 504; FAIR HOUSING ACT (42 U.S.C.); 24 CFR 5.303; 24 CFR 960.705; NOTICE FHEO 2020-01]**

**A. OVERVIEW**

This article discusses situations under which permission for an assistance animal, including service and support animals, may be denied, and establishes standards for the care of assistance animals.

Notice FHEO 2020-01 was published January 28, 2020. The notice provides guidance to help PHAs and other housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by the PHA's pet policies. FHEO 2020-01 makes clear that the notice is guidance and a tool for PHAs and other housing providers to use at their discretion and provides a set of best practices for addressing requests for assistance animals. The guidance in FHEO 2020-01 should be read together with HUD's regulations prohibiting discrimination under the Fair Housing Act (FHA) and the HUD/Department of Justice (DOJ) Joint Statement on Reasonable Accommodation under the Fair Housing Act. Housing providers may also be subject to the Americans with Disabilities Act (ADA) and should therefore refer also to DOJ's regulations

implementing Titles II and III of the ADA at 28 CFR Parts 35 and 36, in addition to DOJ's other guidance on assistance animals.

There are two types of assistance animals: (1) service animals, and (2) other animals that do work, perform tasks, aid, and/or provide therapeutic emotional support for individuals with disabilities (i.e., support animals).

Assistance animals, including service and support animals, are not pets and thus are not subject to the PRPHA's pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705; Notice FHEO 2020-01].

## **B. APPROVAL OF ASSISTANCE ANIMALS [Notice FHEO 2020-01]**

### **1. Service Animals**

Notice FHEO 2020-01 states that PHAs should initially follow the Department of Justice (DOJ) analysis to assessing whether an animal is a service animal under the Americans with Disabilities Act (ADA). Under the ADA, a *service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.

As a best practice, housing providers may use the following questions to help them determine if an animal is a service animal under the ADA:

- a. Is the animal a dog? If not, the animal is not a service animal but may be another type of assistance animal for which accommodation is needed (support animal).
- b. Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of the individual with a disability? If yes, further inquiries are inappropriate because the animal is a service animal. If not, it is advisable that the PRPHA limit its inquiries to the following two

questions: (1) Is the animal required because of the disability? and (2) What work or task has the animal been trained to perform?

If the answer to question (1) is “yes” and work or a task is identified in response to question (2), grant the requested accommodation if otherwise reasonable. If the answer to either question is “no,” the animal does not qualify as a service animal but may be a support animal.

A service animal must be permitted in all areas of the facility where members of the public are allowed.

## **2. Support Animals (Assistance Animals other than Service Animals)**

If the animal does not qualify as a service animal, the PRPHA must next determine whether the animal would qualify as a support animal (other type of assistance animal). If the individual has indeed requested a reasonable accommodation to get or keep an animal in connection with a physical or mental impairment or disability, the PRPHA may use the following questions to help them assess whether to grant the accommodation in accordance with the policies outlined in Chapter II (the PRPHA is not required to grant a reasonable accommodation that has not been requested):

- a. Does the person have an observable disability or does the PRPHA already have information giving them reason to believe that the person has a disability? If not, has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?
- b. If the person has an observable disability, the PRPHA already has information giving them reason to believe the person has a disability, or the person has provided information supporting that they have a disability, then has the person provided information that reasonably supports that the animal does work, performs tasks, helps, and/or

provides therapeutic emotional support with respect to the individual's disability?

- c. If yes, is the animal commonly kept in households? An *animal commonly kept in households* would be a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes. For purposes of this assessment, reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.

If the individual is requesting to keep a unique animal not commonly kept in households, then the requestor has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal. Such individuals are encouraged to submit documentation from a health care professional.

### **3. General Considerations**

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and their need for the animal [PH Occ GB, p. 179].

Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an animal, the PRPHA is encouraged to engage in a good-faith dialog with the requestor called the "interactive process" [FHEO 2020-01].

The PRPHA will not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the



owners themselves and, in some cases, no special training is required. The question is whether the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ GB, p. 178]. A refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless [PH Occ GB, p. 179]:

- a. There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation
- b. There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

The Fair Housing Act does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others. A PRPHA may therefore refuse a reasonable accommodation for an assistance animal if the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through the actions the individual takes to maintain or control the animal (e.g., keeping the animal in a security enclosure). While most requests for reasonable accommodations involve one animal, requests sometimes involve more than one animal (for example, a person has a disability-related need for both animals, or two people living together each have a disability-related need for a separate assistance animal). The decision-making process in Notice FHEO 2020-01 should be used in accordance with the reasonable accommodation policies in Chapter II for all requests for exceptions or modifications to the PRPHA's rules, policies, practices, and procedures so that persons

with disabilities can have assistance animals in the housing where they reside.

The PRPHA has the authority to regulate service animals and assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

### **C. CARE AND HANDLING [24 CFR 5.303; 24 CFR 960.705]**

Residents are responsible for feeding, maintaining, providing veterinary care, and controlling their assistance animals. A resident may do this on their own or with the assistance of family, friends, volunteers, or service providers.

Residents must care for assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.

Residents must ensure that assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.

When a resident's care or handling of an assistance animal violates these policies, the PRPHA will consider whether the violation could be reduced or eliminated by reasonable accommodation. If the PRPHA determines that no such accommodation can be provided, the PRPHA may withdraw the approval of a particular assistance animal.

## **ARTICLE X.2: PET POLICIES FOR ALL DEVELOPMENTS [24 CFR 5, SUBPART C; 24 CFR 960, SUBPART G]**

### **A. OVERVIEW**

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

## **B. MANAGEMENT APPROVAL OF PETS**

### **1. Registration of Pets**

Pets must be registered with the PRPHA before they are brought onto the premises.

Registration includes documentation signed by a licensed veterinarian or state/local authority that the pet has received all inoculations required by state or local law, and that the pet has no communicable disease(s) and is pest-free. This registration must be renewed annually and will be coordinated with the annual reexamination date.

Pets will not be approved to reside in a unit until completion of the registration requirements.

### **2. Refusal to Register Pets**

The PRPHA will refuse to register a pet if:

- a. The pet is not a *common household pet* as defined in Chapter X below;
- b. Keeping the pet would violate any pet restrictions listed in this policy;
- c. The pet owner fails to provide complete pet registration information, or fails to update the registration annually;
- d. The applicant has previously been charged with animal cruelty under state or local law; or has been evicted, had to relinquish a pet or been prohibited from future pet ownership due to pet rule violations or a court order;
- e. The PRPHA reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament and behavior may be considered as a factor in determining the pet owner's ability to comply with the provisions of the lease.

If the PRPHA refuses to register a pet, a written notification will be sent to the pet owner within thirty (30) business days of the PRPHA's decision. The notice will state the reason for refusing to register the pet and will inform the family of their right to appeal against the decision in accordance with the PRPHA's grievance procedures.

### **3. Pet Agreement**

Residents who have been approved to have a pet must enter into a pet agreement with the PRPHA, or the approval of the pet will be withdrawn. The pet agreement is the resident's certification that they have received a copy of the PRPHA's pet policy and applicable house rules, that they have read the policies and/or rules, understand them, and agree to comply with them.

The resident further certifies by signing the pet agreement that they understand that noncompliance with the PRPHA's pet policy and applicable house rules may result in the withdrawal of the PRPHA approval of the pet or termination of tenancy.

## **C. STANDARDS FOR PETS [24 CFR 5.318; 960.707(b)]**

The PRPHA have establish reasonable requirements related to pet ownership including, but not limited to:

### **1. Definition of "Common Household Pet" [24 CFR 5.306(2)]**

*A common household pet* means a domesticated animal, such as a dog, cat, bird, or fish that is traditionally recognized as a companion animal and is kept in the home for pleasure rather than commercial purposes.

The following animals are not considered common household pets:

- a. Reptiles;
- b. Rodents;
- c. Insects;

- d. Arachnids;
- e. Wild animals or feral animals;
- f. Pot-bellied pigs;
- g. Animals used for commercial breeding;
- h. Any farm animals;
- i. Horses;
- j. Sheep;
- k. Cows

## **2. Pet Restrictions**

The following animals are not permitted:

- a. Any animal whose adult weight will exceed twenty-five (25) pounds;
- b. Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites or lacerations;
- c. Any animal not permitted under state or local or federal law or code.

## **3. Number of Pets**

Residents may own a maximum of two (2) pets, only one (1) of which may be a dog.

In the case of fish, residents may keep no more than can be maintained in a safe and healthy manner in a tank holding up to ten (10) gallons.

Such a tank or aquarium will be counted as one (1) pet.

## **D. PET RULES**

Pet owners must maintain pets responsibly, in accordance with PRPHA policies, and in compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations [24 CFR 5.315; 24 CFR 960.707(a)].

## **1. Pet Area Restrictions**

Pets must be maintained within the resident's unit. When outside of the unit (within the building or on the grounds) dogs and cats must be kept on a leash or carried. They must always be under the control of the resident or other responsible individual.

Pets other than dogs or cats must be kept in a cage or carrier when outside of the unit.

Pets are not permitted in common areas including lobbies, community rooms and laundry areas except for those common areas which are entrances to and exits from the building.

Pet owners are not permitted to exercise pets or permit pets to deposit waste on project premises outside of the areas designated for such purposes.

## **2. Cleanliness**

The pet owner shall be responsible for the removal of waste from the exercise area by placing it in a sealed plastic bag and disposing of it in a container provided by the PRPHA.

The pet owner shall take adequate precautions to eliminate any pet odors within or around the unit and to always maintain the unit in a sanitary condition.

Litter box requirements:

- a. Pet owners must promptly dispose of waste from litter boxes and must maintain litter boxes in a sanitary manner.
- b. Litter shall not be disposed of by being flushed through a toilet.
- c. Litter boxes shall be kept inside the resident's dwelling unit.

### **3. Alterations to Unit**

Pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal. Installation of pet doors is prohibited.

### **4. Noise**

Pet owners must agree to control the noise of pets so that such noise does not constitute a nuisance to other residents or interrupt their peaceful enjoyment of their housing unit or premises. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities.

### **5. Pet Care**

Each pet owner shall be responsible for adequate care, nutrition, exercise and medical attention for their pet.

Each pet owner shall be responsible for appropriate training and caring for their pet to ensure that the pet is not a nuisance or danger to other residents and does not damage the PRPHA property.

No animals may be tethered or chained inside or outside the dwelling unit at any time.

### **6. Responsible Parties**

The pet owner will be required to designate two (2) responsible parties for the care of the pet if the health or safety of the pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet.

A resident who cares for another resident's pet must notify the PRPHA and sign a statement that they agree to abide by all the pet rules.

### **7. Inspections and Repairs**

Except for emergencies, management will not enter the dwelling unit for performance of repairs or inspections where a pet resides unless

accompanied for the entire duration of the inspection or repair by the pet owner or responsible person designated by the pet owner. The pet must be held under physical restraint by the pet owner or responsible person until management has completed its tasks. Any delays or interruptions suffered by management in the inspection, maintenance, and upkeep of the premises due to the presence of a pet may be cause for lease termination.

#### **8. Pets Temporarily on the Premises**

Pets that are not owned by a tenant are not allowed on the premises. Residents are prohibited from feeding or harboring stray animals.

This rule does not apply to visiting pet programs sponsored by a humane society or other non-profit organizations and approved by the PRPHA.

#### **9. Pet Rule Violations**

All complaints of cruelty and all dog bites will be referred to animal control or an applicable agency for investigation and enforcement.

If a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, written notice will be served.

The notice will contain a brief statement of the factual basis for the determination and the pet rule(s) that were violated. The notice will also state:

- a. That the pet owner has ten (10) business days from the effective date of the service of notice to correct the violation or make a written request for a meeting to discuss the violation.
- b. That the pet owner is entitled to be accompanied by another person of their choice at the meeting.
- c. That the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of



procedures to remove the pet, or to terminate the pet owner's tenancy.

#### **10. Notice for Pet Removal**

If the pet owner and the PRPHA are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time allotted by the PRPHA, the PRPHA may serve notice to remove the pet. The notice will contain:

- a. A brief statement of the factual basis for the PRPHA's determination of the pet rule that has been violated.
- b. The requirement that the resident /pet owner must remove the pet within thirty (30) calendar days of the notice.
- c. A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures.

#### **11. Pet Removal**

If the death or incapacity of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the responsible party designated by the pet owner.

If the responsible party is unwilling or unable to care for the pet, or if the PRPHA after reasonable efforts cannot contact the responsible party, the PRPHA may contact the appropriate state or local agency and request the removal of the pet.

#### **12. Termination of Tenancy**

The PRPHA may initiate procedures for termination of tenancy based on a pet rule violation if:

- a. The pet owner has failed to remove the pet or correct a pet rule violation within the time specified
- b. The pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease

### **13. Emergencies**

The PRPHA will take all necessary steps to ensure that pets that become vicious, display symptoms of severe illness, or demonstrate behavior that constitutes an immediate threat to the health or safety of others, are immediately removed from the premises by referring the situation to the appropriate state or local entity authorized to remove such animals.

If it is necessary for the PRPHA to place the pet in a shelter facility, the cost will be the responsibility of the pet owner.

If the pet is removed because of any aggressive act on the part of the pet, the pet will not be allowed back on the premises.

### **ARTICLE X.3: PET-RELATED DAMAGES DURING OCCUPANCY**

All reasonable expenses incurred by the PRPHA because of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

1. The cost of repairs and replacements to the resident's dwelling unit;
2. Fumigation of the dwelling unit;
3. Repairs to common areas of the project.

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.F, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damage during occupancy.

Charges for pet-related damage are not part of the rent payable by the resident.

Other restriction:

1. Cat declawing is not a requirement or condition of pet ownership in public housing and HUD encourages PHAs to refrain from engaging in this practice [New PHOCCGB, *Pet Ownership*, p. 9].
2. PRPHA will not require pet owners to have any pet's vocal cords removed.

3. PRPHA will not require pet owners to obtain or carry liability insurance.

## **CHAPTER XI: COMMUNITY SERVICE**

### **A. OVERVIEW**

This chapter explains HUD regulations requiring the PHAs to implement a community service program for all nonexempt adults living in public housing. This chapter describes HUD regulations and the PRPHA policies related to these topics in two parts:

Article XI.1: Community Service Requirements. This article describes who is subject to the community service requirement, who is exempt, and HUD's definition of economic self-sufficiency.

Article XI.2: PRPHA Implementation of Community Service. This article provides PRPHA policy regarding PRPHA implementation and program design.

### **ARTICLE XI.1: COMMUNITY SERVICE REQUIREMENT**

#### **A. OVERVIEW**

HUD regulations pertaining to the community service requirement are contained in 24 CFR 960 Subpart F (960.600 through 960.609). PHAs and residents must comply with the community service requirement, effective with PRPHA fiscal years that commenced on or after October 1, 2000. Per 903.7(l)(1)(iii), the PRPHA Plan must contain a statement of how the PRPHA will comply with the community service requirement, including any cooperative agreement that the PRPHA has entered or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities [24 CFR 960.601 (b)].

In administering community service requirements, the PRPHA must comply with

all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

## **B. REQUIREMENTS**

Each adult resident of the PRPHA, who is not exempt, must [24 CFR 960.603(a)]:

1. Contribute 8 hours per month of community service; or
2. Participate in an economic self-sufficiency program (as defined in the regulations) for 8 hours per month; or
3. Perform 8 hours per month of combined activities (community service and economic self-sufficiency programs).
4. The required community service or self-sufficiency activity may be completed 8 hours each month or may be aggregated across a year. Any blocking of hours is acceptable as long as 96 hours are completed by each annual certification of compliance [Notice PIH 2015-12].

## **C. DEFINITIONS**

### **1. Exempt Individual [24 CFR 960.601(b), Notice PIH 2015-12]**

*An exempt individual is an adult who:*

- a. Is age sixty-two (62) years or older;
- b. Is blind or disabled (as defined under section 216[i] [I] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions;
- c. Is a primary caretaker of such an individual;
- d. Is engaged in work activities. The PRPHA will consider thirty (30) hours per week as the minimum number of hours needed to qualify for a work activity exemption.
- e. Can meet requirements of being exempted under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PRPHA is located, including a state-administered welfare-to-work program. This

exemption applies to anyone whose characteristics or family situation meets the welfare agency exemption criteria and can be verified.

- f. Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PRPHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program.
- g. Is a member of a non-public housing over-income family.

## **2. Community service [24 CFR 960.601(b), Notice PIH 2015-12]**

*Community service* is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

Eligible community service activities include, but are not limited to, work at:

- a. Local public or nonprofit institutions such as schools, head start programs, before or after school programs, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- b. Nonprofit organizations serving PRPHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or

- education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- c. Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
  - d. Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
  - e. PRPHA housing to improve grounds or provide gardens (so long as such work does not alter the PRPHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
  - f. Care for the children of other residents so parent may volunteer
  - g. PRPHA may form their own policy in regard to accepting community services at profit-motivated entities, acceptance of volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work.

Community services at profit-motivated entities, volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work will not be considered eligible community service activities.

### **3. Economic Self-Sufficiency Program [24 CFR 5.603(b), Notice PIH 2015-12]**

For purposes of satisfying the community service requirement, an *economic self-sufficiency program* is defined by HUD as any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

Eligible self-sufficiency activities include, but are not limited to:

- a. Job readiness or job training;
- b. Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers;
- c. Employment counseling, work placement, or basic skills training;
- d. Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes;
- e. Apprenticeships (formal or informal);
- f. English proficiency or English as a second language classes;
- g. Budgeting and credit counseling;
- h. Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling).

#### **4. Work Activities [42 U.S.C. 607(d)]**

As it relates to an exemption from the community service requirement, *work activities* mean:

- a. Unsubsidized employment;
- b. Subsidized private sector employment;
- c. Subsidized public sector employment;
- d. Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- e. On-the-job training;
- f. Job search and job readiness assistance;
- g. Community service programs;
- h. Vocational educational training (not to exceed twelve (12) months with respect to any individual)
- i. Job skills training directly related to employment;
- j. Education directly related to employment, in the case of a recipient

who has not received a high school diploma or a certificate of high school equivalency;

- k. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.

#### **D. NOTIFICATION REQUIREMENTS [24 CFR 960.605(C)(2), NOTICE PIH 2015-12, NOTICE PIH 2016- 06]**

The PRPHA will provide the family with a copy of the Community Service Policy found in Exhibit 11-1 of this chapter, at lease-up, lease renewal, when a family member is determined to be subject to the community service requirement during the lease term, and at any time upon the family's request. The policy will notify the family that self-certification forms are subject to review by the PRPHA.

On an annual basis, at the time of lease renewal, the PRPHA will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes nonexempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform, and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify the activities and hours completed.

#### **E. DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE [24 CFR 960.605(c)(3)]**

The PRPHA must review and verify family compliance with service requirements annually at least thirty days before the end of the twelve (12) month lease term. The policy for documentation and verification of compliance with service requirements may be found at Chapter XI., Documentation and



Verification.

## **F. ANNUAL DETERMINATION**

### **1. Determination of Exemption Status**

An exempt individual is excused from the community service requirement [24 CFR 960.603(a)].

At least sixty (60) days prior to lease renewal, the PRPHA will review and verify the exemption status of all adult family members. This verification will only be done on an annual basis unless the family reports a change or the PRPHA has reason to believe that an individual's exemption status has changed. For individuals who are exempt because they are sixty-two (62) years of age and older, verification of exemption status will be done only at the initial examination.

Upon completion of the verification process, the PRPHA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

### **2. Determination of Compliance [24 CFR 960.605(c)(3)]**

Approximately sixty (60) days prior to the end of the lease term, the PRPHA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have ten (10) business days to submit the PRPHA required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or PRPHA approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Chapter XI., Noncompliance.

### **3. Change in Status between Annual Determinations**

#### **a. Exempt to Nonexempt Status:**

If an exempt individual becomes nonexempt during the twelve (12) month lease term, it is the family's responsibility to report this change to the PRPHA within ten (10) business days.

Within ten (10) business days of a family reporting such a change, or the PRPHA determining such a change is necessary, the PRPHA will provide written notice of the effective date of the requirement, a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.

The effective date of the community service requirement will be the first of the month following thirty (30) day notice.

#### **b. Determination of Initial Compliance**

When an adult family member becomes subject to community service, they must perform eight (8) hours of community service for the months they are subject to the requirement before the end of the lease term (anniversary date).

#### **c. Nonexempt to Exempt Status**

If a nonexempt person becomes exempt during the twelve (12) month lease term, it is the family's responsibility to report this change to the PRPHA within ten (10) business days. Any claim of exemption will be verified by the PRPHA in accordance with the policy at 11-I.D., Documentation and Verification of Exemption Status.

Within ten (10) business days of a family reporting such a change, or the PRPHA determining such a change is necessary, the PRPHA will provide the family written notice that the family member is no longer

subject to the community service requirement, if the PRPHA is able to verify the exemption.

The exemption will be effective immediately.

## **G. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4), 960.607, Notice PIH 2016-08]**

The PRPHA must retain reasonable documentation of service requirement performance or exemption in participant files.

### **1. Documentation and Verification of Exemption Status**

All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification. The PRPHA will provide a completed copy to the family and will keep a copy in the tenant file.

The PRPHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter VII.

The PRPHA makes the final determination whether to grant an exemption from the community service requirement. If a resident does not agree with the PRPHA's determination, s/he can dispute the decision through the PRPHA's grievance procedures (see Chapter XIV).

### **2. Documentation and Verification of Compliance [Notice PIH 2015-12]**

Everyone who is subject to the community service requirement will be required to record their community service or self-sufficiency activities and the number of hours contributed on the required form. The certification form will also include places for signatures and phone numbers of supervisors, instructors, and counselors certifying the number of hours contributed.

Families will be required to submit the documentation to the PRPHA, upon request by the PRPHA, at least annually.

If the PRPHA has reasonable cause to believe that the certification

provided by the family is false or fraudulent, the PRPHA has the right to require additional third-party verification.

## **H. NONCOMPLIANCE**

### **1. Noncompliant Residents**

The lease specifies that it is renewed automatically for all purposes, unless the family fails to comply with the community service requirement and families determined to be over-income for twenty-four (24) consecutive months. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve (12) month lease term, but not for termination of tenancy during the twelve (12) month lease term [24 CFR 960.603(b)].

The notice of noncompliance will be sent at least forty-five (45) days prior to the end of the lease term.

The family will have ten (10) business days from the date of the notice of noncompliance to enter into a written work-out agreement to cure the noncompliance over the twelve (12) month term of the new lease, provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has vacated the unit before the PRPHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them. If the family does not request a grievance hearing or does not take either corrective action required by the notice of noncompliance within the required ten (10) business day timeframe, the PRPHA will terminate tenancy in accordance with the policies in Section 13-IV.D.

### **2. Continued Noncompliance and Enforcement Documentation [24 CFR**

**960.607(b)]**

Should a family member refuse to sign a written work-out agreement or fail to comply with the terms of the work-out agreement, PRPHA are required to initiate termination of tenancy proceedings at the end of the current twelve (12) month lease (see 24 CFR 966.53(c)) for failure to comply with lease requirements.

Notices of continued noncompliance will be sent at least thirty (30) days prior to the end of the lease term and will also serve as the family's termination notice. The notice will meet the requirements for termination notices described in Chapter XIII, Form, Delivery, and Content of the Notice.

The family will have ten (10) business days from the date of the notice of non-compliance to provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing. If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has vacated the unit before the PRPHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the noncompliant family member that previously resided with them.

If the family does not request a grievance hearing or provide such documentation within the required ten (10) business day timeframe, the family's lease and tenancy will automatically terminate at the end of the current lease term without further notice.

**ARTICLE XI.2: IMPLEMENTATION OF COMMUNITY SERVICE**

**A. OVERVIEW**

Each PRPHA must develop a policy for administration of community service

and economic self-sufficiency requirements for public housing. It is in the PRPHA's best interests to develop a viable, effective community service program, to provide residents with the opportunity to engage in the community and to develop competencies.

### **1. PRPHA Implementation of Community Service**

The PRPHA will not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by PRPHA employees or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

If a disabled resident certifies that can perform community service, the PRPHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter II. (See Exhibit 11-2)

### **2. Program Design**

The PRPHA may administer qualifying community service or economic self-sufficiency activities directly or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions [24 CFR 960.605(b)].

The PRPHA will attempt to provide the broadest choice possible to residents as they choose community service activities.

The PRPHA's goal is to design a service program that gives residents viable opportunities to become involved in the community and to gain competencies and skills. The PRPHA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

The PRPHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, the PRPHA will provide names and contacts at agencies that can provide

opportunities for residents, including persons with disabilities, to fulfill their community service obligations.

Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in the PRPHA Plan.

The PRPHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

When the PRPHA has a ROSS program, a ROSS Service Coordinator, or an FSS program, the PRPHA will coordinate individual training and service plans (ITSPs) with the community service requirement. Regular meetings with PRPHA coordinators will satisfy community service activities and PRPHA coordinators will verify community service hours within individual monthly logs.

## **CHAPTER XII: TRANSFER POLICY**

### **A. OVERVIEW**

This chapter explains the PRPHA's transfer policy, based on HUD regulations, HUD guidance, and PRPHA policy decisions. Transfers will be made without regard to race, color, sex, age (when age eligibility is not a factor), familial status, disability (excluding reasonable accommodations), national origin, ancestry, sexual orientation, gender identity, marital status, housing status, order of protection status, military discharge status or source of income. Tenants may be transferred to accommodate a disability.

Tenants with reasonable accommodation transfers, voluntary administrative transfers or good cause transfers may request specific developments or regions where they will accept an offer.

Other than Tenants who need emergency transfers, Tenants who request a transfer will receive one unit offer; however, multiple unit offers may be made to satisfy a reasonable accommodation request. For emergency and

mandatory administrative transfers, refusal of a unit offer without good cause will result in lease termination. For voluntary or Tenant-initiated transfers, refusal of a unit offer with or without good cause will result in the removal of the household from the transfer waitlist. Tenants cannot request any of these transfer types for twelve (12) months from the date of the removal letter. This chapter describes HUD regulations and the PRPHA policies related to these topics in the following seven articles:

Article XII.1: Types of transfers. This article describes the different types of transfers in the PRPHA policy.

Article XII.2: Priorities among types of transfers. This article discusses the transfers that have priority among others transfer required by the family.

Article XII.3: Eligibility for transfer. This article describes the criteria to be eligible for transfer.

Article XII.4: Cost of Transfer. This article describes the policies related to the cost of transfer depending on the type of transfer.

Article XII.5: Processing Transfer. This article describes the process of the transfer wait list, the unit offers and the notification of transfers.

Article XII.6: Good cause for unit refusal. This article discusses examples of good causes for refusal unit offers.

Article XII.7: Deconcentration. This article discussed the policies of the PRPHA on transfers under the deconcentration policies.

Article XII.8: New Lease. This article discussed that when a transfer occurs the tenant must execute a new lease.

Article XII.9: Adverse Action. This article describes the adverse action transfer and the steps for a grievance procedure.

## **ARTICLE XII.1: TYPES OF TRANSFERS**

### **A. EMERGENCY TRANSFERS**

If the dwelling unit is damaged to the extent that conditions are created which



are hazardous to life, health, or safety of the occupants, the PRPHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

A mandatory transfer upon the determination by the PRPHA or determined in a legal proceeding that unit or building conditions pose an immediate threat to Tenant life, health, safety and cannot be repaired in 24 hours will be considered emergency transfer. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the PRPHA will transfer the resident to the first available and appropriate unit after the temporary relocation. The emergency transfer will not require a prior written notice to the Tenant.

Emergency conditions that occur due to abuse or neglect to a unit by the Tenant will be grounds for emergency transfers; however, the responsible Tenant will be charged for the damages caused to the unit and/or may have their lease terminated. Refusal to accept an emergency transfer is grounds for lease termination and eviction.

#### **B. VAWA**

A VAWA transfer requested by a Tenant and approved by PRPHA to resolve problems of a life-threatening nature that are not related to unit or building conditions, including but not limited to removing Tenants from dangers of domestic violence, sexual violence, dating violence, sexual assault, stalking, or hate crimes, and other documented situations of nonrandom violence that put a Tenant's life in danger. These transfers are dealt with expeditiously and without consideration of lease compliance until the family is transferred.

#### **C. FAMILY FIRST**

Families that are under Law Num. 57-2023 that requires more bedrooms for a foster child.

#### **D. OVER INCOME FAMILIES OR FULL-TIME STUDENTS (ACCORDING TO SECTION 42 OF THE IRS)**

A public housing tenant who lives in a tax credit unit who no longer meets the LIHTC occupancy requirements, such as becoming a student or over income. After admission if the family status changes to a full-time student status or income change that disqualified the family to meet LIHTC requirements, the PRPHA will offer transfer to a public housing project. Refusal to accept the transfer is grounds for lease termination and eviction.

#### **E. DEMOLITION, DISPOSITION, REVITALIZATIONS, OR REHABILITATION AND HOMEOWNERSHIP:**

These transfers permit the PRPHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

The PRPHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The PRPHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

A transfer of participants in the homeownership program who have completed the requirements for homeownership. If the family does not complete, qualified or does not want to continue the homeownership program will be transferred to another public housing project.

PRPHA does not guarantee Tenant the right to return to the former unit- just to a unit that is the right size and type for the Tenant family.

## **F. TRANSFERS TO MAKE AN ACCESSIBLE UNIT AVAILABLE**

When a non-accessible unit becomes available, the PRPHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. The PRPHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

## **G. OCCUPANCY STANDARDS TRANSFERS**

The PRPHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to PRPHA policy [24 CFR 960.257(a)(4)]. On some occasions, the PRPHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

### **a. Household composition change**

The PRPHA will transfer a family when the family size has changed, and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

- i. Overcrowded:** the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Chapter V.
- ii. Over-housed:** the family no longer qualifies for the bedroom size in which they are living based on the PRPHA's occupancy standards as described in Chapter V.

The PRPHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the

PRPHA's occupancy standards, when the PRPHA determines there is a need for the transfer.

The PRPHA may elect not to transfer an over-housed family to prevent vacancies.

A family that is required to move because of family size will be advised by the PRPHA that a transfer is necessary, and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Chapter V. will only be required to transfer if it is necessary to comply with the approved exception.

#### **H. SPLIT FAMILY TRANSFERS (APPLICABLE ONLY TO VAWA TRANSFERS, REASONABLE ACCOMMODATIONS, AND MODERNIZATION TRANSFERS)**

*PRPHA-initiated split family transfers for relocating families:* PRPHA will make a one-time split family transfer when it is evident that PRPHA is unable to house the entire family in one (1) unit and must offer two (2) units. The following are the criteria to make a split family transfer:

1. The presence of an additional adult family member, with or without children, does not automatically qualify a family for a split family transfer if the family is not overcrowded in the unit they are occupying.
2. For all types of splits, the head of the splitting family must be a member of the original family's household for at least three (3) consecutive years before the split family transfer can be initiated, unless the transfer is for a VAWA victim or a result of a reasonable accommodation.
3. The head of household and all members aged 18 years and over, of the splitting family must pass applicant screening.

4. The original family must be lease compliant to qualify for a split family transfer. If the original family violates the lease after the family requested a split and the family member requesting to split off was not involved in the lease violation and meets all other requirements to split, the split will continue to be processed.
5. PRPHA will only supply one subsidy per family. Split family transfers will not be allowed to separate co-heads of the household or spouses, except in the case of VAWA. If a court determines the disposition of property between the head and co-head of household in a divorce or separation under a settlement or judicial decree, PRPHA will follow the court's determination of which family member continues to receive assistance.
6. In the absence of a judicial decision or an agreement among the original family members, the PRPHA will determine which family will retain continuity of occupancy. In making its determination, the PRPHA 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.

#### **I. SENIOR DESIGNATED HOUSING TRANSFERS:**

Senior designated Housing transfers are available to lease-compliant Tenants of senior buildings impacted by a Designated Housing Plan (DHP) who wish to transfer from the senior designated housing property to a family property and who were in residency on the date of the DHP designation.

Transfers available to elderly lease-compliant Tenants of family properties who wish to transfer to a senior designated housing property and who were in residency on the date of designation.

If a senior designated housing does not have a head, co-head or spouse that is 62-year-old the family will be transferred to a family properties.

## **J. RESIDENT REQUESTED TRANSFERS**

The types of requests for transfers that the PRPHA will consider are limited to requests for transfers to alleviate a serious or life-threatening medical condition, transfers due to a threat of physical harm or criminal activity, transfers to a different unit size if the family qualifies for the unit according to the PRPHA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by the PRPHA.

The PRPHA will consider the following as high priority transfer requests:

1. When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature.
2. When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the PRPHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, or a hate crime.
3. When a family requests a transfer as a reasonable accommodation. It is mandatory for PRPHA to address a request for a transfer for Tenants with disabilities who are verified to have a need for a transfer as a reasonable accommodation. The Tenant is not required to accept the transfer and may receive up to three offers of units unless is not with good cause. Management Agents that have transfer requests of this nature must notify the 504 Coordinator. A recommendation to approve the transfer request must be issued by the 504 Coordinator before the transfer is conducted. Examples of such transfers may include, but are not limited to:
  - a. Transfers to a unit in closer proximity to healthcare providers;
  - b. Transfers to a unit which provides an extra bedroom for a live-in aide, large medical equipment, a separate room for a family member

needing extra space for a verified medical need (e.g., a child who may have loud, disruptive/violent outbursts), etc.;

- c. Transfers to a unit located on the first floor of a development;
- d. Transfers to a unit without mobility barriers, such as stairs, shower curb, etc.; and
- e. Transfers to units for the vision or hearing-impaired.

The PRPHA will consider the following as regular priority transfer requests:

- a. When a family requests a larger bedroom size unit even though the family does not meet the PRPHA's definition of overcrowded, if the family meets the PRPHA's occupancy standards for the requested size unit.
- b. When the head of household or spouse is employed twenty-five (25) miles or more from the public housing unit, has no reliable transportation, and public transportation is not adequate.
- c. When an education institution is twenty-five (25) miles or more from the public housing unit, has no reliable transportation, and public transportation is not adequate.
- d. Other situations that the residents present to the PRPHA that merit a transfer

Transfers requested by the tenant are considered optional for the tenant.

## **ARTICLE XII.2: PRIORITIES AMONG TYPES OF TRANSFERS**

The PRPHA will maintain a transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead, emergency transfers will be handled immediately, on a case-by-case basis. If the emergency cannot be resolved by temporary accommodation, and the resident requires a permanent transfer, the family will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions).
2. Demolition, Disposition, Revitalizations, or Rehabilitation and Homeownership and Over Income families or full-time students (according to Section 42 of the IRS)
3. VAWA and Family First.
4. High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation).
5. Transfers to make accessible units available and Senior designated housing transfers
6. Occupancy standards.
7. Deconcentration
8. Resident requested transfers (regular priority transfers)

Within each category, transfers will be processed in order of the date a family was placed on the transfer list.

With the approval of the Public Housing Administrator or representative, the PRPHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list to address the immediate need of a family in crisis. If an emergency event does not occur, transfers will take precedence over waiting list admissions,



### **ARTICLE XII.3: ELIGIBILITY FOR TRANSFER**

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the PRPHA establishes other standards for considering a transfer request [PH Occ GB, p. 150].

Except where reasonable accommodation is requested, the PRPHA will only consider transfer requests from residents that follow all terms of the lease and HUD and PRPHA Regulations. For example:

1. Have not engaged in criminal activity that threatens the health and safety of residents and staff.
2. Owe no back rent or other charges or have a pattern of late payment.
3. Have no housekeeping lease violations or history of damaging property.
4. Can get utilities turned on in the name of the head of household.

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the PRPHA's advantage to make the transfer.

Exceptions will also be made when the PRPHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who provides documentation of abuse in accordance with Chapter XVI of this ACOP. Tenants who are not in good standing may still request a transfer under VAWA.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

#### **ARTICLE XII.4: COST OF TRANSFER**

PRPHA will pay the costs associated with moving and transfer of utilities for all emergency transfers (hazardous maintenance conditions), reasonable accommodation transfers and modernization transfers.

Tenants are solely responsible for all costs associated with all other transfers such as occupancy standards transfers.

#### **ARTICLE XII.5: PROCESSING TRANSFER**

Generally, families who request a transfer should be placed on a transfer list and processed in a consistent and appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience inequitable treatment.

1. The transfer waitlist is maintained by Property, Bedroom Size, category and date/time.
2. Tenants may request transfers from Management Agents with the necessary documentation to substantiate the need for the transfer. Management Agents must maintain the transfer request package. Tenants will be informed in writing of the approval or denied the request. If a Tenant is denied permission to transfer, the decision may be grieved under the PRPHA Grievance Procedure.
3. The Management Agent will examine the criminal history from the most recent annual reexamination of all adult household members aged 18 and over. The Management Agent will approve the Tenant's eligibility to transfer based on the documentation provided in the transfer request package and the criminal background check results. If the request is denied based on the criminal background information, the Management Agent will provide a copy of the criminal background information used.

4. The Management Agent 504/ADA Coordinator must approve all transfers for reasonable accommodation.
5. Once the transfer request package is complete, the Management Agent places the transferring resident on the Transfer Waiting List in the appropriate property, bedroom size and category by the date and time.
6. Management Agent shall consider personal safety issues when transferring families to/from buildings. The family must provide documentation of domestic violence, sexual violence, dating violence, stalking, sexual assault or hate crimes, and/or other situations of non-random violence that put a Tenant's life in danger when contesting transferring to/from a building or area of the city.
7. Transfers may be initiated by a Management Agent (e.g., moving a Tenant who does not need the features of an accessible unit to a non-accessible unit).
8. Unit offers for Tenants on the waitlist:
  - a. Tenants who request a transfer will receive only one unit offer for selected projects; however,
    - i. For mandatory transfers, refusal of a unit offer without good cause will result in lease termination.
    - ii. For resident request transfers, refusal of a unit offer, with or without good cause, will result in the removal of the household from the transfer waitlist.
9. Failing to respond to an outreach will result in the Tenant's name being removed from the waitlist.
10. Tenants will be notified of transfers as follows:
  - a. For emergency transfers, there is no notice requirement.
  - b. The Management Agent may provide less than the thirty (30) calendar day notice for mandatory administrative transfers to

correct occupancy standards and in cases where the Tenant is in danger from domestic violence, sexual violence, dating violence, stalking, sexual assault or hate crimes, and/or other situations of non-random violence or some medical condition that is not life-threatening but may be exacerbated by their current unit or location.

- c. For all other transfers, the Management Agetet may provide at less than thirty (30) calendar day notice. An example of this transfer type would be a voluntary tenant-initiated transfer to move to a property closer to the tenant's employment.

11. Tenants must move to the new unit within five (5) calendar days of accepting the offer.

#### **ARTICLE XII.6: GOOD CAUSE FOR UNIT REFUSAL**

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

1. The family demonstrates to the PRPHA's satisfaction that accepting the unit offer will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.
2. The family demonstrates to the PRPHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, stalking, or human trafficking in accordance with Article XVI.7 (D) of this ACOP. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

3. 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.
4. 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 thirty (30) day notice to move.
5. The unit has lead-based paint, and the family includes children under the age of six (6).

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

#### **ARTICLE XII.7: DECONCENTRATION**

If subject to deconcentration requirements, the PRPHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the PRPHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

#### **ARTICLE XII.8: NEW LEASE**

Whether a Tenant transfers from one PRPHA unit to another unit within the same development (intra-development), or from one PRPHA development to another development (inter-development) a new lease will be executed for the dwelling into which the family moves. The Management Agent will notify and bill the Tenant for any damage not due to normal wear or tear at the old unit.

#### **ARTICLE XII.9: ADVERSE ACTION [24 CFR 966.4(E)(8)(I)]**

A PRPHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family

requests a grievance hearing within the required timeframe, the PRPHA may not act on the transfer until the conclusion of the grievance process.

## **CHAPTER XIII: LEASE TERMINATIONS**

### **A. OVERVIEW**

Either Party to the dwelling Lease Agreement may terminate the lease in accordance with the terms of the lease. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program. The PRPHA has the authority to terminate the lease because of the family's failure to comply with HUD or IRS regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD or the IRS regulations also specify when termination of the lease is mandatory by the PRPHA.

This Chapter presents the policies that govern voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by the PRPHA. It is presented in four (4) parts:

Article XIII.1: Termination by Tenant. This article discusses the PRPHA requirements for voluntary termination of the lease by the family.

Article XIII.2: Termination by PRPHA-Mandatory. This article describes circumstances when termination of the lease by the PRPHA is mandatory. This article also explains nonrenewal of the lease for noncompliance with community service requirements and families that have been over the income limit for twenty-four (24) consecutive months.

Article XIII.3: Termination by PRPHA – Other Authorized Reasons. This article describes the PRPHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some

of these options HUD requires the PRPHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PRPHA has full discretion whether to consider the options as just cause to terminate if the PRPHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PRPHA may consider in lieu of termination, and the criteria the PRPHA will use when deciding what actions to take.

Article XIII.4: Notification Requirements, Eviction procedure and record keeping. This article presents the federal requirements for disclosure of criminal records to the family prior to termination of lease, the HUD requirements and PRPHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This article also discusses record keeping related to lease termination.

#### **ARTICLE XIII.1: TERMINATION BY TENANT**

##### **A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]**

If a family desires to move and terminate their tenancy with the PRPHA, they must give at least thirty (30) calendar days advance written notice to the PRPHA of their intent to vacate. When a family must give less than thirty (30) days' notice due to circumstances beyond their control the PRPHA, at its discretion, may waive the thirty (30) day requirement.

The effective date for moving and termination of their tenancy will be the 1<sup>st</sup> day of the next month.

The notice of lease termination must be signed by the head of household, spouse, or co-head.

## **ARTICLE XIII.2: TERMINATION BY THE PRPHA – MANDATORY**

### **A. OVERVIEW**

HUD requires mandatory termination of the lease for certain actions or inactions of the family. There are other actions or inactions of the family that constitute grounds for lease termination, but lease termination is not mandatory. The PRPHA must establish policies for termination of the lease in those cases where termination is optional for the PRPHA.

For those tenant actions or failures to act where HUD requires termination, the PRPHA has no such option. In those cases, the family's lease must be terminated. This article describes situations in which HUD requires the PRPHA to terminate the lease.

### **B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]**

The PRPHA must terminate the lease if any family member fails to sign and submit any consent form, he/she is required to sign for any reexamination. See Chapter VII for a complete discussion of consent requirements.

### **C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]**

The PRPHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PRPHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For such termination must be for a period of at least twenty-four (24) months. This does not apply to



ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter VII for a complete discussion of documentation requirements.

**D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2018-24]**

The PRPHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of ninety (90) calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter VII for a complete discussion of documentation and certification requirements.

**E. FAILURE TO ACCEPT THE PRPHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]**

The PRPHA must terminate the lease if the family fails to accept the PRPHA's offer of a lease revision to an existing lease, provided the PRPHA has done the following:

1. The revision is on a form adopted by the PRPHA in accordance with [24 CFR 966.3] pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
2. The PRPHA has made written notice of the offer of the revision at least sixty (60) calendar days before the lease revision is scheduled to take effect.
3. The PRPHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter VIII for information pertaining to PRPHA policies for offering lease revisions.

#### **F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]**

The PRPHA must immediately terminate the lease if the PRPHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

See Chapter XIII for the HUD definition of *premises*.

#### **G. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]**

Should the PRPHA 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 PRPHA must immediately terminate assistance for the household member.

In this situation, the PRPHA 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 PRPHA must terminate assistance for the household.

#### **H. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

The PRPHA is prohibited from renewing the lease at the end of the twelve (12) month lease term when the family fails to comply with the community service requirements as described in Chapter XI.

#### **I. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2012-4]**

In case the PRPHA is notified of the death of a sole family member, the PRPHA will have up to twenty (20) calendar days to visit the house unit or conduct interviews before terminating the lease following the death of the sole family member.

After validating the death of the tenant the relatives or authorized person will have 10 to 15 calendar days to remove the personal properties or belongings of the ex-tenant. After that time PRPHA will dispose of all things left in the unit.

## **J. OVER INCOME FAMILIES [24 CFR 960.507; FR Notice 7/26/18; Notice PIH 2023-03; FR Notice 2/14/23]**

For families whose income exceeds the over-income limit for twenty-four (24) consecutive months, the PRPHA will not terminate the family's tenancy and will charge the family the alternative non-public housing rent, as well as require the family to sign a new non-public housing lease in accordance with the continued occupancy policies below.

### **1. Over-Income Limit [Notice PIH 2023-03]**

The PRPHA will rely on the following over-income limits published by HUD each year. These numbers will be updated within sixty (60) days of HUD publishing new income limits each year and will be effective for all annual and interim reexaminations once these policies have been adopted.

### **2. Decreases in Income [24 CFR 960.507(c)(4)]**

If, at any time during the twenty-four (24) month period following the initial over-income determination, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with PRPHA policy in Chapter IX.

If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. The PRPHA will notify the family in writing within thirty (30) calendar days of the determination that over-income policies no longer apply to them.

### **3. Initial Notice of Over-Income Status [24 CFR 960.507(c)(1); Notice PIH 2023-03]**

At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, within thirty (30) calendar days of the determination, the PRPHA will notify the family in writing of the determination. The notice will state that if the family continues to be

over-income for twenty-four (24) consecutive months, the family will be subject to the PRPHA's over-income policies. The notice will state that the family may request a hearing if the family disputes the PRPHA's determination in accordance with PRPHA policies in Chapter XIV. The PRPHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

**4. Second Notice of Over-Income Status [24 CFR 960.507(c)(2); Notice PIH 2023-03; Notice PIH 2023-27]**

If a family's income continues to exceed the applicable over-income limit for twelve (12) consecutive months, within thirty (30) calendar days of the determination, the PRPHA will notify the family in writing of the determination. The notice will state that if the family continues to be over-income for twenty-four (24) consecutive months, the family will be subject to the PRPHA's over-income policies. The notice will provide an estimate of the alternative non-public housing rent applicable to the family at the close of the twenty-four (24) consecutive month period. The notice will also state that the family may request a hearing if the family disputes the PRPHA's determination in accordance with PRPHA policies in Chapter XIV. The PRPHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

**5. Final Notice of Over-Income Status [24 CFR 960.507(c)(3) and 960.509; Notice PIH 202303; Notice PIH 2023-27]**

If a family's income exceeds the applicable over-income limit for twenty-four (24) consecutive months, the PRPHA will notify the family in writing of the determination within thirty (30) calendar days of the date of the determination. The PRPHA will ensure that all notices and

communications are provided in a manner that is effective for persons with hearing, visual, and other impairments. The notice will state that the family will be charged the alternative non-public housing rent in accordance with PRPHA continued occupancy policies and HUD regulations and provide the family's new rent amount.

The notice will also include a new non-public housing lease and inform the over-income family that the lease must be executed by the family and the PRPHA no later than sixty (60) calendar days from the date of the notice or at the next lease renewal, whichever is sooner. The family will continue to be a public housing program participant until the family executes the new non-public housing lease. The notice will also state that failure to execute the lease within this period stated in the notice will result in termination of tenancy no more than six (6) months after the date of the notice. The PRPHA will permit an over-income family to execute a lease beyond this period, but before termination of tenancy, if the over-income family pays the PRPHA the total difference between the alternative non-public housing rent and their public housing rent dating back to the point in time that the over-income family was required to execute the new lease.

Once the family signs the new non-public housing lease, the family will no longer be a public housing participant family. The family will no longer be subject to income examinations, are precluded from participating in the resident council, and cannot participate in any programs that are only for public housing or low-income families. The PRPHA will not provide such families with hearing or grievance rights.

The non-public housing over-income (NPHOI) lease will contain all required provisions listed at [24 CFR 960.509]. The initial term of the lease will be for one year. Upon expiration of the initial lease term, the lease will not renew automatically, and subsequent leases will state renewal

terms. At any time, the PRPHA may terminate tenancy in accordance with [24 CFR 960.509(b)(11)] and in accordance with state and local law.

Upon execution of the lease, the tenant will be required to pay the amount of monthly tenant rent (known as the alternative non-public housing rent) determined by the PRPHA in accordance with HUD regulations. The PRPHA will comply with state and local law in giving the tenant written notice stating any changes in the amount of tenant rent. Charges assessed under the lease will be due in accordance with state and local law.

If an NPHOI family subsequently experiences a decrease in income after signing the NPHOI lease, the family may only be readmitted to the public housing program if they once again become an eligible low-income family and reapply to the public housing program.

### **ARTICLE XIII.3: TERMINATION BY PRPHA – OTHER AUTHORIZED REASONS**

#### **A. OVERVIEW**

Besides requiring PRPHA to terminate the lease under the circumstances described in Article XIII.2, HUD requires the PRPHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PRPHA to terminate for such violations in all cases. The PRPHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PRPHA may, as an alternative to termination, require the exclusion of the culpable household member. The PRPHA must adopt policies concerning the use of these options.

In addition, HUD authorizes PRPHA to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of the terms of the lease or for other good cause. The PRPHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good causes, based upon the content of the PRPHA lease. In the development of the terms of the lease, the PRPHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PRPHA wide discretion in some areas, a broad range of policies could be acceptable.

The PRPHA also has the option to terminate the tenancies of certain over-income families.

The PRPHA may consider alternatives to termination and must establish policies describing the criteria the PRPHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PRPHA must take when terminating a family's lease.

## **B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(I)(5)]**

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PRPHA to terminate for such violations in all cases, therefore PRPHA policies are needed.

### **1. Definitions [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

- a. *Affiliated individual* is defined in Chapter XVI.
- b. *Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.
- c. *Dating violence* is defined in Chapter XVI.
- d. *Domestic violence* is defined in Chapter XVI.

- e. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].
- f. *Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.
- g. *Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.
- h. *Household* means the family and PRPHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].
- i. *Other person under the tenant's control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.
- j. *Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.
- k. *Sexual assault* is defined in Chapter XVI.
- l. *Stalking* is defined in Chapter XVI.
- m. *Violent criminal activity* means any criminal activity that has one of these 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.



## **2. Drug Crime on or Off the Premises [24 CFR 966.4(I)(5)(i)(B)]**

The PRPHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PRPHA will consider alternatives as described in Chapter XIII. Upon consideration of such alternatives and factors, the PRPHA may, on a case-by-case basis, choose not to terminate the lease.

## **3. Illegal Use of a Drug [24 CFR 966.4(I)(5)(i)(B)]**

The PRPHA will terminate the lease when the PRPHA determines that a household member is illegally using a drug or the PRPHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous three months.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PRPHA will consider alternatives as described in Chapter XIII. Upon consideration of such alternatives and factors, the PRPHA may, on a case-by-case basis, choose not to terminate the lease.

#### **4. Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]**

The PRPHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PRPHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

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

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PRPHA will consider alternatives as described in Chapter XIII and other factors. Upon consideration of such alternatives and factors, the PRPHA may, on a case-by-case basis, choose not to terminate the lease.

#### **5. Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

The PRPHA will terminate the lease if the PRPHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one (1) incident of any such abuse of alcohol during the previous three months.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PRPHA will consider alternatives as described in Chapter XIII and other factors. Upon consideration of such alternatives and factors, the PRPHA may, on a case-by-case basis, choose not to terminate the lease.

**6. Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]**

The PRPHA will terminate the lease if the PRPHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the PRPHA will consider alternatives as described in Chapter XIII and other factors. Upon consideration of such alternatives and factors, the PRPHA may, on a case-by-case basis, choose not to terminate the lease.

**7. Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]**

The PRPHA will terminate the lease for the following violations of tenant obligations under the lease:

- a. Failure to make payments due under the lease, including nonpayment of rent (see Chapter VIII for details pertaining to lease requirements for payments due);
- b. Repeated late payment of rent or other charges. Four late payments within a twelve (12) month period shall constitute a repeated late payment.
- c. Failure to fulfill the following household obligations:
  - i. Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
  - ii. To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose.
  - iii. To abide by necessary and reasonable regulations promulgated by the PRPHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease.
  - iv. To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
  - v. To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition.
  - vi. To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner.
  - vii. To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances; including elevators.

- viii. To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project.
- ix. To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.
- x. To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition.

In making its decision to terminate the lease, the PRPHA will consider alternatives as described in Chapter XIII and other factors. Upon consideration of such alternatives and factors, the PRPHA may, on a case-by-case basis, choose not to terminate the lease.

### **C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(I)(2) and (5)(ii)(B)]**

HUD authorizes PRPHA to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

#### **1. Other Good Cause [24 CFR 966.4(I)(2)(ii)(B) and (C)]**

The PRPHA will terminate the lease for the following reasons:

- a. *Fugitive Felon or Parole Violator*. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, or violating a condition of probation or parole imposed under federal or state law.

- b. *Persons subject to sex offender registration requirement.* If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.
- c. Discovery of facts after admission to the program that would have made the tenant ineligible.
- d. Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with a reexamination of income.
- e. Failure to furnish such information and certifications regarding family composition and income as may be necessary for the PRPHA to make determinations with respect to rent, eligibility, and the appropriateness of the dwelling unit size.
- f. Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PRPHA that such a dwelling unit is available.
- g. Failure to permit access to the unit by the PRPHA after advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists.
- h. Failure to promptly inform the PRPHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within twenty (20) business days of the event.
- i. Failure to abide by the provisions of the PRPHA pet policy.
- j. If the family has breached the terms of a repayment agreement entered with the PRPHA.

- k. If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.
- l. If a household member has engaged in or threatened violent or abusive behavior toward PRPHA/Management Agent personnel.
- m. *Abusive or violent behavior towards PRPHA/Management Agent 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.
- n. *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the PRPHA will consider alternatives as described in Chapter XIII and other factors. Upon consideration of such alternatives and factors, the PRPHA may, on a case-by-case basis, choose not to terminate the lease.

## **2. Family Absence from Unit [24 CFR 982.551(i)]**

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

The family must promptly notify the PRPHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than thirty (30) calendar days. In such a case promptly means within ten (10) business days of the start of the extended absence.

If a family is absent from the public housing unit for more than one hundred eighty (180) consecutive days, and the family does not

adequately verify that they are living in the unit, the PRPHA will terminate the lease for other good cause.

*Abandonment of the unit:* If the family appears to have vacated the unit without giving proper notice, the PRPHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the PRPHA will secure the unit immediately to prevent vandalism and other criminal activity.

#### **D. ALTERNATIVES TO TERMINATION OF TENANCY**

##### **1. Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]**

The PRPHA will consider requiring the tenant to exclude a household member to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon PRPHA request.

##### **2. Repayment of Family Debts**

If a family owes amounts to the PRPHA, as a condition of continued occupancy, the PRPHA will require the family to repay the full amount or to enter into a repayment agreement, within thirty (30) days of receiving notice from the PRPHA of the amount owed. See Chapter XVI for policies on repayment agreements.

#### **E. CRITERIA FOR DECIDING TO TERMINATE TENANCY**

A PRPHA that has grounds to terminate a tenancy is not required to do so, except as explained in Article XIII.2 of this chapter, and may consider all the circumstances relevant to a particular case before making a decision.



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

The PRPHA will use the preponderance of the evidence as the standard for making all termination decisions.

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

## **2. Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]**

The PRPHA will consider the following facts and circumstances before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- a. The seriousness of the offending action, especially with respect to how it would affect other residents' safety or property.
- b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in this chapter) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.
- c. The effects that the eviction will have on other family members who were not involved in the action or failure to act.
- d. The effect on the community of the termination, or of the PRPHA's failure to terminate the tenancy.
- e. The effect of the PRPHA's decision on the integrity of the public housing program.
- f. The demand for housing by eligible families who will adhere to lease responsibilities.

- g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action.
- h. 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.
- i. While a record or records of arrest will not be used as the sole basis for termination, an arrest may, however, trigger an investigation to determine whether the participant engaged in disqualifying criminal activity. As part of its investigation, the PRPHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PRPHA may also consider:
  - i. Any statements made by witnesses, or the participant not included in the police report.
  - ii. Whether criminal charges were filed.
  - iii. Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal.
  - iv. Any other evidence relevant to determining whether the participant engaged in disqualifying activity.
- j. Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.
- k. In the case of program abuse, the dollar amount of the underpaid rent and whether a false certification was signed by the family.

### **3. Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]**

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the PRPHA will consider whether such household member has

successfully completed a supervised drug or alcohol rehabilitation program.

For this purpose, the PRPHA will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.

#### **4. Reasonable Accommodation [24 CFR 966.7]**

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the PRPHA will determine whether the behavior is related to the disability. If so, upon the family's request, the PRPHA will determine whether alternative measures are appropriate as a reasonable accommodation. The PRPHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter II provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant on the basis or as a direct result of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13]

Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD

began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

**5. Limits on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]**

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PRPHA will consider the following, and any other relevant, factors:

- a. Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.
- b. Whether the threat is a physical danger beyond a speculative threat.
- c. Whether the threat is likely to happen within an immediate time frame.
- d. Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat.

If the tenant wishes to contest the PRPHA's determination that they are an actual and imminent threat to other tenants or employees, the

tenant may do so as part of the grievance hearing or in a court proceeding.

**a. Documentation of Abuse [24 CFR 5.2007]**

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking claims protection under VAWA, the PRPHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in Chapter XVI of this ACOP.

The PRPHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PRPHA will document the waiver in the individual's file.

**b. Terminating or Evicting a Perpetrator of Domestic Violence**

The PRPHA will bifurcate a family's lease and terminate the tenancy of a family member if the PRPHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the PRPHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the PRPHA by the victim in accordance with this section and Chapter XVI. The PRPHA will also consider the factors in Chapter XIII. Upon such consideration, the PRPHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the PRPHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If the person

removed from the lease was the only tenant eligible to receive assistance, the PRPHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the PRPHA must provide the tenant with a reasonable time to find new housing or to establish eligibility for another housing program covered under VAWA.

## **ARTICLE XIII.4: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **A. OVERVIEW**

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This article discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This article also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### **B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]**

The PRPHA will conduct criminal records checks when it has come to the attention of the PRPHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. To obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The PRPHA may not pass along to the tenant the costs of a criminal records check.

### **C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]**

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the PRPHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given ten (10) business days from the date of the PRPHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the PRPHA to dispute the information within that ten (10) business day period, the PRPHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

### **D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3); Notice PIH 2021-29]**

#### **1. Procedure, Delivery, and Content of the Notice**

The PRPHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such an attempt fails, the notice will be sent by postal mail the same day.

All notices of lease termination will include a copy of the forms HUD-5382 and HUD-5380 to accompany the termination notice. Any tenant who claims that the cause for termination involves domestic violence, dating violence, sexual assault, stalking, or human trafficking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in this chapter and Chapter XVI.

**2. Timing of the Notice [24 CFR 966.4(I)(3)(i); 24 CFR 966.8; Notice PIH 2021-29]**

The PRPHA will give written notice of thirty (30) calendar days from the date the tenant receives the notice for nonpayment of rent (during nationwide emergency orders) or fourteen (14) calendar days from the date the tenant receives the notice for nonpayment of rent (upon expiration of nationwide emergency orders). For all other lease terminations, the PRPHA will give thirty (30) days written notice or, if state or local law allows less than thirty (30) days, such shorter notice will be given.

**3. Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(I)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]**

If after receiving a notice of initial noncompliance the family does not request a grievance hearing or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement and is still in noncompliance after being provided the twelve (12) month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Chapter XI. and will also serve as the notice of termination of tenancy.

**4. Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria



and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the PRPHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter XIV for the PRPHA's informal hearing procedures.

**E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]**

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the PRPHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the PRPHA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PRPHA may not proceed with an eviction action if the PRPHA has not made available the documents to be used in the case against the family and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

**F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]**

When the PRPHA evicts an individual or family for criminal activity, including drug-related criminal activity, the PRPHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

## **G. RECORD KEEPING**

A written record of every termination and/or eviction will be maintained by the PRPHA at the development where the family was residing, and will contain the following information:

1. Name of resident, number and identification of unit occupied;
2. Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently;
3. Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in [24 CFR 5.903. and 5.905];
4. Date and method of notifying the resident;
5. Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

## **CHAPTER XIV: GRIEVANCES AND APPEALS**

### **A. OVERVIEW**

This chapter discusses grievances and appeals pertaining to PRPHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Article XIV.1: Informal Hearings for Public Housing Applicants. This article outlines the requirements and procedures for informal hearings for public housing applicants.

Article XIV.2: Informal Hearings Regards to Noncitizens. This article discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Article XIV.3: Grievance Procedures for Public Housing Residents. This article outlines the requirements and procedures for handling grievances for public housing residents.

## **ARTICLE XIV.1: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS**

### **A. OVERVIEW**

When the PRPHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except regarding citizenship status, to be covered in Article XIV.2). This article discusses the PRPHA policies necessary to respond to applicant appeals through the informal hearing process.

### **B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]**

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants under the PRPHA grievance procedures [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide applicants the opportunity to review the reasons for denial of admission and to present evidence to refute the grounds for denial.

#### **1. Use of Informal Hearing Process**

While the PRPHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the

PRPHA could make the informal hearing process available to applicants who wish to dispute other PRPHA actions that adversely affect them.

If the PRPHA's Specialist determine an applicant to be ineligible after screening, the Specialist will send any applicants found to be ineligible an email and a postal mail letter headed "Based upon the information you supplied in your application for housing, you are not eligible for admission." The letter will include the following items:

- a. Specialists inform ineligible applicants of their right to an informal hearing if requested within twenty (20) calendar days of the receipt of the ineligible letter.
- b. If the applicant requests the informal hearing, another Specialist or any officer assign by the administration, will conduct the hearing within fifteen (15) calendar days after receiving the request for a final determination.
- c. Once the decision to ineligible is final, the Determination and Eligibility Specialist files the application with other ineligible applications.

## **2. Notice of Denial [24 CFR 960.208(a)]**

The PRPHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the PRPHA decision and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain informal hearing.

The applicants who are determined to be ineligible will receive written notification of the ineligibility decision, along with information related to the appeal process and documents advising them of their rights. The notification will indicate the reason for denial and advise that may request an informal hearing within twenty (20) calendar days from the receipt of the ineligible letter.

When denying eligibility for admission, the PRPHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Act, and as outlined in Chapter XVI. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Chapter III for details concerning this requirement.

### **3. Scheduling an Informal Hearing**

A request for an informal hearing must be made in writing and delivered to the PRPHA either in person or by postal mail, by the close of the day, no calendar later than twenty (20) calendar days from the date of the PRPHA's notification of denial of admission.

The PRPHA will schedule and send written notice of the informal hearing within fifteen (15) calendar days of the family's request.

If the PRPHA informal hearing will be conducted remotely, at the time the notice is sent to the family, the family will be informed:

- a.** Regarding the processes involved in a remote informal hearing;
- b.** That the PRPHA will provide technical assistance prior to and during the informal hearing, if needed; and
- c.** That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal hearing, the family may inform the PRPHA and the PRPHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal hearing, as appropriate.

#### **4. Conducting an Informal Hearing [PH Occ GB, p. 58]**

The informal hearing will be conducted by a person other than the one who made or approved the decision under review, another Specialist or any officer assign by the administration,

The applicant will be provided with an opportunity to present written or oral objections to the decision of the PRPHA.

The person conducting the informal hearing will make a recommendation to the PRPHA, but the PRPHA is responsible for making the final decision as to whether admission should be granted or denied.

#### **5. Remote Informal Hearings [Notice PIH 2020-32]**

The PRPHA will inform the resident through writing notification that will have the right to request an informal hearing either by remotely or in person.

If the resident requires a remote hearing, the PRPHA will send a notification to the resident that informed of the processes involved in a remote hearing and that the PRPHA will provide technical assistance, if needed, before the hearing.

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

#### **6. Ensuring Accessibility for Persons with Disabilities and LSP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearing must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information,

websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PRPHA may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

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

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

As with in-person hearings, Limited Spanish Proficiency (LSP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter II for a more thorough discussion of accessibility and LSP requirements, all of which apply in the context of remote informal hearings.

## **7. Conducting Remote Informal Hearings [Notice PIH 2020-32]**

The PRPHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PRPHA. The PRPHA should

determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PRPHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PRPHA must ensure that the applicant has the right to hear and be heard. All PRPHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will follow HUD regulations at 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

The PRPHA will conduct remote informal hearing in consideration of the following aspect:

- a. The PRPHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.
- b. At least five (5) business days prior to scheduling the remote hearing, the PRPHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via postal mail and/or email. The notice will advise the family of technological requirements for the hearing



and request the family notify the PRPHA of any known barriers. The PRPHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

- c. If the informal hearing is to be conducted remotely, the PRPHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through mail or via email. The PRPHA will scan and email copies of these documents to the PRPHA representative and to the person conducting the informal hearing the same day.
- d. Documents will be shared electronically whenever possible.
- e. The PRPHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal hearing to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.
- f. The PRPHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LSP.

#### **8. Informal Hearing Decision [PH Occ GB, p. 58]**

The PRPHA will notify the applicant of the PRPHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the PRPHA will evaluate the following matters:

- a. Whether or not the grounds for denial were stated factually in the notice
- b. The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PRPHA policy, then the decision to deny assistance will be overturned. See Chapter III for

a detailed discussion of the grounds for applicant denial.

- c. The validity of the evidence. The PRPHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PRPHA will uphold the decision to deny admission.
- d. If the facts prove the grounds for denial, and the denial is discretionary, the PRPHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.
- e. The PRPHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and their representative, if any.
- f. If the informal hearing decision overturns the denial, processing for admission will resume.
- g. If the family fails to appear for their informal hearing, the denial of admission will stand, and the family will be so notified.

#### **9. Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the PRPHA must consider such accommodations. The PRPHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter II for more detail pertaining to reasonable accommodation requests.

## **ARTICLE XIV.2: INFORMAL HEARINGS REGARD TO NONCITIZENS**

### **A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated based on immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PRPHA 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 PRPHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **1. Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters III and XIII, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- a. That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- b. The family may be eligible for proration of assistance.

- c. In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- d. 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.
- e. That the family has a right to request an informal hearing with the PRPHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- f. 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.

**2. United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]**

When the PRPHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PRPHA must notify the family of the results of the USCIS verification. The family will have thirty (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 USCIS. The family must provide the PRPHA with a copy of the written request for appeal and proof of mailing.

The PRPHA will notify the family in writing of the results of the USCIS secondary verification within twenty (20) days of receiving the results.

The family must provide the PRPHA with a copy of the written request for appeal and proof of mailing within twenty (20) 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 PRPHA, of its decision. When the USCIS notifies the PRPHA of the decision. The PRPHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

### **3. Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the PRPHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PRPHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### **4. Informal Hearing Officer**

The PRPHA 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.

### **5. 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 PRPHA 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.

The family will be allowed to copy any documents related to the hearing at no cost to the family. The family must request discovery of PRPHA 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 PRPHA, and to confront and cross-examine all witnesses on whose testimony or information the PRPHA relies.

#### **6. 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 a person make statements on the family's behalf.

The family is entitled to request an interpreter. The PRPHA is obligated to provide a competent interpreter, free of charge, upon request. The family may also or instead provide its own interpreter, at the expense of the family.

- a. Recording of the Hearing: The family is entitled to have the hearing recorded by audiotape. The PRPHA will not provide a transcript of an audio taped informal hearing.

#### **7. Hearing Decision**

The PRPHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

## **8. Retention of Documents [24 CFR 5.514(h)]**

The PRPHA must retain for a minimum of 5 years the following documents that may have been submitted to the PRPHA by the family, or provided to the PRPHA as part of the USCIS appeal or the PRPHA informal hearing process:

- a. The application for assistance
- b. The form completed by the family for income reexamination
- c. Photocopies of any original documents, including original USCIS documents
- d. The signed verification consent form
- e. The USCIS verification results
- f. The request for a USCIS appeal
- g. The final USCIS determination
- h. The request for an informal hearing
- i. The final informal hearing decision

## **9. Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PRPHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PRPHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Article III below.

## ARTICLE XIV.3: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

### A. REQUIREMENTS [24 CFR 966.52]

PRPHA have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PRPHA action or failure to act involving the lease or PRPHA policies which adversely affect their rights, duties, welfare, or status. The PRPHA must not only meet the minimal procedural due process requirements provided under the regulations but must also meet any additional requirements imposed by local, state or federal law. The PRPHA grievance procedure must be included in, or incorporated by reference in, the tenant lease.

The PRPHA must provide at least thirty (30) days' notice to tenants and resident organizations setting forth proposed changes in the PRPHA grievance procedure and provide an opportunity to present written comments. Comments submitted must be considered by the PRPHA before adoption of any changes to the grievance procedure by the PRPHA.

The PRPHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

### B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD regarding public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- 1. Grievance:** any dispute which a tenant may have with respect to PRPHA action or failure to act in accordance with the individual tenant's lease or PRPHA regulations which adversely affect the individual tenant's rights, duties, welfare or status
- 2. Complainant:** any tenant whose grievance is presented to the PRPHA or at the project management office.



- 3. Due Process Determination:** a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.
- 4. Expedited Grievance:** a procedure established by the PRPHA for any grievance or termination that involves:
  - a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment or the PRPHA's project premises by other residents or employees of the PRPHA; or
  - b. Any drug-related criminal activity on or off the premises.
- 5. Elements of Due Process:** an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - a. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - b. Right of the tenant to be represented by counsel
  - c. Opportunity for the tenant to refute the evidence presented by the PRPHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have.
  - d. A decision on the merits.
- 6. Hearing Officer:** an impartial person selected by the PRPHA, other than the person who made or approved the decision under review will need legal knowledge.
- 7. Tenant:** the adult person (or persons) (other than a live-in aide)
  - a. Who resides in the unit, and who executed the lease with the PRPHA as lessee of the dwelling unit;
  - b. Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit

**8. Resident Organization:** includes a resident council.

**C. APPLICABILITY [24 CFR 966.51]**

Grievances could potentially address most aspects of a PRPHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PRPHA. It is not applicable to disputes between tenants not involving the PRPHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PRPHA.

If HUD has issued a due process determination, a PRPHA may exclude from the PRPHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

1. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PRPHA;
2. Any violent or drug-related criminal activity on or off such premises; or
3. Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PRPHA must grant opportunity for grievance hearings for all lease terminations, regardless of cause, with the following exception: PRPHA may use expedited grievance procedures for the excluded categories listed above. These expedited grievance procedures are described in Chapter XIV below.

If HUD has issued a due process determination, the PRPHA may evict through the state/local judicial eviction procedures. In this case, the PRPHA is not required to provide the opportunity for a hearing under the PRPHA's grievance procedure as described above.

See Chapter XIII for related policies on the content of termination notices.

#### **D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the PRPHA office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

The PRPHA will accept written requests for informal grievance settlement (in addition to e-mail requests) to the PRPHA's office within ten (10) business days of the event giving rise to the grievance. Within ten (10) business days of receipt of the request, the PRPHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant. The informal settlement may be conducted remotely as required by the PRPHA or may be conducted remotely upon consideration of the request of the tenant. See Chapter XIV for information on how and under what circumstances remote informal settlements may be conducted.

If a tenant fails to attend the scheduled meeting without prior notice, the PRPHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as reasonable accommodation for a person with disabilities.

The good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion be prepared within a reasonable time and one copy will be given to the tenant and one retained in the PRPHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

The PRPHA will prepare a summary of the informal settlement within (5) five business days; one copy to be given to the tenant and one copy to be retained in the PRPHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

## **E. PROCEDURES TO OBTAIN A HEARING**

### **1. Requests for Hearing and Failure to Request**

The resident must submit a written request (including emailed requests) for a grievance hearing to the PRPHA within five (5) business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the PRPHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PRPHA's action in disposing of the complaint in an appropriate judicial proceeding.

### **2. Scheduling of Hearings [24 CFR 966.56(a)]**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the PRPHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PRPHA official.

Within fifteen (15) calendar days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PRPHA.

If the PRPHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

- a. Regarding the processes involved in a remote grievance hearing;
- b. That the PRPHA will provide technical assistance prior to and during the hearing, if needed; and
- c. That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform the PRPHA and the PRPHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

The PRPHA may wish to permit the tenant to request to reschedule a hearing for good cause.

The tenant may request to reschedule a hearing for good cause, or if it is needed as 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 PRPHA may request documentation of the “good cause” prior to rescheduling the hearing.

### **3. Expedited Grievance Procedure [24 CFR 966.52(a)]**

The PRPHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PRPHA;
- b. Any drug-related criminal activity on or near such premises; or
- c. Any criminal activity that resulted in felony conviction of a household member.

## **F. SELECTION OF HEARING OFFICER [24 CFR 966.53(e)]**

The grievance hearing must be conducted by a hearing officer impartial appointed by the PRPHA. The PRPHA will appoint a hearing officer who was not involved in the decision under appeal.

The PRPHA will describe their policies for selection of a hearing officer in their lease forms. Changes to the public housing lease are subject to a thirty (30) day comment period [24 CFR 966.4].

## **G. REMOTE HEARINGS [Notice PIH 2020-32]**

The PRPHA will offer videoconferencing as a first option, provided that the parties affirm that they have the facility of access and connectivity. The hearing officer shall evaluate the following factors:

1. the complexity of the case,
2. the nature of the hearing to be held,
3. the evidence to be presented, and
4. the personal circumstances of the parties, to determine whether to hold the hearing by videoconference.

The PRPHA will conduct a hearing remotely upon request as a reasonable accommodation for a person with a disability, if a tenant does not have childcare or transportation that would enable them to attend the hearing, or if the tenant believes an in-person hearing would create an undue health risk. The PRPHA will consider other reasonable requests for a remote hearing on a case-by-case basis.

The PRPHA is obliged to safeguard the rights of parties who do not have access to electronic means and shall provide alternatives for their appearance at hearings in physical form. Likewise, the procedures adopted by regulation must guarantee the adequate recording of the hearing proceedings by videoconference to be incorporated into the administrative case file to ensure the integrity of the file for judicial review purposes.

**a. Discovery of Documents Before the Remote Hearing**

If the hearing is conducted remotely, the PRPHA will compile a hearing packet, consisting of all documents the PRPHA intends to produce at the hearing. The PRPHA will mail copies of the hearing packet to the tenant, the tenant's representatives, if any, and the hearing officer at least three (3) days before the scheduled remote hearing. The original hearing packet will be in the possession of the PRPHA representative and retained by the PRPHA.

If the hearing is to be conducted remotely, the PRPHA will require the resident to provide any documents directly relevant to the hearing at least twenty-four (24) hours before the scheduled hearing through the mail or via email. The PRPHA will scan and email copies of these documents to the hearing officer and the PRPHA representative the same day they are received.

Documents will be shared electronically whenever possible.

**b. Ensuring Accessibility for Persons with Disabilities and LSP Individuals**

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

and independence of the individual. PRPHA may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote grievance hearings.

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

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

As with in-person reviews, Limited Spanish Proficiency (LSP) requirements also apply to remote grievance hearings, including the use of interpretation services and document translation. See Chapter II for a more thorough discussion of accessibility and LSP requirements, all of which apply in the context of remote grievance hearings.

### **c. Conducting Hearings Remotely**

The PRPHA must ensure that the lack of technology or inability to use technology for remote grievance hearings does not pose a disadvantage to families that may not be apparent to the PRPHA. The PRPHA should determine through a survey or other means if these barriers exist prior to conducting the remote grievance hearing and, if the family does not have the proper technology to fully participate, either postpone the hearing or provide an alternative means of access.

As with in-person grievance hearings, the PRPHA must provide all materials presented, whether paper or electronic, to the family prior



to the remote grievance hearing. The family must also be provided with an accessible means by which to transmit their own evidence. At least five (5) business days prior to scheduling the remote hearing, the PRPHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via postal mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PRPHA of any known barriers. The PRPHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

The PRPHA will follow up with a phone call and/or email to the family at least one business day prior to the remote grievance hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform.

In the beginning of the hearing, it shall notify the parties that, in the event of disconnection of any of the participants, if it is not possible to re-establish the connection within a maximum period of fifteen (15) minutes, the hearing shall be suspended, and another date shall be set for it to be held. It shall also verify that the PRPHA, as part of the notification of the hearing, informed the parties that the guide or regulations applicable to these proceedings are available on their electronic portal.

The PRPHA will ensure that all electronic information stored or transmitted with respect to the grievance hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LSP.

The PRPHA's essential responsibility is to ensure grievance hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PRPHA policies and processes for remote grievance hearings will be conducted in accordance with due process requirements and in compliance with HUD regulations set forth in 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

## **H. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

### **1. Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing. This includes:

The opportunity to examine before the grievance hearing any PRPHA documents, including records and regulations that are directly relevant to the hearing. The tenant will be allowed to copy any documents related to the hearing at no cost to the family. If the PRPHA does not make the document available for examination upon request by the complainant, the PRPHA may not rely on such document at the grievance hearing. The family must request discovery of PRPHA documents no later than 12:00 p.m. on the business day prior to the hearing.

- a. Hearings may be attended by the following applicable persons:
  - i. The PRPHA representatives and any witnesses for the PRPHA;
  - ii. The tenant and any witnesses for the tenant;
  - iii. The tenant's counsel;
  - iv. Any other person approved by the PRPHA as a reasonable accommodation for a person with a disability.
- b. The right to a private hearing unless the complainant requests a public hearing.
- c. The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PRPHA or project management, and to confront and cross-examine all

witnesses upon whose testimony or information the PRPHA or project management relies.

d. A decision based solely and exclusively upon the facts presented at the hearing.

## **2. Failure to Appear [24 CFR 966.56(c)]**

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to thirty (30) minutes. If the tenant appears within thirty (30) minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within thirty (30) minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the PRPHA within twenty-four (24) hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as 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.

## **3. General Procedures [24 CFR 966.56(d), (e)]**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PRPHA must sustain the burden of justifying the PRPHA action or failure to act against which the complaint is directed [24 CFR 966.56(d)].

The PRPHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four (4) categories of evidence.

- a. Oral evidence:** the testimony of witnesses
- b. Documentary evidence:** a document that is pertinent to the case, for example, a letter written to the PRPHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.
- c. 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.
- d. Real evidence:** A tangible item relating directly to the case.

If the PRPHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PRPHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the PRPHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The complainant or the PRPHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may request a copy of such transcript [24 CFR 966.56(e)].

If the complainant would like the PRPHA to record the proceedings by audiotape, the request must be made to the PRPHA by 12:00 p.m. on the business day prior to the hearing.

The PRPHA will consider that an audio tape recording of the proceedings is a transcript.

#### **4. Accommodations of Persons with Disabilities [24 CFR 966.56(f)]**

The PRPHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation

may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter II for a thorough discussion of the PRPHA's responsibilities pertaining to reasonable accommodation.

#### **5. Limited Spanish Proficiency (24 CFR 966.56(G))**

The PRPHA must comply with HUD's LSP Final Rule in providing language services throughout the grievance process.

#### **I. DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the complainant and the PRPHA. The PRPHA must retain a copy of the decision in the tenant's folder. A log of all hearing officer decisions must also be maintained by the PRPHA and made available for inspection by a prospective complainant, their representative, or the hearing officer [24 CFR 966.57(a)].

In rendering a decision, the hearing officer will consider the following matters:

- 1. PRPHA Notice to the Family:** The hearing officer will determine if the reasons for the PRPHA's decision are factually stated in the notice.
- 2. Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PRPHA policy.
- 3. PRPHA Evidence to Support the PRPHA Decision:** The evidence consists of the facts presented. The hearing officer will evaluate the facts to determine if they support the PRPHA's conclusion.

**4. Validity of Grounds for Termination of Tenancy (when applicable):** The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PRPHA policies. If the grounds for termination are not specified in the regulations or in compliance with PRPHA policies, then the decision of the PRPHA will be overturned.

The hearing officer will issue a written decision to the family and the PRPHA no later than ten (10) business days after the hearing. The report will contain the following information:

**a. Hearing information:**

- i. Name of the complainant
- ii. Date, time and place of the hearing
- iii. Name of the hearing officer
- iv. Name of the PRPHA representatives
- v. Name of family representative (if any)
- vi. Names of witnesses (if any)

**b. Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

**c. Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of their testimony and that are admitted into evidence.

**d. 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 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.

- e. 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 PRPHA's decision.
- f. Order:** The hearing report will include a statement of whether the PRPHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PRPHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the PRPHA to restore the family's status.

#### **5. Procedures for Further Hearing**

The hearing officer may ask the family for additional information and/or might adjourn the hearing to reconvene later, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PRPHA will take effect and another hearing will not be granted.

#### **6. Final Decision [24 CFR 966.57(b)]**

A final order or decision shall be issued in writing within ninety (90) days from the conclusion of the hearing or upon the filing of the proposed findings of fact and conclusions of law, unless this period is waived or extended with the written consent of all parties, or for good cause shown. The order or decision shall include, separately stated, the findings of fact, if not waived, and the conclusions of law supporting the adjudication, as well as the reconsideration process available or review, as the case may be.

The order or decision shall be signed by the PRPHA head or any other official authorized by law. The order or decision shall notify the right to request reconsideration by the PRPHA or to file a petition for review as a matter of law before the Court of Appeals, as well as the parties to be served with notice of said petition for review, and the pertinent time limits therefor.

The aforementioned time limits will begin to run once these requirements have been met. In the certification of its decisions or orders, the PRPHA shall specify the names and addresses of the natural or juridical persons to whom, in their capacity as parties, notice of the decision was served so that they may effectively exercise their right to seek judicial review conferred by law. The agency will send a copy of the order or decision to the parties and their attorneys as soon as possible, if any, by regular or e-mail. The agency shall also file in the case record a copy of the final order or decision and proof of service. No party shall be required to comply with a final order unless said party has been served with notice thereof. A decision issued against a person with profound, severe, moderate, or mild hearing loss or with hypoacusis or any other hearing disorder that prevents such person from communicating effectively may be void if no sign language interpreter and/or oral interpreter, or any other reasonable accommodation that ensures effective communication has been provided to such person throughout the adversary proceeding in accordance with the "Americans with Disabilities Act" (Public Law 101-336, as amended) and Act No. 136-1996. According to "Government of Puerto Rico Uniform Administrative Procedure Act" Act No. 38 of June 30, 2017, as amended

## **7. Reconsideration**

The party aggrieved by a partial or final order or decision may file a motion for reconsideration of such order or decision within twenty (20)



days after the date of entry of the order or decision. The agency shall consider the motion within fifteen (15) days from filing. If the agency denies the motion outright or fails to act on it within fifteen (15) days, the time to request review shall begin to run again from the date of notice of the denial or from the expiration of the fifteen (15) day period as the case may be. If a determination is made upon consideration, the time to request review shall start to run from the date notice of the PRPHA's final decision disposing the motion for reconsideration is entered in the case record. Such decision shall be issued and entered in the case record within ninety (90) days from the filing of the motion for reconsideration. If the agency grants the motion for reconsideration, but fails to act on it within ninety (90) days from filing, it shall lose jurisdiction over the motion and the time to request judicial review shall start to run upon the expiration of said ninety (90)-day period, unless the agency, for good cause and within said ninety (90) days, extends the time to dispose the motion for a period not to exceed thirty (30) additional days. If the date on which notice of entry of order or decision is entered in the record differs from its mailing date, whether by regular or electronic mail, the time shall be computed from its mailing date, whether by regular or electronic mail, as appropriate. According to the "Government of Puerto Rico Uniform Administrative Procedure Act", Act No. 38-2017, as amended.

## **CHAPTER XV: PROGRAM INTEGRITY**

### **A. OVERVIEW**

The PRPHA is committed to ensuring that funds made available to the PRPHA are spent in accordance with HUD requirements.

This chapter covers HUD and the PRPHA 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.

Article XV.1: Preventing, Detecting, and Investigating Errors and Program Abuse. This article presents PRPHA policies related to preventing, detecting, and investigating errors and program abuse.

Article XV.2: Corrective Measures and Penalties. This article describes the corrective measures the PRPHA must and may take when errors or program abuses are found.

## **ARTICLE XV.1: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **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 program abuse. The PRPHA are required to use the EIV system at annual reexamination in accordance with HUD administrative guidance [24 CFR 5.233]. The PRPHA is required to:

1. Provide applicants and residents with form HUD-52675, "Debts Owed to the PRPHA and Terminations".
2. 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.

The PRPHA anticipates that the vast majority of families and the PRPHA's employees intend to and will comply with the requirements of the program and will make reasonable efforts to avoid errors.

To ensure that the PRPHA's program is administered effectively and according to the highest ethical and legal standards, the PRPHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The PRPHA will provide each applicant and resident with a copy of “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The PRPHA will provide each applicant and resident with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition, the PRPHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The PRPHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The PRPHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The PRPHA will routinely provide resident counseling as part of every reexamination interview to clarify any confusion pertaining to program rules and requirements.

The PRPHA staff will be required to review and explain the contents of all HUD- and the PRPHA-required forms prior to requesting family member signatures. The PRPHA will place a warning statement about the penalties for fraud (as described in [18 U.S.C. 1001 and 1010]) on key PRPHA forms and form letters that request information from a family member.

The PRPHA will provide each PRPHA employee with the necessary training on program rules and the organization’s standards of conduct and ethics.

At every regular reexamination the PRPHA staff will explain any changes in HUD regulations or the PRPHA policy that affect residents.

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.

## **B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the PRPHA will use a variety of activities to detect errors and program abuse.

### **1. Quality Control and Analysis of Data**

The PRPHA will employ a variety of methods to detect errors and program abuse, including:

- a. The PRPHA routinely will use EIV and other non-HUD sources of up-front income verification. This includes any other private or public verification of income program available to the PRPHA.
- b. 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.
- c. The PRPHA will compare family-reported income and expenditures to detect possible unreported income.

### **2. Independent Audits and HUD Monitoring**

The PRPHA 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 PRPHA's error detection and abuse prevention efforts.

### **3. Individual Reporting of Possible Errors and Program Abuse**

The PRPHA will encourage staff, residents, and the public to report possible program abuse.

## **C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **1. When the PRPHA Will Investigate**

The PRPHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and

individuals, to determine if they warrant investigation. For the PRPHA 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 PRPHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

## **2. Consent to Release of Information [24 CFR 960.259]**

The PRPHA may investigate possible instances of error or abuse using all available PRPHA and public records. If necessary, the PRPHA will require families to sign consent forms for the release of additional information.

## **3. Analysis and Findings**

The PRPHA 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 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 PRPHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PRPHA, and (3) what corrective measures or penalties will be assessed.

## **4. Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the PRPHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

In the case of family-caused errors or program abuse, the PRPHA will take into consideration:

- a. the seriousness of the offense and the extent of participation or culpability of individual family members,
- b. any special circumstances surrounding the case,
- c. any mitigating circumstances related to the disability of a family member,
- d. the effects of a particular remedy on family members who were not involved in the offense.

#### **5. Notice and Appeals**

The PRPHA will inform the relevant party in writing of its findings and remedies within ten (10) business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PRPHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter XIV).

### **ARTICLE XV.2: CORRECTIVE MEASURES AND PENALTIES**

#### **A. UNDER- OR OVERPAYMENT**

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

##### **1. Corrections**

Whether the incorrect rental determination is an overpayment or underpayment, the PRPHA must promptly correct the tenant rent and any utility reimbursement prospectively.

Increases in the tenant rent will be implemented on the first of the month following a written thirty (30) day notice.

Any decreases in tenant rent will become effective on the first of the month following the discovery of the error.

## **2. Reimbursement**

Whether the family is required to reimburse the PRPHA or the PRPHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PRPHA to use incorrect information provided by a third party.

## **1. Family Reimbursement to PRPHA**

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The PRPHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter XVI. If the family fails to repay the amount owed, the PRPHA will terminate the family's lease in accordance with the policies in Chapter XIII.

## **2. PRPHA Reimbursement to Family**

The PRPHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

## **3. Prohibited Actions**

Any of the following will be considered evidence of family program abuse:

- a. Offering bribes or illegal gratuities to the PRPHA Governing Board members, employees, contractors, or other PRPHA representatives.
- b. Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the PRPHA on the family's behalf.
- c. Use of a false name or the use of falsified, forged, or altered documents.
- d. Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition).
- e. Omitted facts that were obviously known by a family member (e.g., not reporting employment income).
- f. Admission of program abuse by an adult family member.
- g. Make a false statement to the PRPHA [Title 18 U.S.C. Section 1001].
- h. Provide incomplete or false information to the PRPHA [24 CFR 960.259(a)(4)].
- i. Commit fraud, or make false statements in connection with an



application for assistance or with reexamination of income [24 CFR  
The PRPHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

#### **4. Penalties for Program Abuse**

In the case of program abuse caused by a family the PRPHA may, at its discretion, impose any of the following remedies:

- a. A may require the family to repay any amounts owed to the program (Family Reimbursement to PRPHA).
- b. The PRPHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter III (for applicants) and Chapter XIII (for residents)
- c. The PRPHA may deny admission or terminate the family's lease following the policies set forth in Chapter III and Chapter XIII respectively.
- d. The PRPHA may refer to the family for state or federal criminal prosecution as described in Chapter XV.

#### **C. PRPHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of the PRPHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a PRPHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the PRPHA personnel policy.

The PRPHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

##### **1. De Minimis Errors [24 CFR 5.609(c)(4); Notice PIH 2023-27]**

The PRPHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in

calculating family income. A de minimis error is an error where the PRPHA determination of family income deviates from the correct income determination by no more than thirty dollars (\$30.00) per month in monthly adjusted income (three hundred sixty dollars (\$360.00) in annual adjusted income) per family.

PRPHA must take corrective action to credit if the family was overcharged rent, including when PRPHA make de minimis errors in the income determination. Families will not be required to repay the PRPHA in instances where the PRPHA miscalculated income resulting in a family being undercharged for rent. PRPHA state in their policies how they will repay or credit a family the amount they were overcharged because of the PRPHA's de minimis error in income determination.

## **2. Prohibited Activities**

Any of the following will be considered evidence of program abuse by the PRPHA staff:

- a. Failing to comply with any public housing program requirements for personal gain.
- b. Failing to comply with any public housing program requirements because of a conflict-of-interest relationship with any applicant or resident.
- c. Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the PRPHA.
- d. Disclosing confidential or proprietary information to outside parties.
- e. Gaining profit because of insider knowledge of the PRPHA activities, policies, or practices.
- f. Misappropriating or misusing public housing funds.
- g. Destroying, concealing, removing, or inappropriately using any records related to the public housing program.

- h. Committing any other corrupt or criminal act in connection with any federal housing program.
- i. Committing sexual harassment or other harassment based on race, color, religion, national origin, familial status, disability, sexual orientation, or gender identity, either quid pro quo (supervisory harassment) or hostile environment.
- j. Allowing sexual harassment or other harassment based on race, color, religion, national origin, familial status, disability, sexual orientation, or gender identity, either quid pro quo (supervisory harassment) or hostile environment, where the PRPHA knew or should have known such harassment was occurring.
- k. Retaliating against any applicant, resident, or staff reporting sexual harassment or other harassment based on race, color, religion, national origin, familial status, disability, sexual orientation, or gender identity, either quid pro quo (supervisory harassment) or hostile environment.

#### **D. CRIMINAL PROSECUTION**

When the PRPHA determines that program abuse by a family or the PRPHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the PRPHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

#### **E. FRAUD AND PROGRAM ABUSE RECOVERIES**

PRPHA who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin

eviction proceedings against a family may retain 100% of program funds that the PRPHA recovers [Notice PIH 2007-27 (HA)].

If the PRPHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the PRPHA's grieve.

## **CHAPTER XVI: PROGRAM ADMINISTRATION**

### **A. OVERVIEW**

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in seven parts as described below:

Article XVI.1: Setting Utility Allowances. This article describes how utility allowances are established and revised.

Article XVI.2: Establishing Flat Rents. This article describes the requirements and policies related to establishing and updating flat rent amounts.

Article XVI.3: Repayment of Family Debts. This article contains policies for recovery of monies that have been underpaid by families and describes the circumstances under which the PRPHA will offer repayment agreements to families. Also discussed the consequences for failure to make payments in accordance with a repayment agreement.

Article XVI.4: Public Housing Assessment System (PHAS). This article describes the PHAS indicators, how PHAs are scored under PHAS, and how those scores affect a PRPHA.

Article XVI.5: Record Keeping. All aspects of the program involve certain types of record-keeping. This article outlines the privacy rights of applicants and participants and record retention policies the PRPHA will follow.

Article XVI.6: Reporting Requirements for Children with Elevated Blood Lead Level. This article describes the PRPHA's reporting responsibilities related to children with elevated blood lead levels that are living in public housing.

Article XV1.7I: Violence against Women Act (VAWA): Notification, Documentation, and Confidentiality. This article contains key terms used in VAWA and describes requirements related to notifying families about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking; and maintaining the confidentiality of information obtained from victims.

## **Article XVI.1: SETTING UTILITY ALLOWANCES (24 CFR 965 SUBPART E)**

### **A. OVERVIEW**

The PRPHA will establish allowances for PRPHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

### **B. UTILITY ALLOWANCES**

The PRPHA will establish separate allowances for each utility and for each category of dwelling units the PRPHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a PRPHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include electricity and water for a dwelling unit. [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p. 138].

Chapter XIV of the *PH Occupancy Guidebook* provides detailed guidance to the PRPHA about establishing utility allowances.

## **1. Utility Allowance Revisions [24 CFR 965.507]**

The PRPHA must review at least annually the basis on which utility allowances have been established and must revise the allowances, if necessary, to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505. The review must include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PRPHA) indicating probability of a significant change in reasonable requirements and changes in utility rates [24 CFR 965.507(a)].

The PRPHA must revise its allowances for resident-purchased utilities if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based. Adjustments to resident payments because of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective. Such rate changes are not subject to the sixty (60) day notice [24 CFR 965.507(b)].

## **C. NOTICE REQUIREMENTS [965.502]**

The PRPHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

1. Be provided at least sixty (60) days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
2. Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.

3. Notify residents of the place where the PRPHA's documentation on which allowances and surcharges are based is available for inspection.
4. Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

## **ARTICLE XVI.2: ESTABLISHING FLAT RENTS**

### **A. OVERVIEW**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Flat rents are also used to provide prorated assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status [24 CFR 5.504].

This part discusses how the PRPHA establishes and updates flat rents. Policies related to the use of flat rents, flat rent hardships, and proration of rent for a mixed family are discussed in Chapter VI.

### **B. FLAT RENTS [24 CFR 960.253(b) and Notice PIH 2022-33]**

#### **1. Establishing Flat Rents**

The 2015 Appropriations Act requires that flat rents must be set at no less than 80 percent of the applicable fair market rent (FMR). Alternatively, the PRPHA may set flat rents at no less than 80 percent of the applicable small area FMR (SAFMR) for metropolitan areas, or 80 percent of the applicable unadjusted rents for nonmetropolitan areas.

For areas where HUD has not determined a SAFMR or an unadjusted rent, PRPHA must set flat rents at no less than 80 percent of the FMR or apply for an exception flat rent.

The 2015 Appropriations Act permits PRPHA to apply for an exception flat rent that is lower than either 80 percent of the FMR or SAFMR/unadjusted rent if the PRPHA can demonstrate, through the submission of a market analysis, that these FMRs do not reflect the market value of a particular property or unit, and HUD agrees with the PRPHA's analysis. The market analysis must be submitted using form HUD-5880, "Flat Rent Market Analysis Summary."

PRPHA must receive written HUD approval before implementing exception flat rents. PRPHA, with a previously approved flat rent exception request may submit a written request to extend the approved flat rents for up to two additional years, provided local market conditions remain unchanged. Detailed information on how to request exception flat rents can be found in Notice PIH 2022-33.

PRPHA are now required to apply a utility allowance to flat rents as necessary. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.

## **2. Review of Flat Rents**

No later than ninety (90) days after the effective date of the new annual FMRs/SAFMRs/unadjusted rent, PRPHA must implement new flat rents as necessary based changes to the FMR/SAFMR/unadjusted rent or request an exception.

If the FMR falls from year to year, the PRPHA may, but is not required to, lower the flat rent to eighty (80) percent of the current FMR/SAFMR/unadjusted rent.

If the FMR/SAFMR/ is lower than the previous year flat rents will not be affected.

## **3. Applying Flat Rents**



The PRPHA will apply updated flat rents at each family's next annual reexamination or flat rent update after implementation of the new flat rents.

#### **4. Posting of Flat Rents**

The PRPHA will publicly post the schedule of flat rents in a conspicuous manner on the PRPHA web page and in each project office.

#### **5. Documentation of Flat Rents [24 CFR 960.253(b)(5)]**

The PRPHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the PRPHA in accordance with this method.

### **ARTICLE XVI.3: REPAYMENT OF FAMILY DEBTS**

#### **A. OVERVIEW**

Families are required to reimburse the PRPHA if they were charged less rent than required because the family either underreported or failed to report income. PRPHA are required to determine retroactive rent amounts as far back as the PRPHA has documentation of family unreported income [Notice PIH 2018-18].

This article describes the PRPHA's policies for recovery of monies owed to the PRPHA by families.

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the PRPHA holds the family liable to return any underpayments to the PRPHA.

The PRPHA will enter into repayment agreements in accordance with the policies contained in this part to recover underpayments.

## **B. REPAYMENT POLICY**

### **1. Family Debts to the PRPHA**

Any amount owed to the PRPHA by a public housing family must be repaid. If the family is unable to repay the debt within thirty (30) calendar days, the PRPHA will offer to enter into a repayment agreement in accordance with the policies below.

### **2. Refusal to Enter into An Agreement**

When a family refuses to repay monies owed to the PRPHA, in addition to termination of program assistance, the PRPHA will utilize other available collection.

### **3. Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the PRPHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

### **4. General Repayment Agreement Guidelines**

#### **a. Down Payment Requirement**

Before executing a repayment agreement with a family, the PRPHA will generally require a down payment of ten percent (10%) of the total amount owed. If the family can provide evidence satisfactory to the PRPHA that a down payment of ten percent (10%) would impose an undue hardship, the PRPHA may, in its sole discretion, require a lesser percentage or waive the requirement.

#### **b. Payment Thresholds**

If a family is paying less than forty percent (40%) of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two amounts:

- i. The difference between forty percent (40%) of the family's MAI and the TTP at the time the agreement is executed.

ii. Monthly payment of twenty-five dollars (\$25.00).

If a family can provide evidence satisfactory to the PRPHA that a monthly payment amount of twenty-five (\$25.00) would impose an undue hardship, the PRPHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either the PRPHA or the family may request that the monthly payment amount be adjusted accordingly.

#### **5. Execution of the Agreement**

Any repayment agreement between the PRPHA and a family must be signed and dated by the PRPHA and by the head of household and spouse/cohead (if applicable).

#### **6. Due Dates**

All payments are due by the close of business on the fifteenth (15) day of the month. If the fifteenth (15) day of the month does not fall on a business day, the due date is the close of business on the first business day after the fifteenth (15).

#### **7. Late or Missed Payments**

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the PRPHA, the PRPHA will send the family a delinquency notice giving the family fourteen (14) business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PRPHA will terminate tenancy in accordance with the policies in Chapter XIII.

#### **8. No Offer of Repayment Agreement**

The PRPHA 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.

## **9. Repayment Agreement Terms**

All repayment agreements must be in writing, dated, signed by both the family and the PRPHA, include the total retroactive rent amount owed, amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. Notice PIH 2018-18 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. A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PRPHA may terminate assistance because of a family's action or failure to act.
- b. A statement clarifying that each month the family not only must pay to the PRPHA the monthly payment amount specified in the agreement but must also pay to the PRPHA the monthly tenant rent.
- c. A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases.
- d. A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy.

## **ARTICLE XVI.4: PUBLIC HOUSING ASSESSMENT SYSTEM (PRPHA)**

### **A. OVERVIEW**

The purpose of the Public Housing Assessment System (PRPHA) is to improve the delivery of services in public housing and enhance trust in the public housing system among PRPHA, public housing residents, HUD and the public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

## **B. PRPHA INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]**

The table below lists each of the PRPHA indicators, the points possible under each indicator, and a brief description of each indicator. A PRPHA's performance is based on a combination of all four indicators.

### **Indicator 1: Physical condition of the PRPHA's projects**

#### **Maximum Score: 40**

- The objective of this indicator is to determine the level to which a PRPHA is maintaining its public housing in accordance with the standard of safe, habitable dwelling units.
- To determine the physical condition of a PRPHA's projects, inspections are performed using the National Standards for the Inspection of Real Estate (NSPIRE). The inspections are performed by an independent inspector arranged by HUD and include a statistically valid sample of the units in each project in the PRPHA's public housing portfolio.

### **Indicator 2: Financial condition of the PRPHA's projects**

#### **Maximum Score: 25**

- The objective of this indicator is to measure the financial condition of the PRPHA's public housing projects for the purpose of evaluating whether the PRPHA has sufficient financial resources and can manage those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.
- A PRPHA's financial condition is determined by measuring each public housing project's performance in each of the following sub indicators: quick ratio, months expendable net assets ratio, and debt service coverage ratio.

- **Indicator 3: Management operations of the PRPHA's projects**
- **Maximum Score: 25**
- The objective of this indicator is to measure certain key management operations and responsibilities of a PRPHA's projects for the purpose of assessing the PRPHA's management operations capabilities.
- Each project's management operations are assessed based on the following sub-indicators: occupancy, tenant accounts receivable, and accounts payable.
- An on-site management review may be conducted as a diagnostic and feedback tool for problem performance areas, and for compliance. Management reviews are not scored.

**Indicator 4: Capital Fund  
Maximum Score: 10**

- The objective of this indicator is to measure how long it takes the PRPHA to obligate capital funds and to occupy units.
- The PRPHA's score for this indicator is measured at the PRPHA level and is based on the following sub indicators: timeliness of fund obligation and occupancy rate.

**C. PHA SCORING [24 CFR 902 Subpart F]**

HUD's Real Estate Assessment Center (REAC) issues overall PHA scores, which are based on the scores of the four PHA indicators, and the sub indicators under each indicator. The PHA's indicator scores are based on a weighted average of the PHA's public housing projects' scores. PHAs scores translate into a designation for each PHA as high performing, standard, substandard, or troubled.

A high performer is a PHA that achieves an overall PHA score of 90 or greater and achieves a score of at least 60 percent of the points available under the

physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A standard performer is a PHA that has an overall PHA score between 60 and 89 and achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A substandard performer is a PHA that has an overall PHA score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical, financial, or management indicators.

A troubled performer is a PHA that achieves an overall PHA score of less than 60 or achieves less than 50 percent of the total points available under the capital fund indicator.

These designations can affect a PHA in several ways:

1. High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
2. PHA that is standard performers, may be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(1)].
3. PHA that is substandard performers will be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(2)].
4. PHA with an overall rating of "troubled" are subject to additional HUD oversight and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].
5. PHA that fail to execute or meet MOA requirements may be referred to the Assistant Secretary to determine remedial actions, including, but not limited to, remedies available for substantial default [24 CFR 902.75(g) and 24 CFR Part 907].

The PHA must post a notice of its final PHA score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and designation [24 CFR 902.64(b)(2)].

## **ARTICLE XVI.5: RECORD KEEPING**

### **A. OVERVIEW**

The PRPHA 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 PRPHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights, and that complies with VAWA confidentiality requirements.

### **B. RECORD RETENTION**

The PRPHA will keep the last three (3) years of the Form HUD-50058 and supporting documentation, and for at least three (3) years after end of participation all documents related to a family's eligibility, tenancy, and termination.

The PRPHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period not to exceed three (3) years from the EOP date [Notice PIH 2018-18]. Notice PIH 2014-20 requires the PRPHA to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

The PRPHA will keep Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy and for three (3) years from the end of participation date.

In addition, the PRPHA will keep the following records for at least three (3) years:



1. An application from each ineligible family and notice that the applicant is not eligible.
2. Lead-based paint records as required by [24 CFR 35, Subpart B].
3. Documentation supporting the establishment of flat rents.
4. Documentation supporting the establishment of utility allowances and surcharges.
5. Documentation related to PRPHA.
6. Accounts and other records supporting PRPHA budget and financial statements for the program.
7. Complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act, the equal access final rule, or VAWA.
8. Confidential records of all emergency transfers related to VAWA requested under the PRPHA's Emergency Transfer Plan and the outcomes of such requests.
9. Other records as determined by the PRPHA or as required by HUD.
10. If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Chapter XIV.
11. All other documents and or records will be kept following the procedures established by the PRPHA.

### **C. RECORDS MANAGEMENT**

PRPHA must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

All applicant and participant information will be kept in a secure location and access will be limited to authorized PRPHA/Management Agent staff.

PRPHA/Management Agent 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.

## **1. Privacy Act Requirements [24 CFR 5.212 and Form-9886 or HUD 9886A]**

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 or HUD-9886A (the form approved by HUD to address this matter), 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 PRPHA may release the information collected.

## **2. Upfront Income Verification (UIV) Records**

PHA that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD-issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data*.

## **3. Criminal Records**

The PRPHA may only disclose the criminal conviction records which the PRPHA receives from a law enforcement agency to officers or employees of the PRPHA, or to authorized representatives of the PRPHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PRPHA must establish and implement a system of records management that ensures that any criminal record received by the PRPHA 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 PRPHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PRPHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PRPHA 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 PRPHA 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 PRPHA other than under 24 CFR 5.905.

#### **4. Medical/Disability Records**

PRPHA are not permitted to inquire about the nature or extent of a person's disability. The PRPHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PRPHA receives a verification document that provides such information, the PRPHA should not place this information in the tenant file. The PRPHA should destroy the document.

#### **5. Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking Records**

For requirements and PRPHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking please refer Article XVI.7.

## **ARTICLE XVI.6: REPORTING REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL**

### **A. REPORTING REQUIREMENTS [24 CFR 35.1130(e); Notice PIH 2017-13]**

The PRPHA has certain responsibilities relative to children with elevated blood lead levels that are living in public housing.

The PRPHA must report the name and address of a child identified as having an elevated blood lead level (EBLL) to the public health department within five business days of being notified by any other medical health care professional. The PRPHA must also report each known case of a child with an EBLL to the HUD field office.

The PRPHA will provide the public health department with written notice of the name and address of any child identified as having an Elevated Blood Lead Level (EBLL).

The PRPHA will provide written notice of each known case of a child with an EBLL to the HUD field office, and to HUD's Office of Lead Hazard Control (OLHCHH), within five (5) business days of receiving the information.

## **ARTICLE XVI.7: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, AND CONFIDENTIALITY**

### **A. OVERVIEW**

The Violence against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who are applying for or receiving assistance under the public housing program. If your state or local laws provide greater protection for such victims, those apply in conjunction with VAWA.

Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

In addition to definitions of key terms used in VAWA, this article contains general VAWA requirements and PRPHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PRPHA policies are in Chapter III, "Eligibility" (Chapter III); Chapter V, "Occupancy Standards and Unit Offers" (Chapter V); Chapter VIII, "Leasing and Inspections" (Chapter VIII); Chapter XII, "Transfer Policy" (Chapter XII); and Chapter XIII, "Lease Terminations" (Chapter XIII).

## **B. DEFINITIONS [24 CFR 5.2003, FR Notice 8/6/13]**

As used in VAWA:

1. The term *affiliated individual* means, with respect to a person:
  - a. A spouse, parent, brother or sister, or child of that individual, or an individual to whom that person stands in the position or place of a parent; or
  - b. Any individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
  - c. The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

- d. 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:
- i. The length of the relationship
  - ii. The type of relationship
  - iii. The frequency of interaction between the persons involved in the relationship
- e. The term *domestic violence* includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
- i. The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
  - ii. A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
  - iii. A person with whom the victim shares a child in common
  - iv. A person who commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction
- f. The term *economic abuse* means behavior that is coercive,

deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:

- i. Restrict a person's access to money, assets, credit, or financial information.
  - ii. Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage.
  - iii. Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty.
- g. 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.
- h. The term *stalking* means to engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
- i. The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
- i. Internet enabled devices;
  - ii. Online spaces and platforms;
  - iii. Computers;
  - iv. Mobile devices;

- v. Cameras and imaging programs;
- vi. Apps;
- vii. Location tracking devices;
- viii. Communication technologies;
- ix. Any other emergency technologies.

## **C. NOTIFICATION [24 CFR 5.2005(a)]**

### **1. Notification to Public**

The PRPHA adopts the following policy to help ensure that all actual and potential beneficiaries of its public housing program are aware of their rights under VAWA.

The PRPHA 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. A notice of occupancy rights under VAWA to public housing program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking.
- b. A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation.
- c. A copy of the PRPHA's emergency transfer plan.
- d. A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383.
- e. The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)
- f. Contact information for local victim advocacy groups or service providers.

### **2. Notification to Applicants and Tenants [24 CFR 5.2005(a)(1)]**

The PRPHA are required to inform public housing applicants and tenants of their rights under VAWA, including their right to confidentiality and the



limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits. The PRPHA will inform the public housing applicants in the following way:

- a. The PRPHA must distribute a notice of VAWA rights, along with the VAWA self-certification form (HUD-5382) at each of these three junctures in the paragraph above.
- b. The VAWA information provided to applicants and participants will consist of the notices in the form HUD 5382 and 5383.
- c. The PRPHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The PRPHA will also include such information in all notices of denial of assistance (see Chapter III).
- d. The PRPHA will provide all tenants with information about VAWA at the time of admission (see Chapter VIII) and at annual reexamination. The PRPHA will also include such information in all lease termination notices (see Chapter XIII).
- e. The PRPHA will display VAWA information on its central and regional offices and in all its public housing developments administration offices.
- f. The PRPHA is not limited to providing VAWA information at the times specified in the above policy. If the PRPHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PRPHA make alternative delivery arrangements that will not put the victim at risk.
- g. Whenever the PRPHA has reason to suspect that providing information about VAWA to a public housing tenant might place a

victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the PRPHA may decide not to send mail regarding VAWA protections to the victim's unit if the PRPHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

- h. When discussing VAWA with the victim, the PRPHA will take reasonable precautions to ensure that no one can overhear the conversation such as having conversations in a private room.
- i. The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

#### **D. DOCUMENTATION [24 CFR 5.2007]**

Any request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking will be in writing, will specify a deadline of fourteen (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 PRPHA may, in its discretion, extend the deadline for ten (10) business days. In determining whether to extend the deadline, the PRPHA will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited Spanish proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues. Any extension granted by the PRPHA will be in writing.

Once the victim provides documentation, the PRPHA will acknowledge receipt of the documentation within ten (10) business days.

**1. Conflicting Documentation [24 CFR 5.2007]**

If presented with conflicting certification documents from members of the same household, the PRPHA will request third-party documents, the PRPHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given thirty (30) calendar days from the date of the request to provide such documentation.

If the PRPHA does not receive third-party documentation within the required timeframe (and any extensions) the PRPHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PRPHA will hold separate hearings for the applicants or tenants.

**2. Discretion to Require No Formal Documentation [24 CFR 5.2007]**

The PRPHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence without requiring formal documentation of abuse in accordance with 24 CFR 5.2007. HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

If the PRPHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PRPHA will document acceptance of the statement or evidence in the individual's file.

**3. Failure to Provide Documentation [24 CFR 5.2007(c)]**

To deny the protections afforded by VAWA, PRPHA must provide the individual seeking assistance with a written request for documentation

of abuse. If the individual fails to provide the documentation within fourteen (14) business days from the date of receipt of the application, or within such time as the PRPHA allows, the PRPHA may deny VAWA protection assistance .

#### **E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to the PRPHA regarding domestic violence, dating violence, sexual assault, stalking, or human trafficking, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, must be retained in confidence. This means that the PRPHA cannot allow the following:

1. must not enter the information into any shared database;
2. must not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and;
3. must not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

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

### **CHAPTER XVII: HOMEOWNERSHIP PROGRAM**

#### **A. OVERVIEW**

The 1998 Quality Housing and Work Responsibility Act (QHWRA) permitted public housing authorities (PHAs), through Section 32 of the U.S. Housing Act of 1937, to make public housing dwelling units available for purchase by low-income families as their principal residence.

Under Section 32, the PRPHA will sell all or a portion of a public housing development to eligible public or non-public housing residents. Other more restrictive homeownership programs, such as 5(h) and Turnkey III, may be converted to Section 32 to increase the pool of eligible low-income homebuyers.

PRPHA also operates a 5(h)-homeownership program, which helps low-income families purchase homes through an arrangement that benefits both the buyer and the PRPHA. It gives the buyer access to an affordable homeownership opportunity and to the many tangible and intangible advantages it brings. Homeownership can be an important part of self-sufficiency for low-income families, providing a way of building wealth as well as increasing self-esteem and security.

Section 5(h) permits PRPHA to sell individual units and developments that may, due to their location or configuration, no longer be efficient to operate while HUD continues to service the debt on the original acquisition, construction or modernization costs. PRPHA can retain and reuse the proceeds of sale of public housing units to meet other low-income housing needs. The PRPHA uses these homeownership programs primarily to make its single-family scattered site properties available for purchase.

## **B. PRIORITIES FOR HOMEOWNERSHIP PROGRAM PARTICIPATION**

The PRPHA has established priorities for selecting potential homeowners that further the program's goals. The following are the established priorities:

- 1. First Priority:** Current residents of units selected for homeownership
- 2. Second Priority:** Current Public Housing Homeownership eligible tenants and tenants who participate in the Family Self Sufficiency program
- 3. Third Priority:** Current Housing Choice Voucher Homeownership eligible participants and Family Self Sufficiency participants

- 4. Fourth Priority:** Current applicants on the public housing waiting list may be offered an opportunity to participate in the public housing homeownership programs.

Families who live in units that are selected for the homeownership program who do not wish to purchase the unit will be added to the Transfer Waiting List and will be transferred to an appropriately sized unit.

## **CHAPTER XVIII: GLOSSARY**

### **ARTICLE XVIII.1 ACRONYMS USED IN PUBLIC HOUSING**

- 1. ACC:** Annual contributions contract
- 2. ACOP:** Admissions and continued occupancy policy
- 3. ADA:** Americans with Disabilities Act of 1990
- 4. AIDS:** Acquired immune deficiency syndrome
- 5. AMI:** Area median income
- 6. AMP:** Asset management project
- 7. CDBG:** Community Development Block Grant (Program)
- 8. CFP:** Capital fund program
- 9. CFR:** Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
- 10. EID:** Earned Income Disallowances
- 11. EIV:** Enterprise Income Verification
- 12. DHP:** Designated Housing Plan
- 13. FDIC:** Federal Deposit Insurance Corporation
- 14. FHA:** Federal Housing Administration (HUD Office of Housing)
- 15. FHEO:** Fair Housing and Equal Opportunity (HUD Office of)
- 16. FMR:** Fair market rent
- 17. FR:** -Federal Register

- 18. FSS:** Family Self-Sufficiency (Program)
- 19. FY:** Fiscal year
- 20. HA:** Housing authority or housing agency
- 21. HCV:** Housing choice voucher
- 22. HIP:** Housing Information Portal
- 23. HOPE VI:** Revitalization of Severely Distressed Public Housing Program
- 24. HOTMA:** Housing Opportunity through Modernization Act of 2016
- 25. HUD:** Department of Housing and Urban Development
- 26. IRA:** Individual retirement account
- 27. IRS:** Internal Revenue Service
- 28. IVT:** Income Validation Tool
- 29. LIHTC:** Low-income housing tax credit
- 30. LSP:** Limited Spanish proficiency
- 31. NPHOI:** Non-public Housing Over-Income
- 32. NSPIRE:** National Standards for the Physical Inspection of Real Estate
- 33. OGC:** HUD's Office of General Counsel
- 34. OIG:** HUD's Office of Inspector General
- 35. OMB:** Office of Management and Budget
- 36. PASS:** Plan to Achieve Self-Support
- 37. PHA:** Public housing agency
- 38. PHAS:** Public Housing Assessment System
- 39. PIH:** (HUD Office of) Public and Indian Housing
- 40. PRPHA:** Puerto Rico Public Housing Administration
- 41. QHWRA:** Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act).
- 42. REAC:** (HUD) Real Estate Assessment Center
- 43. RFP:** Request for proposals
- 44. ROSS:** Resident Opportunity and Supportive Services
- 45. SSA:** Social Security Administration

- 46. SSI:** Supplemental security income
- 47. TANF:** Temporary assistance for needy families
- 48. TR:** Tenant rent
- 49. TTP:** Total tenant payment
- 50. UA:** Utility allowance
- 51. UFAS:** Uniform Federal Accessibility Standards
- 52. UIV:** Upfront income verification
- 53. VAWA:** Violence Against Women Act
- 54. VCA:** Voluntary Compliance Agreement

## **ARTICLE XVIII.2: DEFINITIONS**

1. **Absence:** member of the family that is more than one hundred eighty (180) days outside the unit.
2. **ACOP:** Admission and Continued Occupancy Policy
3. **Accessible:** The facility or portion of the facility can be approached, entered, and used by persons with disabilities.
4. **Accessible Unit:** A unit designed, constructed, altered, or adapted to comply with the Uniform Federal Accessibility Standards (UFAS), meets the minimum standards for compliance, and is accessible.
5. **Adaptability:** Ability to change certain elements in an otherwise accessible dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered to accommodate the needs of persons with different types or degrees of disability.
6. **Adjusted income:** Annual income (as determined under 24 CFR 5.609), of the members of the family residing or intending to reside in the dwelling unit less allowable HUD deductions and allowances.
7. **Admission:** The point at which the family becomes a tenant of public housing. The date used for this purpose is the effective date of the family's HUD Form 50058.



- 8. Adult Family Member:** A person eighteen (18) years or older or an emancipated minor who is an authorized household member listed on the lease. Only an adult family member may be the head or co-head of the household.
- 9. Affiliated individual:** With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in loco parentis (in the position or place of a parent), or any individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- 10. Alimony:** An allowance made to one spouse by the other for support pending or after legal separation or divorce.
- 11. Alteration:** Any change in a facility or its permanent fixtures or equipment. Alterations do not include routine maintenance or repairs, re-roofing, interior decoration, or changes to mechanical systems.
- 12. Alternative non-public housing rent:** A monthly rent equal to the greater of:
- The applicable fair market rent, as defined in 24 CFR part 888, subpart A, for the unit; or
  - The amount of the monthly subsidy provided for the unit, which will be determined by adding the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund.
- 13. Annual contributions contract (ACC):** The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.
- 14. Annual Income:** Refer to Exhibit 6-1.
- 15. Applicant (applicant family):** A family that has applied for admission to a program but is not yet a participant in the program.
- 16. As-paid states:** States where the welfare agency adjusts the shelter and

utility component of the welfare grant in accordance with actual housing costs.

**17. Assets:** (See *net family assets definition*.)

**18. Auxiliary aids:** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving federal financial assistance.

**19. Bifurcate:** With respect to a public housing lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

**20. Care attendant/Caregiver:** A person regularly visits a PRPHA Tenant unit to provide supportive or medical services. Care attendants are not live-in aides since they have their place of residence (and, if requested by PRPHA, must demonstrate separate residence) and do not live in the public housing unit. Care attendants have no right to tenancy.

**21. Caretakers for a Child:** A temporary arrangement in which a relative or non-relative becomes the primary caregiver for a child(ren) but is not the child's biological parent. The primary caregiver need not have legal custody of such child(ren) to be a kinship caregiver under this definition. The primary caregiver must be able to document *Caretakers for a Child*, which is usually accomplished through school and/or medical records.

**22. Child:** A member of the family other than the family head or spouse who is under eighteen (18) years of age.

**23. Childcare expenses:** Amounts anticipated to be paid by the family for the care of children under thirteen (13) years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further their education and only to the extent such

amounts are not reimbursed. The amount deducted shall reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

**24. Child Support:** Payment for the support of a child or children in the household made by an adult who is not a household member.

**25. Citizen:** A citizen or national of the United States.

**26. Cohead:** An individual in the household who is equally responsible for the lease with the head of household. A family may have a cohead or spouse but not both. A cohead never qualifies as a dependent. The cohead must have legal capacity to enter a lease.

**27. Community Service Requirement:** The performance of unpaid work or duties that benefit the public and serve to improve the quality of life, enhance Tenant self-sufficiency, or increase Tenant self-responsibility in the community. Community service is not employment and may not include political activities. Each adult Tenant of a public housing development shall:

- a. Contribute eight hours per month of community service within their community;
- b. Participate in an economic self-sufficiency program for eight hours per month; or
- c. Perform eight hours per month of activities combining a) and b) above.

**28. Consent form:** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the

collection of other information to determine eligibility or level of benefits.

- 29. Covered families:** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which federal, state, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.
- 30. Covered Person:** For lease enforcement, a Tenant, any authorized member of the Tenant's household, a guest, or another person under the Tenant's control.
- 31. Custody:** To permit children to be considered family.
- 32. Dating violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
- a. The length of the relationship
  - b. The type of relationship
  - c. The frequency of interaction between the persons involved in the relationship
- 33. Day laborer:** An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.
- 34. Dependent:** A member of the family (which excludes foster children, foster adults and unborn child) other than the family head or spouse, who is under eighteen (18) years of age, or is a person with a disability, or is a full-time student.
- 35. Designated Housing (or designated development):** A development or portion of a development designated for a specific person (e.g., elderly housing per the Senior Designated Housing Plan).

- 36. Disability assistance expenses:** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member, and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.
- 37. Disabled family:** A family whose head, cohead, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.
- 38. Disabled person:** See definition “person with disabilities”.
- 39. Disallowance:** Exclusion from annual income.
- 40. Displaced family:** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.
- 41. Displaced Person:** A person displaced by governmental action or whose dwelling has been extensively damaged or destroyed due to a disaster declared or formally recognized pursuant to federal disaster relief laws. A family may also be displaced for redevelopment activities as defined in the Uniform Relocation Act. Such families have been displaced if they have been required to permanently move from real property for the rehabilitation or demolition of such property. These families may be entitled to specified benefits under the Uniform Relocation Act. **49 CFR § 24.2.**
- 42. Domestic violence:** Felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of

physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:

- a. The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim.
- b. A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner.
- c. A person with whom the victim shares a child in common.
- d. A person who commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction.

**43. Domicile:** The legal residence of the household head or spouse as determined in accordance with state and local law.

**44. Drug-related criminal activity:** The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug.

**45. Earned income:** Income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, Social Security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

**46. Economic abuse:** Behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion,

fraud, and manipulation to:

- a. Restrict a person's access to money, assets, credit, or financial information
- b. Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
- c. Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty

**47. Economic self-sufficiency program:** Any program designed to encourage, assist, train, or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see 24 CFR 5.603(c).

**48. Effective date:** The "effective date" of an examination or reexamination refers to: (i) in the case of an examination for admission, the date of initial occupancy and (ii) in the case of reexamination of an existing tenant, the date the redetermined rent becomes effective.

**49. Elderly family:** A family whose head, cohead, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

**50. Elderly person:** An individual who is at least 62 years of age.

**51. Eligible family:** A family that is income eligible and meets the other

requirements of the 1937 Act and Part 5 of 24 CFR.

**52. Eligible Immigration Status:** For a non-citizen, verification of immigration status eligible for assisted housing consisting of a signed certification and the original copy of an acceptable United States Citizenship and Immigration Services (USCIS) document.

**53. Emergency Applicants who are Victims of Federally Declared Disasters:** Families or individuals displaced from their permanent residence due to a federally declared disaster and apply for PRPHA housing.

**54. Employer identification number (EIN):** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

**55. Evidence of citizenship or eligible status:** The documents which must be submitted as evidence of citizenship or eligible immigration status. (See 24 CFR 5.508(b).)

**56. Extenuating Circumstances:** Circumstances that, by their serious, unpredictable, or uncontrollable nature, warrant an exception to the policies in place.

**57. Extremely low-income family:** A family whose annual income does not exceed the federal poverty level or thirty (30) percent of the median income for the area as determined by HUD, whichever number is higher, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than thirty (30) percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. (See 24 CFR 5.603.)

**58. Facility:** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock, or other real or personal property or interest in the property.

**59. Fair Housing Act:** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.



- 60. Fair market rent (FMR):** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.
- 61. Family:** Please refer to Article III.1 for the definition.
- 62. Family self-sufficiency program:** The program established by a PRPHA within its jurisdiction to promote self-sufficiency among tenants, including the coordination of supportive services to these families (24 CFR 984.103).
- 63. Federal agency:** A department of the executive branch of the federal government.
- 64. Flat rent:** Rent that is based on the market rent charged for comparable units in the private unassisted rental market, set at no less than eighty (80) percent of the current fair market rent (FMR), eighty (80) percent of the small area fair market rent (SAFMR), or eighty (80) percent of the unadjusted rent, with utility allowances applied as necessary. The unadjusted rent is the FMR estimated directly from source data that HUD uses to calculate FMRs in nonmetropolitan areas.
- 65. Foster adult:** A member of the household who is eighteen (18) years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.
- 66. Foster Care:** Situation in which the family cares for a foster adult(s) or child(ren) in their home who has been placed there by an authorized placement agency (e.g. public child welfare agency) or by legal judgment, decree, or other order of any court of competent jurisdiction.

These individuals are household members but are not family members and have no rights as remaining family members because they do not have the legal capacity to remain in the home without an authorized remaining family member eligible to assume the role of the head of household.

- 67. Foster child:** A member of the household who meets the definition of a foster child under State law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.
- 68. Foster childcare payment:** A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.
- 69. Full-time student:** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (See 24 CFR 5.603)
- 70. Gender identity:** Actual or perceived gender-related characteristics.
- 71. Gift Income:** Monetary support a household member receives regularly from an outside source, either from an individual or organizations. Contributions are not necessarily monetary amounts given directly to the household; they may also include regular payments of a bill or expense.
- 72. Good Cause:** Adequate or substantial grounds or reason to take a certain action not related to considerations of membership in a protected class. What constitutes a good cause will be determined on a case-by-case basis.
- 73. Grievance Hearing:** An administrative hearing accordance to a resident regarding any dispute(s) the tenant may have with respect to PRPHA/Management Agent action or failure to act in accordance with resident's lease or PRHA regulations which adversely affect the resident's

rights, duties, welfare, or status, or an administrative hearing involving an individual who claims remaining family member status and wants to succeed to a lease.

**74. Guest:** A person temporarily visiting or staying in the unit with the consent of the Tenant or other household member who has express or implied authority to consent on behalf of the Tenant.

**75. Handicap:** Any condition or characteristic that renders a person an individual with handicaps. *(See person with disabilities definition.)*

**76. Head of household:** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

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

**78. Homeless:** Families or individuals (a) residing in homeless hotels, shelters or place not meant for human habitation; (b) residing in places not designed for, or ordinarily used as a regular sleeping accommodation (e.g., parks, bus depots, or automobiles); (c) exiting health care facilities (e.g., hospitals) and cannot return to prior housing; or (d) residing in transitional or supportive housing.

**79. HOTMA:** Housing Opportunity through Modernization Act of 2016. Consists of 14 sections of law that affect the Public Housing and Section 8 rental assistance programs.

**80. Household:** A household includes additional people other than the family who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

**81. Housekeeping Violations:** Tenants whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, PRPHA will provide proper notice of a lease violation.

**82. HUD:** The U.S. Department of Housing and Urban Development.

**83. Human trafficking:** A crime involving the exploitation of a person for labor, services, or commercial sex. The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations recognize and define two primary forms of human trafficking:

- a. Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act in which a 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. See 22 U.S.C. § 7102(11)(A).
- b. Forced labor is the recruitment, harboring, transporting, providing, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjecting such person to involuntary servitude, peonage, debt bondage, or slavery. See 22 U.S.C. § 7102(11)(B).

**84. Imputed asset:** An asset disposed of for less than fair market value during the two (2) years preceding examination or reexamination.

**85. Imputed asset income:** When the value of net family assets exceeds \$50,000 and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

**86. Imputed welfare income:** An amount of annual income that is not actually received by a family because of a specified welfare benefit reduction but is included in the family's annual income and therefore reflected in the

family's rental contribution.

**87. Income-based rent:** A tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

**88. Income information:** means information relating to an individual's income, including:

- a. All employment income information known to current or previous employers or other income sources;
- b. All information about wages, as defined in the state's unemployment compensation law, including any social security number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, employer identification number of an employer reporting wages under a state unemployment compensation law;
- c. Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received;
- d. Unearned IRS income and self-employment wages and retirement income;
- e. Wage, social security, and supplemental security income data obtained from the Social Security Administration.

**89. Income Limits:** HUD established an Area Median Income level and a set of resulting income limits for each geographical area of the USA and territories. PRHA/Management Agents use the income limits to determine the eligibility of applicants to the program and/or receive housing assistance.

**90. Income Validation Tool (IVT):** Accessible through HUD's EIV system, provides validation of tenant reported wages, unemployment compensation, and Social Security benefits by comparing the income

reported in IMS-PIC via form HUD-50058 to information received from the Department of Health and Human Services' (HHS) National Directory of New Hires (NDNH), and the Social Security Administration (SSA) data sharing agreements.

- 91. Independent contractor:** An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.
- 92. Individual with handicaps:** See "person with disabilities" definition.
- 93. Jurisdiction:** The area in which the PRPHA has authority under state and local law to administer the program.
- 94. Lease:** A written agreement between the PRPHA and a tenant family for the leasing of a public housing unit. The lease establishes the legal relationship between the PRPHA and the tenant family.
- 95. Lease Compliance Screening:** A determination of whether a splitting family member would be lease compliant with the lease by demonstrating no serious or repeated violations of the lease terms, with a criminal background check review.
- 96. Limited Spanish Proficiency (LSP) Individual:** A person who does not speak Spanish as their primary language and who has a limited ability to read, write, speak, or understand Spanish can be LSP and is entitled to language assistance with respect to a particular type of service or benefit.
- 97. Live-in aide:** A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:
- a. Is determined to be essential to the care and well-being of the person.

- b. Is not obligated for the support of the persons; and would not be living in the unit except to provide the necessary supportive services.
  - c. Live-in aides have no rights as remaining family members upon death, eviction, departure, or abandonment of the Tenant or the family member with disability requiring the live-in aide's services.
- 98. Local preference:** A preference used by the PRPHA to select among applicant families.
- 99. Low-income family:** A family whose income does not exceed eighty (80) percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than eighty (80) percent for areas with unusually high or low incomes.
- 100. Low-Income Housing Tax Credit:** The Low-Income Housing Tax Credit (LIHTC) program is a resource for creating affordable housing in the United States. Created by the Tax Reform Act of 1986, the LIHTC program gives State and local LIHTC-allocating agencies annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households. All units or properties participating in this program are regulated by Section 42 of the Internal Revenue Services (IRS).
- 101. Minimum rent:** An amount established by the PHA of \$25.00 to \$50.00.
- 102. Minor:** A member of the family household other than the family head, cohead or spouse, who is under eighteen (18) years of age.
- 103. Mixed family:** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.
- 104. Monthly adjusted income:** income after applying certain allowable deduction.
- 105. Monthly income:** gross income received monthly.

- 106. National.** A person who owes permanent allegiance to the United States, for example, because of birth in a United States territory or possession.
- 107. Near-elderly family:** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.
- 108. Net family assets:** (1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment. (2) In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets. (3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all non-necessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners



and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family. (4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

**109. Noncitizen:** A person who is neither a citizen nor national of the United States.

- 110. Non-Housing Program:** All or any PRPHA-owned portions of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property or structure is located. A Non-Housing Program includes, but is not limited to, common areas, entrances, elevators, PRPHA's offices and the offices of private management companies, community centers, daycare facilities, senior citizen centers, social service offices, mail delivery, laundry rooms/facilities and trash disposal. Furthermore, Non-Housing programs include any aid, benefit, or service provided by PRPHA, policies, administrative procedures, services, and non-tangible matters whose operation contributes to the application for housing, full enjoyment of housing, and full participation in PRPHA's housing programs.
- 111. Non-public housing over-income family:** A family whose income exceeds the over-income limit for twenty-four (24) consecutive months and is paying the alternative non-public housing rent.
- 112. Non-Recurring Income:** Income that will not be repeated in the coming year.
- 113. Other Person Under the Tenant's Control:** A person who, although is not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the Tenant or other member of the household who has express or implied authority to so consent on behalf of the Tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not "under the Tenant's control."
- 114. Over-income family:** A family whose income exceeds the over-income limit.
- 115. Over-income limit:** The over-income limit is determined by multiplying

the applicable

- a. income limit for a very low-income family, as defined in 24 CFR 5.603(b), by a factor of 2.4.

- 116. Participant (participant family):** A family that has been admitted to the PHA program and is currently assisted in the program.
- 117. Pension:** Retirement benefits received by the resident on a regularly scheduled basis.
- 118. Periodic Benefit:** Benefits received by the resident on a regularly scheduled basis.
- 119. Person with disabilities:** *For the purposes of program eligibility.* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes people with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation.* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.
- 120. Premises:** The building or complex in which the dwelling unit is located, including common areas and grounds.
- 121. Prohibited Tobacco Product:** Any item that involves the ignition and burning of tobacco leaves, including cigars, pipes, and water pipes (hookahs).
- 122. PRPHA:** The Puerto Rico Public Housing Administration. The definition includes PRPHA, its contractors and Management Agents. Whenever the term PRPHA/Management Agent is used in this policy, means that

any action may be done by the PRPHA of the Management Agent in charge of the unit or development.

- 123. Public assistance:** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.
- 124. Public housing agency (PHA):** Any state, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.
- 125. Qualified Individual with a Disability:** An individual with disabilities who meets the essential eligibility requirements, including stated eligibility requirements, such as income, and other explicit or implicit requirements inherent in the nature of the program or activity.
- 126. Real property:** Has the same meaning as that provided under the law of the State in which the property is located.
- 127. Reasonable accommodation:** A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA's programs or services.
- 128. Reasonable Costs, Reasonable Efforts and Reasonable Standards:** All these terms rely on the "reasonable person" standard, a law concept. The "reasonable person" is a hypothetical individual who approaches any situation with appropriate caution and then sensibly acts. It is a standard created to provide courts and juries with an objective test to decide whether a person's actions constitute negligence. This does not mean they must be perfect. Mistakes are made, and when an error is reasonable under the circumstances, a person may not be liable.
- 129. Recertification:** Sometimes called *reexamination*. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional

changes to be reported.

- 130. Refusal of Housing:** An applicant's choice not to accept a PRPHA offer of housing without good cause.
- 131. Regular Contributions:** Monetary support a household member receives regularly from an outside source, either from individuals or organizations. Contributions are not necessarily monetary amounts given directly to the household, but also include regular payments of a bill or expense.
- 132. Rejection for Housing:** A determination made by PRPHA not to accept an applicant either because of ineligibility or failing applicant screening.
- 133. Remaining Family Members:** Family members listed on the unit's lease that remain in the unit when the head of household dies or leaves the unit without a housing subsidy. Continued occupancy by remaining family members is permissible only if one or more family members on the lease living in the household can pass applicant screening and is age eighteen (18) years or over. Household members do not have rights as remaining family members.
- a. Live-in aides, foster children, or foster adults are considered household members and have no rights as remaining family members upon the death, eviction, departure, or abandonment of the Tenant family.
- 134. Remaining member of the tenant family:** The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age forty seven (47) who is not disabled).
- 135. Responsible entity:** For the public housing program, the PHA administers the program under an ACC with HUD.
- 136. Seasonal Worker:** An individual who is hired into a short-term position and the employment begins the same time each year (such as summertime or winter). Typically, the individual is hired to address

seasonal demands that arise for a particular employer or industry. (24 CFR § 5.603 (b)).

137. **Secretary:** The Secretary of Housing and Urban Development.
138. **Section 8:** Section 8 of the United States Housing Act of 1937; refers to the housing choice voucher program.
139. **Service Animal:** An animal that is individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the animal must be directly related to the person's disability. An example of a service animal is a guide dog for a blind or visually impaired individual.
140. **Service Provider:** A person or organization qualified and experienced in providing supportive services that follows applicable licensing requirements imposed by state or local law for the type of service to be provided. The service provider may be either a for-profit or a non-profit entity.
141. **Sexual Abuse:** includes violations of federal law where a person knowingly (1) causes another person to engage in a sexual act by threatening or placing that other person in fear; or (2) engages in a sexual act with another person if that other person is (a) incapable of appraising the nature of the conduct or (b) communicating unwillingness to engage in, that sexual act. See also Domestic Violence, Dating Violence, and Stalking.
142. **Sexual assault:** Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a))
143. **Sexual orientation:** Homosexuality, heterosexuality or bisexuality.
144. **Single person:** A person living alone or intending to live alone.
145. **Site-based Waitlists:** Lists of applicants based on their preferred housing location. Once the initial site-based lists have been established, all

applicants will be informed of the length of each list. Ranking preferences establish the placement order on the waitlist but do not guarantee admission.

- 146. Social security number (SSN):** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.
- 147. Specified welfare benefit reduction:** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.
- 148. Spouse:** The marriage partner of the head of household.
- 149. Stalking:** To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- 150. Student Aide/Assistance:** All payments received from scholarships, educational entitlement, grants, work study programs, and/or financial aid packages, even if earmarked for general living expenses.
- 151. Technological abuse:** An act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass,

impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:

- a. Internet enabled devices
  - b. Online spaces and platforms
  - c. Computers
  - d. Mobile devices
  - e. Cameras and imaging programs
  - f. Apps
  - g. Location tracking devices
  - h. Communication technologies
  - i. Any other emergency technologies
- 152. Tenant:** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.
- 153. Tenant-Caused Damages:** Damages to the unit beyond normal wear and tear will be billed to the tenant.
- 154. Tenant rent:** The amount payable monthly by the family as rent to the PRPHA.
- 155. Total tenant payment (TTP):** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.
- 156. Transfer Waitlist:** Lists of Tenants who are required by PRPHA to transfer or request a transfer. Transfers will be processed in accordance with the ACOP. Except for Tenant initiated transfers, all transfer types have priority over new admissions from a PRPHA waitlist.
- 157. Tobacco and Marijuana Restricted Area:** Any public housing apartment and building interior or exterior, including lobbies, hallways, elevators, stairwells, porches, balconies, fire escapes, laundry rooms, management offices, basements, Resident Association spaces, community facilities, day care centers, and outdoor areas within 25 feet of public housing



buildings, or to PRHA's property boundary where that boundary is less than 25 feet from a PRHA building.

- 158. Unauthorized Occupant:** An unauthorized occupant is a person residing in the assisted unit without the consent or written approval of PRPHA.
- 159. Unearned income:** Any annual income, as calculated under § 5.609, that is not earned income.
- 160. Uniform Federal Accessibility Standards (UFAS):** Standards for the design, construction, and alteration of publicly owned Tenant structures to ensure that physically disabled persons will have ready access to and use of such structures.
- 161. Utilities:** Water, electricity service. Telephone service is not included.
- 162. Utility allowance:** A monthly utility allowance that reflects a reasonable number of utilities for the specific size and type of unit occupied. The utility allowance is deducted from the Tenants TTP only if the Tenant is paying some or all the unit's utility bills. The current utility allowance amount is based off a schedule in the housing management system.
- 163. Utility reimbursement:** The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment (TTP) for the family occupying the unit. Families paying flat rent do not receive utility allowances and, consequently, will never qualify for utility reimbursement.
- 164. Veteran:** A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.
- 165. Very Low-Income Family:** A family with an annual income less than 50% of the AMI, adjusted for family size, as determined by HUD.
- 166. Victims of Domestic Violence:** Victims of felony or misdemeanor crimes of violence committed by a family member, current or former spouse, intimate partner, person similarly situated to a spouse of the victim under

local government domestic or family violence laws, or any other person who committed felony or misdemeanor crimes of violence against an adult or youth victim who is protected from local government domestic or family violence laws.

- 167. *Violence Against Women Act (VAWA)*:** Prohibits denying admission to, denying assistance under, or evicting from a public housing unit an otherwise qualified applicant or tenant on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.
- 168. *Violent criminal activity*:** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.
- 169. *Visitor*:** See definition of Guest
- 170. *Waiting list*:** A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available. Welfare assistance. Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, childcare or other services for working families. For the FSS program (24 CFR 984.103), welfare assistance includes only cash maintenance payments designed to meet a family's ongoing basic needs. Does not include nonrecurring short term benefits designed to address individual crisis situations, work subsidies, supportive services such as child care and transportation provided to families who are employed, refundable earned income tax credits, contributions to and distributions from Individual Development Accounts under TANF, services such as counseling, case management, peer support, child care information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment- related

services that to not provide basic income support, amounts solely directed to meeting housing expenses, amounts for health care, Supplemental Nutrition Assistance Program (SNAP) and emergency rental and utilities assistance, SSI, SSDI, or social security, and child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not the need of the child's current non-parental caretaker.

## **CHAPTER XIX: SUPPLEMENTAL PROVISIONS**

### **ARTICLE XIX.1 FEDERAL REGULATIONS PREVAIL**

The amounts, calculations and other requirements set forth in this regulation reflect the terms and conditions of federal public housing regulations in effect at the time of submission to the Puerto Rico Department of States. The PRPHA acknowledges that HUD or any other agency with jurisdiction may amend, substitute, or repeal at any time federal regulations, instructions and/or guidance applicable to the PRPHA's public housing program. In such event, the PRPHA shall apply the most recent version of the applicable regulations, instructions and/or guidance, without the need to amend this regulation; provided, however, that the most recent version of the regulation, instruction or guidance will be published as a Guidance Document, as provided in Section 2.20 of the Uniform Administrative Procedures Act, as amended.

### **ARTICLE XIX.2 HUD-ASSISTED DEDUCTIONS [NOTICE PIH-2023-27]**

The changes in the deduction mentioned in this ACOP will be applied once the HUD Housing Information Portal (HIP) is implemented.

### **ARTICLE XIX.3 SEVERABILITY CLAUSE**

The provisions of this Regulation are severable from each other. If any article, section, subsection, paragraph, word, sentence or part of this Regulation is

declared unconstitutional, invalid or null by a court with competent jurisdiction, such declaration will not affect, impair or invalidate the remaining provisions and parts of this Regulation. In such case, its effect will be limited to the article, section, subsection, paragraph, word, sentence or specific part and it will not be understood that it affects or damages in any way its application or validity in any other instance of the Regulation.

#### **ARTICLE XIX.4 REPEALING CLAUSE**

Any circular, Administrative Order, Rule or Regulation inconsistent with the provisions of this Regulation is hereby repealed or modified accordingly. This Regulation expressly revokes Regulation No. 8624, adopted on July 31, 2015, known as "*Reglamento sobre las Políticas de Admisión y Ocupación Continuada en los Residenciales Públicos del Estado Libre Asociado de Puerto Rico*".

#### **ARTICLE XIX.5 PREVAILING VERSION**

This Regulation is originally adopted in the English language, therefore a translation to the Spanish language is included. In case of any inconsistency between both versions, the English version will prevail.

#### **ARTICLE XIX.6 EFFECTIVE DATE**

This Regulation shall take effect thirty (30) days after its filing date to the Department of State of the Government of Puerto Rico.

APPROVED in San Juan, Puerto Rico, on the \_\_\_\_ of \_\_\_\_\_ 2024.

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**William Rodríguez Rodríguez**  
**President**  
**Public Housing Administration's Governing Board**

## EXHIBIT

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

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

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

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the 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 public housing program

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

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

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

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

### A. Person with Disabilities [24 CFR 5.403]

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

1. Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:  
Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months  
In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period.
2. Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:
  - a. IN GENERAL – The term *developmental disability* means a severe, chronic disability of an individual that-
    - (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
    - (ii) is manifested before the individual attains age 22;
    - (iii) is likely to continue indefinitely;
    - (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) self-care, (II) receptive and expressive language, (III) learning, (IV) mobility, (V) self-direction, (VI) capacity for independent living, (VII) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

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

3. Has a physical, mental, or emotional impairment that is expected to be of long continued and indefinite duration; substantially impedes their ability to live independently and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.
4. 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.

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

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.



The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

1. Physical or mental impairment includes:
  - a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.
  - b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
2. Major life activities mean functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
3. Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
4. Is regarded as having an impairment means:
  - a. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

- b. has a physical or mental impairment that substantially limits one or more major life activities only because of the attitudes of others toward such impairment;
- c. has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

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**EXHIBIT 3-2: TYPE OF CRIMINAL ACTIVITY OR OFFENSE/DRUG ABUSE**

<b>Type of Criminal Activity or Offense/Drug Abuse</b>	<b>Action</b>
Convicted of producing methamphetamine on the premises of federally assisted housing	Mandatory denial.
Subject to a lifetime registration requirement under a State sex offender program	Mandatory denial.
Determined to be currently engaging in illegal use of a controlled substance	Mandatory denial
Reasonable cause to believe that illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents	Mandatory denial
Evicted from federally assisted housing for drug-related criminal activity within the last three years, UNLESS <ul style="list-style-type: none"> <li>• The circumstances leading to the eviction no longer exist, or</li> <li>• The evicted household member has successfully completed an approved supervised drug rehabilitation program</li> </ul>	Mandatory 3-year denial on admission, except if specified conditions are met then PHA may exercise discretion
History of drug-related criminal activity	Discretionary denial
History of violent criminal activity	Discretionary denial
History of criminal activity that adversely affects the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, persons residing in the immediate vicinity of the premises, or public housing agency employees	Discretionary denial

**EXHIBIT 6-1: ANNUAL INCOME FULL DEFINITION**

**24 CFR 5.609**

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

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

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

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

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

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from— (

- 1) The Federal government;
- (2) A State, Tribe, or local government;
- (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
- (4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- (5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

- (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
- (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (
- 3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12)

(i) 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);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount 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.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, 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 unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) 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.

(14) Earned income of dependent fulltime students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(16) 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 in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) 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.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude 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 paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) 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; and

(ii) 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.



## **EXHIBIT 6-2: TREATMENT OF FAMILY ASSETS**

### **24 CFR 5.603(b) Net Family Assets**

(1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all nonnecessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in

which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

**EXHIBIT 6-3: THE EFFECT OF WELFARE BENEFIT REDUCTION  
24 CFR 5.615**

**Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income**

(a) **Applicability.** This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

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

**Covered families.** Families who receive welfare assistance or other public assistance benefits (“welfare benefits”) from a State or other public agency (“welfare agency”) under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

**Economic self-sufficiency program.** See definition at Sec. 5.603.

**Imputed welfare income.** The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

**Specified welfare benefit reduction.**

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) “Specified welfare benefit reduction” does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency

economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) **Imputed welfare income.**

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

**(d) Review of PHA decision.**

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

**(e) PHA relation with welfare agency.**

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare

benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

**Exhibit 7-1: Summary of Documentation Requirements for Noncitizens [HCV GB, pp. 5-9 and 5-10]**

<ul style="list-style-type: none"> <li>• All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.</li> <li>• Except for persons 62 or older, all noncitizens must sign a verification consent form</li> <li>• Additional documents are required based upon the person's status.</li> </ul>	
<p><b>Elderly Noncitizens</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	
<p><b>All other Noncitizens</b></p> <ul style="list-style-type: none"> <li>• Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</li> </ul>	
<ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following:               <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 Arrival-Departure Record with no annotation accompanied by:               <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li> </ul>
<ul style="list-style-type: none"> <li>• A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or</li> <li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ul>	

**EXHIBIT 9-1: CALCULATING INCOME AT ANNUAL REEXAMINATION**

**Example 1: Calculating Annual Income at Annual Reexamination Using EIV**

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes

to annual income to the PHA since the 3/1/2023 annual reexamination. The SSA-published 2024 COLA is 7 percent.

Last reexamination – 3/1/2023 Annual Reexamination

<u>Ruby:</u> Wages: \$30,000	<u>Georgia:</u> SSI: \$10,980 (\$915 monthly)
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The EIV report pulled on 12/15/2023

<u>Ruby:</u>	<u>Georgia:</u>
Wages Total: \$33,651	SSI Total: \$10,980
Quarter 3 of 2023: \$8,859 (City Public School)	2023 benefit \$915 monthly
Quarter 2 of 2023: \$8,616 (City Public School)	
Quarter 1 of 2023: \$8,823 (City Public School)	
Quarter 4 of 2022: \$7,353 (City Public School)	

Income Reported on Reexamination Application

<u>Ruby:</u> Wages at City Public School: \$32,000 (switched jobs but no permanent change to amount)	<u>Georgia:</u> SSI benefits: \$10,980 (no changes)
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<u>Calculating Ruby’s wages:</u> Step 1: Determine prior annual income from EIV (i.e., Q4 2022 through Q3 of 2023: \$33,651). Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination). Step 3: Ruby certifies that the \$33,651 of wages in EIV is accurate and reflects her current annual income, so the PHA will use \$33,651 for annual wages for the 3/1/2024 annual reexamination given there have been no additional changes to annual income.	<u>Calculating Georgia’s SSI benefit:</u> Step 1: Determine the prior annual income from EIV (i.e., \$915 x 12 months: \$10,980). Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination). Step 3: Ruby certifies the SSI income in EIV is accurate and reflects Georgia’s current annual income. The PHA must adjust the prior-year income (2023 SSI benefit) by the 7- percent COLA and will use this amount to calculate annual SSI income for the 3/1/2024 annual reexamination: COLA: \$64.05 (\$915 x 0.07) New gross SSI benefit: \$11,748.60 (\$979.05 x 12 months)
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If Ruby did not agree with the annual wages reported in EIV, the PHA/MFH Owner would be required to verify her current income in accordance with HUD’s verification hierarchy.

Summary of Annual Income (as reported on the HUD-50058)

Ruby (Head of Household): Other Wage: \$33,651 Myers Family Total Annual Income: \$45,399	Georgia (Other Youth Under 18): SSI: \$11,748
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**Example 2: Calculating Annual Income at Annual Reexamination Using EIV:  
Family Disagrees with EIV**

Staff are processing Paul Hewson’s 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha’s Sweets to a part-time job at Viking Bakery. Following HUD’s EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha’s Sweets and decreased his anticipated annual income from \$28,000 to \$7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.

5/1/2023 Annual Reexamination

Wages: \$28,000

The EIV report pulled on 1/15/2024

Wages Total: \$18,271
Quarter 3 of 2023: \$2,500 (Viking Bakery)
Quarter 3 of 2023: \$796 (Sweet Tooth Candy Bar)
Quarter 2 of 2023: \$1,300 (Sasha’s Sweets)
Quarter 2 of 2023: \$584 (Larry’s Concessions)
Quarter 2 of 2023: \$2,401 (Viking Bakery)
Quarter 1 of 2023: \$6,500 (Sasha’s Sweets)
Quarter 4 of 2022: \$600 (Sasha’s Sweets)
SS/SSI: No history of benefits

Income Reported on Reexamination Application

Wages: \$0 (permanent change; no longer receiving)

Social Security: \$14,400 (\$1,200 monthly)

Paul certified on the PHA’s annual reexamination paperwork that he does not agree with the annual wages of \$18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of \$1,200 effective 3/1/2024.

Calculating Wages and SS Benefit

Step 1: Determine prior annual income taking into consideration the 7/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: \$18,271)

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to \$7,500.

Step 3: Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all.

Process the annual reexamination effective 5/1/2024 using annual SS income of \$14,400 and \$0 wages.

Summary of Annual Income (as reported on the HUD-50058)

Paul (Head of Household): \$14,400 (SS)  
Hewson Family Total Annual Income: \$14,400

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**Example 3: Calculating Annual Income at Annual Reexamination**

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from \$200 to \$100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha’s daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the PHA did not establish a lower threshold. Samantha did not report any additional changes to the PHA.

<u>Last reexamination – 11/1/2023 Annual Reexamination</u>	
<u>Samantha:</u> Business income: \$28,000 VA disability pension: \$12,000 Child support: \$2,400	<u>Fergus:</u> Wages: \$8,250 Other non-wage income: \$3,000 (Go Fund Me online fundraiser)

The EIV report pulled on 9/16/2024

<u>Samantha:</u> Wages Total: \$0 (no wage data reported since Q1 2023)	<u>Fergus:</u> Wages Total: \$8,600 Quarter 1 of 2024: \$2,100 (Ian’s Fish ‘n’ Chips) Quarter 1 of 2024: \$500 (Claire’s Healthcare Supplies) Quarter 4 of 2023: \$1,000 (Claire’s Healthcare Supplies) Quarter 3 of 2023: \$1,800 (The Onion Garden Shop) Quarter 2 of 2023: \$3,200 (Ivar’s Fish Haus)
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Current Family Circumstances: Income Reported on Reexamination Application  
Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on PHA’s annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian’s Fish ‘n’ Chips for the annual reexamination. The family supplied the supporting documentation noted below to the PHA for the 11/1/2024 annual reexamination.

<u>Samantha:</u> Business income: \$28,750 (last year); has decreased to \$18,000 (permanent change) VA disability benefit: \$12,000 (last year); has increased to \$12,300 (permanent change) Child support: \$2,400 (last year); has decreased to \$1,200 (permanent change)	<u>Fergus:</u> Wages: \$6,000
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Calculating Samantha’s Net Business Income  
Step 1: Determine prior annual net business income (i.e., \$28,000 on last HUD–50058.



Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to \$18,000. The PHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is \$18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.

#### Calculating Samantha's VA Pension Income

Step 1: Determine prior annual VA pension income (i.e., \$12,000 supported by a VA award letter Samantha supplied that documents the prior year monthly VA pension was \$1,000).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The PHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of \$1,025, or \$12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 (\$12,300 in this example).

#### Calculating Samantha's Child Support Income

Step 1: Determine prior annual child support income (i.e., \$2,400 on the last HUD-50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from \$200 to \$100 monthly, but the change was not processed because it did not meet the threshold.

Step 3: The family reported changes, so the PHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular \$100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 (\$1,200 in this example).

#### Calculating Fergus' Wages

Step 1: Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: \$8,600).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: There is a discrepancy between what the family reported and EIV, so the PHA must verify and adjust to reflect current annual income from wages. Fergus reported \$6,000 in annual income from wages on the annual reexamination from a single employer, Ian's Fish 'n' Chips. The PHA projected annual income of \$7,800 based on the two paystubs for this employer, and EIV shows

\$8,600 earned in the most recent four quarters in EIV. To complete Step 3, the PHA must do the following:

- Resolve the discrepancy between EIV wages, the \$6,000 annual income Fergus reported, and the \$7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire’s Healthcare Supplies in accordance with HUD’s verification hierarchy and local policies.

The PHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of \$9,000. The PHA verified Fergus was no longer employed at Claire’s Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn \$9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 (\$9,360 in this example).

<u>Calculating Fergus’ Other Non-Wage Income</u>	
Step 1: Determine prior annual income from other non-wage income (i.e., \$3,000 on the last HUD– 50058).	
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.	
Step 3: The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD–50058. The PHA must verify and adjust to reflect current non-wage income. The PHA must verify no income was received through a “Go Fund Me” online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn’t solicited funds online and doesn’t plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of \$0 determined in Step 3.	
<u>Summary of Annual Income (as reported on the HUD-50058)</u>	
Samantha (Head of Household): Own business: \$18,000 Pension: \$12,300 Child support: \$1,200	Fergus (Co-head): Wages: \$9,360
Poole Family Total Annual Income: \$40,860	

## EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY

### A. Background

The Quality Housing and Work Responsibility Act of 1998 requires that all nonexempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

### B. Definitions

**Community Service:** community service activities include, but are not limited to, work at:

1. Local public or nonprofit institutions such as schools, head start programs, before or after school programs, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
2. Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
3. Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
4. Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts

5. PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
6. Care for the children of other residents so parent may volunteer

**Note:** Political activity is excluded.

**Self-Sufficiency Activities:** self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

**Exempt Adult:** an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i] [l] or 1614 of the Social Security Act), and who certifies that because of this disability they are unable to comply with the service provisions, or is the primary caretaker of such an individual
- Is engaged in *work activities*
- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the

state in which the PHA is located, including a state-administered welfare-to-work program; or

- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program
- Is a member of a non-public housing over-income family.

PHAs can use reasonable guidelines in clarifying the work activities in coordination with TANF, as appropriate.

**Work Activities:** as it relates to an exemption from the community service requirement, *work activities* mean:

1. Unsubsidized employment
2. Subsidized private sector employment
3. Subsidized public sector employment
4. Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
5. On-the-job training
6. Job search and job readiness assistance
7. Community service programs
8. Vocational educational training (not to exceed 12 months with respect to any individual)
9. Job skills training directly related to employment
10. Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
11. Satisfactory attendance at secondary school or in a course of study

leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate

12. Provision of childcare services to an individual who is participating in a community service program

### **C. Requirements of the Program**

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month or may be aggregated across a year. Any blocking of hours is acceptable as long as 96 hours is completed by each annual certification of compliance.
3. Family obligation:
  - At lease execution, all adult members (18 or older) of a public housing resident family must:
    - Sign a certification that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
    - Declare if they are exempt. If exempt, they must complete the Exemption Form and provide documentation of the exemption.
  - Upon written notice from the PHA, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying the number of hours.
  - If a family member is found to be noncompliant at the end of the 12-month lease term, they, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be

terminated.

- At annual reexamination, the family must also sign a certification certifying that they understand the community service requirement.

4. Change in exempt status:

- If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is their responsibility to report this to the PHA and provide documentation of exempt status.
- If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is their responsibility to report this to the PRPHA. Upon receipt of this information the PRPHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

#### **D. Authority Obligation**

1. To the greatest extent possible and practicable, the PRPHA will:
  - Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.
  - Provide in-house opportunities for volunteer work or self-sufficiency activities.
2. The PHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, the PRPHA will verify the exemption status in accordance with its verification policies. The PRPHA will make the final determination as to whether a family member is exempt

from the community service requirement. Residents may use the PRPHA's grievance procedure if they disagree with the PRPHA's determination.

4. Noncompliance of family member:

- At least thirty (30) days prior to the end of the twelve (12) month lease term, the PRPHA will begin reviewing the exempt or nonexempt status and compliance of family members;
- If, at the end of the initial twelve (12) month lease term under which a family member is subject to the community service requirement, the PRPHA finds the family member to be noncompliant, the PRPHA will not renew the lease unless:
  - The head of household and any other noncompliant resident enter into a written agreement with the PRPHA, to make up the deficient hours over the next twelve (12) month period; or
  - The family provides written documentation satisfactory to the PRPHA that the noncompliant family member no longer resides in the unit.
- If, at the end of the next twelve (12) month lease term, the family member is still not compliant, a thirty (30) day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to the PRPHA that the noncompliant family member no longer resides in the unit;
- The family may use the PRPHA's grievance procedure to dispute the lease termination.

All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

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Resident

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Date



**EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(I) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE**

**Social Security Act:**

**216(i)(1):** Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

**Section 1416 (excerpt):**

SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term “aged, blind, or disabled individual” means an individual who—

- (A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and
- (B) (i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States because of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or (ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (because of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.