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**Excerpts from Code of Federal Regulations, Title 24 (24 CFR)****PART 5 GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS****Subpart A Generally Applicable Definitions and Federal Requirements; Waivers****5.100 Definitions.**

The following definitions apply to this part and also in other regulations, as noted:

*1937 Act* means the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

*ADA* means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

*ALJ* means an administrative law judge appointed to HUD pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

*Covered person*, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.

*Department* means the Department of Housing and Urban Development.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

*Elderly Person* means an individual who is at least 62 years of age.

*Fair Housing Act* means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.).

*Fair Market Rent (FMR)* means the rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. This Fair Market Rent includes utilities (except telephone). Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the *Federal Register* in accordance with part 888 of this title.

*Federally assisted housing* (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

- (1) Public housing;
- (2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);
- (3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);
- (4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;
- (5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);
- (6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715(d)(5));
- (7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or
- (8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

*General Counsel* means the General Counsel of HUD.

*Grantee* means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.

*Guest*, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982, 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. The requirements of parts 966 and 982 apply to a guest as so defined.

*Household*, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.

*HUD* means the same as Department.

*MSA* means a metropolitan statistical area.

*NAHA* means the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.).

*NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*NOFA* means Notice of Funding Availability.

*OMB* means the Office of Management and Budget.

*Organizational Unit* means the jurisdictional area of each Assistant Secretary, and each office head or field administrator reporting directly to the Secretary.

*Other person under the tenant's control*, for the purposes of the definition of *covered person* and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as *premises* is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

*Premises*, for purposes of 24 CFR part 5, subpart I, and parts 960 and 966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

*Public housing* means housing assisted under the 1937 Act, other than under Section 8. 'Public housing' includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.

*Public Housing Agency (PHA)* means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

*Responsible entity* means: (1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD; (2) For all other Section 8 programs, responsible entity means the Section 8 project owner.

*Section 8* means section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

*Secretary* means the Secretary of Housing and Urban Development.

*URA* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201-4655).

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

**Subpart B Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information****5.210 Purpose, applicability, and Federal preemption.**

(a) *Purpose*. This subpart B requires applicants for and participants in covered HUD programs to disclose, and submit documentation to verify, their Social Security Numbers (SSNs). This subpart B also enables HUD and PHAs to obtain income information about

applicants and participants in the covered programs through computer matches with State Wage Information Collection Agencies (SWICAs) and Federal agencies, in order to verify an applicant's or participant's eligibility for or level of assistance. The purpose of this subpart B is to enable HUD to decrease the incidence of fraud, waste, and abuse in the covered programs.

(b) *Applicability*-- (1) This subpart B applies to mortgage and loan insurance and coinsurance and housing assistance programs contained in chapter II, subchapter B, and chapters VIII and IX of this title.

(2) The information covered by consent forms described in this subpart involves income information from SWICAs, and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at 26 U.S.C. 6103. In addition, consent forms may authorize the collection of other information from applicants and participants to determine eligibility or level of benefits.

(c) *Federal preemption*. This subpart B preempts any State law, including restrictions and penalties, that governs the collection and use of income information to the extent State law is inconsistent with this subpart.

### 5.212 Compliance with the Privacy Act and other requirements.

(a) *Compliance with the Privacy Act*. The collection, maintenance, use, and dissemination of SSNs, EINs, any information derived from SSNs and Employer Identification Numbers (EINs), and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(b) *Privacy Act notice*. All assistance applicants shall be provided with a Privacy Act notice at the time of application. All participants shall be provided with a Privacy Act notice at each annual income recertification.

### 5.214 Definitions.

In addition to the definitions in 5.100, the following definitions apply to this subpart B:

*Assistance applicant*. Except as excluded pursuant to 42 U.S.C. 3543(b) and 3544(a)(2), this term means the following:

(1) For any program under 24 CFR parts 215, 221, 236, 290, or 891, or any program under Section 8 of the 1937 Act: A family or individual that seeks rental assistance under the program.

(2) For the public housing program: A family or individual that seeks admission to the program.

(3) For any program under 24 CFR part 235: A homeowner or cooperative member seeking homeownership assistance (including where the individual seeks to assume an existing mortgage).

*Computer match* means the automated comparison of data bases containing records about individuals.

*Computer matching agreement* means the agreement that describes the responsibilities and obligations of the parties participating in a computer match.

*Consent form* means any consent form approved by HUD to be signed by assistance applicants and participants for the purpose of obtaining income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and payments of retirement income), as referenced at 26 U.S.C. 6103(l)(7)(A); and return information for unearned income from the Internal Revenue Service, as referenced at 26 U.S.C. 6103(l)(7)(B). The consent forms expire after a certain time and may authorize the collection of other information from assistance applicants or participants to determine eligibility or level of benefits as provided in 813.109, 913.109, and 950.315 of this title.

*Employer Identification Number (EIN)* means the nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation pursuant to sections 6011(b), or corresponding provisions of prior law, or 6109 of the Internal Revenue Code.

*Entity applicant*. (1) Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), and paragraph (2) of this definition, this term means a partnership, corporation, or any other association or entity, other than an individual owner applicant, that seeks to participate as a private owner in any of the following: (i) The project-based assistance programs under Section 8 of the 1937 Act; (ii) The programs in 24 CFR parts 215, 221, or 236; or (iii) The other mortgage and loan insurance programs in 24 CFR parts 201 through 267, except that the term 'entity applicant' does not include a mortgagee or lender. (2) The term does not include a public entity, such as a PHA, IHA, or State Housing Finance Agency.

*Federal agency* means a department of the executive branch of the Federal Government.

*Income information* means information relating to an individual's income, including: (1) All employment income information known to current or previous employers or other income sources that HUD or the processing entity determines is necessary for purposes of determining an assistance applicant's or participant's eligibility for, or level of assistance in, a covered program; (2) 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; (3) With respect to unemployment compensation: (i) Whether an individual is receiving, has received, or has applied for unemployment compensation; (ii) The amount of unemployment compensation the individual is receiving or is entitled to receive; and (iii) The period with respect to which the individual actually received such compensation; (4) Unearned IRS income and self-employment, wages and retirement income as described in the Internal Revenue Code, 26 U.S.C. 6103(l)(7); and (5) Wage, social security (Title II), and supplemental security income (Title XVI) data obtained from the Social Security Administration.

*Individual owner applicant*. Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), or paragraph (2) of this definition, this term means: (1) An individual who seeks to participate as a private owner in any of: (i) The project-based assistance programs under Section 8 of the 1937 Act; or (ii) The programs in 24 CFR parts 215, 221, 235 (without homeownership assistance), or 236, including where the individual seeks to assume an existing mortgage; or (2) An individual who: (i) Either: (A) Applies for a mortgage or loan insured or coinsured under any of the programs referred to in paragraph (1)(iii) of the definition of 'entity applicant' in this section; or (B) Seeks to assume an existing mortgage or loan; and (ii) Intends to hold the mortgaged property in his or her individual right.

*IRS* means the Internal Revenue Service.

*Owner* means the person or entity (or employee of an owner) that leases an assisted dwelling unit to an eligible family and includes, when applicable, a mortgagee.

*Participant*. Except as excluded pursuant to 42 U.S.C. 3543(b) and 3544(a)(2), this term has the following meaning: (1) For any program under 24 CFR Part 891, or Section 8 of the 1937 Act: A family receiving rental assistance under the program; (2) For the public housing program: A family or individual that is assisted under the program; (3) For 24 CFR parts 215, 221, 236, and 290: A tenant or qualified tenant under any of the programs; and (4) For 24 CFR part 235: A homeowner or a cooperative member receiving homeownership assistance.

*Processing entity* means the person or entity that, under any of the programs covered under this subpart B, is responsible for making eligibility and related determinations and an income reexamination. (In the Section 8 and public housing programs, the 'processing entity' is the 'responsible entity' as defined in 5.100.)

*Social Security Number (SSN)* means 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.

*SSA* means the Social Security Administration.

*State Wage Information Collection Agency (SWICA)* means the State agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the State, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

**Disclosure and Verification of Social Security Numbers and Employer Identification Numbers for Applicants and Participants in Certain HUD Programs**

**5.216 Disclosure and verification of Social Security and Employer Identification Numbers.**

(a) *Disclosure: assistance applicants.* Each assistance applicant must submit the following information to the processing entity when the assistant applicant's eligibility under the program involved is being determined:

- (1)(i) The complete and accurate SSN assigned to the assistant applicant and to each member of the assistant applicant's household who is at least six years of age; and
- (ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(2) If the assistance applicant or any member of the assistance applicant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(b) *Disclosure: individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSNs assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSNs; or

(2) If any person referred to in paragraph (b)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(c) *Disclosure: certain officials of entity applicants.* As explained more fully in HUD administrative instructions, each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure: participants--* (1) Initial disclosure. Each participant whose initial determination of eligibility under the program involved was begun before November 6, 1989, must submit the following information to the processing entity at the next regularly scheduled income reexamination for the program involved:

(i)(A) The complete and accurate SSN assigned to the participant and to each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) Subsequent disclosure. Once a participant has disclosed and verified every SSN, or submitted any certification that an SSN has not been assigned, as provided by paragraph (a) of this section (for an assistance applicant) or paragraph (d)(1) (for a preexisting participant) of this section, the following rules apply:

(i) If the participant's household adds a new member who is at least six years of age, the participant must submit to the processing entity, at the next interim or regularly scheduled income reexamination that includes the new members:

(A) The complete and accurate SSNs assigned to each new member and the documentation referred to in paragraph (f)(1) of this section to verify the SSNs for each new member; or

(B) If the new member has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(ii) If the participant or any member of the participant's household who is at least six years of age obtains a previously undisclosed SSN, or has been assigned a new SSN, the participant must submit the following to the processing entity at the next regularly scheduled income reexamination:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN of each such individual.

(iii) Additional SSN disclosure and verification requirements, including the nature of the disclosure and the verification required and the time and manner for making the disclosure and verification, may be specified in administrative instructions by:

(A) HUD; and

(B) In the case of the public housing program or the programs under parts 882 and 887 of this title, the PHA.

(e) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN.

(f) *Required documentation--* (1) Social Security Numbers. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) of this section is a valid SSN card issued by the SSA, or such other evidence of the SSN as HUD and, where applicable, the PHA may prescribe in administrative instructions.

(2) Employer Identification Numbers. The documentation necessary to verify any EIN of an entity applicant that is required to disclose its EIN under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(g) *Special documentation rules for assistance applicants and participants--* (1) Certification of inability to meet documentation requirements. If an individual who is required to disclose his or her SSN under paragraph (a) (assistance applicants) of this section or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant must submit to the processing entity the individual's SSN and a certification executed by the individual that the SSN submitted has been assigned to the individual, but that acceptable documentation to verify the SSN cannot be provided.

(2) Acceptance or certification by processing entity. Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of this section and continue to process the assistant applicant's or participant's eligibility to participate in the program involved.

(3) Effect on assistance applicants. If the processing entity determines that the assistance applicant is otherwise eligible to participate in the program, the assistance applicant may not become a participant in the program, unless it submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section. During such period, the assistance applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including its place on any waiting list maintained for the program, if applicable.

(4) Effect on participants. If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section.

(5) Time for submitting documentation. The time period referred to in paragraphs (g)(4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g)(1) of this section is executed, except that the processing entity may, in its discretion, extend this period for up to an additional 60 days if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60-day period.

(h) *Rejection of documentation or certification.* The processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraphs (a)(2), (b)(2), (d), or (g)(1) of this section, only for such reasons as HUD and the PHA may prescribe in applicable administrative instructions.

(i) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local SSA Office or consulting the SSA regulations at 20 CFR chapter III (see, particularly, part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the IRS or consulting the appropriate regulations for the IRS.

(j) *Form and manner of certifications.* The certifications referred to in paragraphs (a)(2), (b)(2), (d), and (g)(1) of this section must be in the form and manner that HUD and the PHA prescribe in applicable administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, the certification must be executed by his or her parent or guardian or, in accordance with administrative instructions, by the individual or another person.

**5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.**

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in 5.216.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

(1) The entity applicant does not meet the applicable EIN disclosure and verification requirements specified in 5.216; or

(2) Any of the officials of the entity applicant referred to in 5.216(c) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in 5.216.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance or tenancy, or both, of a participant, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in 5.216.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of SSNs and EINs in determinations regarding eligibility.

**Procedures for Obtaining Income Information About Applicants and Participants**

**5.230 Consent by assistance applicants and participants.**

(a) *Required consent by assistance applicants and participants.*

Each member of the family of an assistance applicant or participant who is at least 18 years of age, and each family head and spouse regardless of age, shall sign one or more consent forms.

(b) *Consent authorization.* (1) To whom and when. The assistance applicant shall submit the signed consent forms to the processing entity when eligibility under a covered program is being determined. A participant shall sign and submit consent forms at the next regularly scheduled income reexamination. Assistance applicants and participants shall be responsible for the signing and submitting of consent forms by each applicable family member.

(2) Subsequent consent forms--special cases. Participants are required to sign and submit consent forms at the next interim or regularly scheduled income reexamination under the following circumstances:

(i) When any person 18 years or older becomes a member of the family;

(ii) When a member of the family turns 18 years of age; and

(iii) As required by HUD or the PHA in administrative instructions.

(c) *Consent form--contents.* The consent form required by this section shall contain, at a minimum, the following:

(1) A provision authorizing HUD and PHAs to obtain from SWICAs any information or materials necessary to complete or verify the application for participation and to maintain continued assistance under a covered program; and

(2) A provision authorizing HUD, PHAs, or the owner responsible for determining eligibility for or the level of assistance to verify with previous or current employers income information pertinent to the assistance applicant's or participant's eligibility for or level of assistance under a covered program;

(3) A provision authorizing HUD to request income return information from the IRS and the SSA for the sole purpose of verifying income information pertinent to the assistance applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the date the consent form is signed.

**5.232 Penalties for failing to sign consent forms.**

(a) *Denial or termination of benefits.* In accordance with the provisions governing the program involved, if the assistance applicant or participant, or any member of the assistance applicant's or participant's family, does not sign and submit the consent form as required in 5.230, then:

(1) The processing entity shall deny assistance to and admission of an assistance applicant;

(2) Assistance to, and the tenancy of, a participant may be terminated.

(b) *Cross references.* Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of income information in determinations regarding eligibility.

**5.234 Requests for information from SWICAs and Federal agencies; restrictions on use.**

(a) *Information available from SWICAs and Federal agencies--to whom and what.* Income information will generally be obtained through computer matching agreements between HUD and a SWICA or Federal agency, or between a PHA and a SWICA, as described in paragraph (c) of this section. Certification that the applicable

assistance applicants and participants have signed appropriate consent forms and have received the necessary Privacy Act notice is required, as follows:

(1) When HUD requests the computer match, the processing entity shall certify to HUD; and

(2) When the PHA requests the computer match, the PHA shall certify to the SWICA.

(b) *Restrictions on use of information.* The restrictions of 42 U.S.C. 3544(c)(2)(A) apply to the use by HUD or a PHA of income information obtained from a SWICA. The restrictions of 42 U.S.C. 3544(c)(2)(A) and of 26 U.S.C. 6103(l)(7) apply to the use by HUD or a PHA of income information obtained from the IRS or SSA.

(c) *Computer matching agreements.* Computer matching agreements shall specify the purpose and the legal authority for the match, and shall include a description of the records to be matched, a statement regarding disposition of information generated through the match, a description of the administrative and technical safeguards to be used in protecting the information obtained through the match, a description of the use of records, the restrictions on duplication and redisclosure, a certification, and the amount that will be charged for processing a request.

### **5.236 Procedures for termination, denial, suspension, or reduction of assistance based on information obtained from a SWICA or Federal agency.**

(a) *Termination, denial, suspension, or reduction of assistance.* The provisions of 42 U.S.C. 3544(c)(2)(B) and (C) shall govern the termination, denial, suspension, or reduction of benefits for an assistance applicant or participant based on income information obtained from a SWICA or a Federal agency. Procedures necessary to comply with these provisions are provided in paragraph (b) of this section.

(b) *Procedures for independent verification.* (1) Any determination or redetermination of family income verified in accordance with this paragraph must be carried out in accordance with the requirements and procedures applicable to the individual covered program. Independent verification of information obtained from a SWICA or a Federal agency may be:

(i) By HUD;

(ii) In the case of the public housing program, by a PHA; or

(iii) In the case of any Section 8 program, by a PHA acting as contract administrator under an ACC.

(2) Upon receiving income information from a SWICA or a Federal agency, HUD or, when applicable, the PHA shall compare the information with the information about a family's income that was:

(i) Provided by the assistance applicant or participant to the PHA; or

(ii) Obtained by the owner (or mortgagee, as applicable) from the assistance applicant or participant or from his or her employer.

(3) When the income information reveals an employer or other income source that was not disclosed by the assistance applicant or participant, or when the income information differs substantially from the information received from the assistance applicant or participant or from his or her employer:

(i) HUD or, as applicable or directed by HUD, the PHA shall request the undisclosed employer or other income source to furnish any information necessary to establish an assistance applicant's or participant's eligibility for or level of assistance in a covered program. This information shall be furnished in writing, as directed to:

(A) HUD, with respect to programs under parts 215, 221, 235, 236, or 290 of this title;

(B) The responsible entity (as defined in 5.100) in the case of the public housing program or any Section 8 program.

(C) The owner or mortgagee, as applicable, with respect to the rent supplement, Section 221(d)(3) BMIR, Section 235 homeownership assistance, or Section 236 programs.

(ii) HUD or the PHA may verify the income information directly with an assistance applicant or participant. Such verification procedures shall not include any disclosure of income information prohibited under paragraph (b)(6) of this section.

(4) HUD and the PHA shall not be required to pursue these verification procedures when the sums of money at issue are too small to raise an inference of fraud or justify the expense of independent verification and the procedures related to termination, denial, suspension, or reduction of assistance.

(5) Based on the income information received from a SWICA or Federal agency, HUD or the PHA, as appropriate, may inform an owner (or mortgagee) that an assistance applicant's or participant's eligibility for or level of assistance is uncertain and needs to be verified. The owner (or mortgagee) shall then confirm the assistance applicant's or participant's income information by checking the accuracy of the information with the employer or other income source, or directly with the family.

(6) *Nondisclosure of Income information.* Neither HUD nor the PHA may disclose income information obtained from a SWICA directly to an owner (unless a PHA is the owner). Disclosure of income information obtained from the SSA or IRS is restricted under 26 U.S.C. 6103(l)(7) and 42 U.S.C. 3544.

(c) *Opportunity to contest.* HUD, the PHA, or the owner (or mortgagee, as applicable) shall promptly notify any assistance applicant or participant in writing of any adverse findings made on the basis of the information verified in accordance with paragraph (b) of this section. The assistance applicant or participant may contest the findings in the same manner as applies to other information and findings relating to eligibility factors under the applicable program. Termination, denial, suspension, or reduction of assistance shall be carried out in accordance with requirements and procedures applicable to the individual covered program, and shall not occur until the expiration of any notice period provided by the statute or regulations governing the program.

### **5.238 Criminal and civil penalties.**

Persons who violate the provisions of 42 U.S.C. 3544 or 26 U.S.C. 6103(l)(7) with respect to the use and disclosure of income information may be subject to civil or criminal penalties under 42 U.S.C. 3544(c)(3), 26 U.S.C. 7213(a), or 18 U.S.C. 1905.

### **5.240 Family disclosure of income information to the responsible entity and verification.**

(a) This section applies to families that reside in dwelling units with assistance under the public housing program, the Section 8 tenant-based assistance programs, or for which project-based assistance is provided under the Section 8, Section 202, or Section 811 program.

(b) The family must promptly furnish to the responsible entity any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income.

(c) The responsible entity must verify the accuracy of the income information received from the family, and change the amount of the total tenant payment, tenant rent or Section 8 housing assistance payment, or terminate assistance, as appropriate, based on such information.

### **Subpart D Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937**

#### **5.400 Applicability.**

This part applies to public housing and Section 8 programs.

#### **5.403 Definitions.**

*Annual contributions contract (ACC)* means 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.

*Applicant* means a person or a family that has applied for housing assistance.

*Disabled family* means a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

*Displaced family* means 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.

*Elderly family* means a family whose head, spouse, or sole member is a person who is at least 62 years of age. It may include 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.

*Family* includes but is not limited to: (1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size); (2) An elderly family; (3) A near-elderly family; (4) A disabled family; (5) A displaced family; (6) The remaining member of a tenant family; and (7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

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

*Near-elderly family* means 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.

*Person with disabilities*: (1) Means a person who: (i) Has a disability, as defined in 42 U.S.C. 423; (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that: (A) Is expected to be of long-continued and indefinite duration; (B) Substantially impedes his or her ability to live independently, and (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or (iii) Has a developmental disability as defined in 42 U.S.C. 6001. (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and (4) Means 'individual with handicaps', as defined in 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

### **Subpart E Restrictions on Assistance to Noncitizens**

#### **5.500 Applicability.**

(a) *Covered programs/assistance.* This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart E is applicable to financial assistance provided under:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and

(4) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) which covers:

(i) HUD's Public Housing Programs;

(ii) The Section 8 Housing Assistance Programs; and  
(iii) The Housing Development Grant Programs (with respect to low income units only).

(b) *Covered individuals and entities.* (1) Covered individuals/ persons and families. The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) Covered entities. The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term 'responsible entity' is used in this subpart E to refer collectively to these entities, and is further defined in 5.504.

#### **5.502 Requirements concerning documents.**

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

#### **5.504 Definitions.**

(a) The definitions '1937 Act', 'HUD', 'Public Housing Agency (PHA)', and 'Section 8' are defined in subpart A of this part.

(b) As used in this subpart E:

*Child* means a member of the family other than the family head or spouse who is under 18 years of age.

*Citizen* means a citizen or national of the United States.

*Evidence of citizenship or eligible status* means the documents which must be submitted to evidence citizenship or eligible immigration status. (See 5.508(b).)

*Family* has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

*Head of household* means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

*Housing covered programs* means the following programs administered by the Assistant Secretary for Housing: (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program); (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

*INS* means the U.S. Immigration and Naturalization Service.

*Mixed family* means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

*National* means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

*Noncitizen* means a person who is neither a citizen nor national of the United States.

*Project owner* means the person or entity that owns the housing project containing the assisted dwelling unit.

*Public Housing covered programs* means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of 'Section 8 Covered Programs' in this section.)

*Responsible entity* means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows: (1) For the Section 235 Program, the mortgagee. (2) For

Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD. (3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

*Section 8 covered programs* means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

*Section 214* means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

*Section 214 covered programs* is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 5.500.

*Tenant* means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

### 5.506 General provisions.

(a) *Restrictions on assistance.* Financial assistance under a Section 214 covered program is restricted to:

- (1) Citizens; or
- (2) Noncitizens who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in 5.516 and 5.518.

(c) *Preferences.* Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

### 5.508 Submission of evidence of citizenship or eligible immigration status.

(a) *General. Eligibility for assistance* or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of 5.516 and 5.518 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

- (i) A signed declaration of eligible immigration status; and
  - (ii) Proof of age document.
- (3) For all other noncitizens, the evidence consists of:
- (i) A signed declaration of eligible immigration status;

- (ii) One of the INS documents referred to in 5.510; and
- (iii) A signed verification consent form.

(c) *Declaration--* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

- (i) For each adult, the declaration must be signed by the adult.
- (ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) For Housing covered programs: The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form.* (1) Who signs. Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows.

- (i) For each adult, the form must be signed by the adult.
- (ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) Notice of release of evidence by responsible entity. The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

- (i) HUD, as required by HUD; and
- (ii) The INS for purposes of verification of the immigration status of the individual.

(3) Notice of release of evidence by HUD. The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under 5.516 and 5.518, or 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214.* (1) When notice is to be issued. Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) Applicant's notice. The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) Notice to tenants. The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular reexamination of income, but not later than one year following June 19, 1995.

(iii) Timing of mortgagor's notice. A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.

- (2) Form and content of notice. The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of 5.516 and 5.518.

(g) *When evidence of eligible status is required to be submitted.* The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) Applicants. For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see 5.512(a)).

(2) Tenants. For tenants, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) New occupants of assisted units. For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) Changing participation in a HUD program. Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) One-time evidence requirement for continuous occupancy. For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(h) *Extensions of time to submit evidence of eligible status.*

(1) When extension must be granted. The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) Thirty-day extension period. Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) Grant or denial of extension to be in writing. The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If

the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

### **5.510 Documents of eligible immigration status.**

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in 5.506(a) for the specific immigration status claimed by the individual.

### **5.512 Verification of eligible immigration status.**

(a) *General.* Except as described in paragraph (b) of this section and 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with 5.508.

(b) *PHA election to provide assistance before verification.* A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

(c) *Primary verification.* (1) Automated verification system. Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) Failure of primary verification to confirm eligible immigration status. If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(d) *Secondary verification.* (1) Manual search of INS records. Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program.

(2) Secondary verification initiated by responsible entity. Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents required for the immigration status declared (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) Failure of secondary verification to confirm eligible immigration status. If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in 5.514(d), which includes notification of the right to appeal to the INS of the INS finding on immigration status (see 5.514(d)(4)).

(e) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

### **5.514 Delay, denial, reduction or termination of assistance.**

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

## Appendix B: Regulations and Guidebooks

*(b) Restrictions on delay, denial, reduction or termination of assistance--* (1) Restrictions on reduction, denial or termination of assistance for applicants and tenants. Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

- (i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;
- (ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;
- (iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;
- (iv) The INS appeals process under 5.514(e) has not been concluded;
- (v) Assistance is prorated in accordance with 5.520; or
- (vi) Assistance for a mixed family is continued in accordance with 5.516 and 5.518; or
- (vii) Deferral of termination of assistance is granted in accordance with 5.516 and 5.518.

(2) Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants. In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

*(c) Events causing denial or termination of assistance--* (1) General. Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in 5.508(g) or by the expiration of any extension granted in accordance with 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

(2) Termination of assisted occupancy. For termination of assisted occupancy, see paragraph (i) of this section.

*(d) Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under 5.520;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in 5.514 and 5.518;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

*(e) Appeal to the INS--* (1) Submission of request for appeal. Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

(2) Documentation to be submitted as part of appeal to INS. The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) Decision by INS. (i) When decision will be issued. The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and responsible entity of the reasons for the delay.

(ii) Notification of INS decision and of informal hearing procedures. When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS. Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

*(f) Informal hearing--* (1) When request for hearing is to be made. After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

(2) Informal hearing procedures. (i) Tenants assisted under a Section 8 covered program: For tenants assisted under a Section 8 covered program, the procedures for the hearing before the responsible entity are set forth in:

(A) For Section 8 Moderate Rehabilitation assistance: 24 CFR part 882;

(B) For Section 8 tenant-based assistance: 24 CFR part 982; or

(C) For Section 8 project-based certificate program: 24 CFR part 983.

(ii) Tenants assisted under any other Section 8 covered program or a Public Housing covered program: For tenants assisted under a Section 8 covered program not listed in paragraph (f)(3)(i) of this section or a Public Housing covered program, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(iii) Families under Housing covered programs and applicants for assistance under all covered programs. For all families under Housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:

## Appendix B: Regulations and Guidebooks

(A) Hearing before an impartial individual. The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), 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;

(B) Examination of evidence. The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) Presentation of evidence and arguments in support of eligible status. The family shall 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;

(D) Controverting evidence of the responsible entity. The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) Representation. The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(F) Interpretive services. The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding; and

(G) Hearing to be recorded. The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

(3) Hearing decision. The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income reexamination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for an informal hearing; and
- (9) The final informal hearing decision.

(i) Termination of assisted occupancy.  
(1) Under Housing covered programs, and in the Section 8 covered programs other than the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the responsible entity notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The responsible entity and tenant entering into a new lease without financial assistance.

(iii) The responsible entity evicting the tenant. While the tenant continues in occupancy of the unit, the responsible entity may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the responsible entity to terminate the tenancy and to evict the tenant must be in accordance with applicable HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The PHA shall not make any additional assistance payments to the owner after the required procedures specified in this section have been completed. In addition, the PPHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

### **5.516 Availability of preservation assistance to mixed families and other families.**

(a) *Assistance available for tenant mixed families.* (1) General. Preservation assistance is available to tenant mixed families, following completion of the appeals and informal hearing procedures provided in 5.514. There are three types of preservation assistance:

- (i) Continued assistance (see paragraph (a) of 5.518);
- (ii) Temporary deferral of termination of assistance (see paragraph (b) of 5.518); or
- (iii) Prorated assistance (see 5.520, a mixed family must be provided prorated assistance if the family so requests).

(2) Availability of assistance.

(i) For Housing covered programs: One of the three types of assistance described is available to tenant mixed families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a mixed family that meets the conditions for eligibility for continued assistance.

(ii) For Section 8 or Public Housing covered programs. One of the three types of assistance described may be available to tenant mixed families assisted under a Section 8 or Public Housing covered program.

(b) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in 5.520.

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c)(1) and (2) of this section.

(1) For Housing covered programs: Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.

(2) For Section 8 or Public Housing covered programs: The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.

(d) *Section 8 covered programs:* Discretion afforded to provide certain family preservation assistance.

(1) Project owners. With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the

standards in this section under which a project owner must provide one of these two types of assistance to a family. However, project owners and PHAs must offer prorated assistance to eligible mixed families.

(2) PHAs. The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in paragraphs (a) and (b) of 5.518. However, the PHA must offer prorated assistance to eligible families.

**5.518 Types of preservation assistance available to mixed families and other families.**

(a) *Continued assistance.* (1) General. A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in 5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) Proration of continued assistance. A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in 5.520.

(b) *Temporary deferral of termination of assistance.* (1) Eligibility for this type of assistance. If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) Housing covered programs: Conditions for granting temporary deferral of termination of assistance. The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing covered program and one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) Time limit on deferral period. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(4) Notification requirements for beginning of each deferral period. At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) Determination of availability of affordable housing at end of each deferral period.

(i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section. Specifically, the responsible entity must:

(A) For Housing covered programs: Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) For Section 8 or Public Housing covered programs: Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

(c) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(d) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

**5.520 Proration of assistance.**

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) *Method of prorating assistance for Housing covered programs.*

(1) Proration under Rent Supplement Program. If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) Proration under Section 235 Program. If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) Proration under Section 236 Program without the benefit of additional assistance. If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) Proration under Section 236 Program with the benefit of additional assistance. If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) *Method of prorating assistance for Section 8 covered programs.*

(1) Section 8 assistance other than assistance provided for a tenancy under the Section 8 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program. For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) Step 1. Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) Step 2. Determine total tenant payment in accordance with section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) Step 3. Subtract amount determined in paragraph (c)(1)(ii), (Step 2), from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) Step 4. Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) Prorated housing assistance. The amount determined in paragraph (c)(1)(iv), (Step 4) is the prorated housing assistance payment for a mixed family.

(vi) No effect on contract rent. Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) Assistance for a Section 8 voucher tenancy or over-FMR tenancy. For a tenancy under the voucher program or for an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) Step 1. Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) Step 2. Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) Prorated housing assistance. The amount determined in paragraph (c)(2)(ii), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) No effect on rent to owner. Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* The PHA shall prorate the family's assistance by:

(1) Step 1. Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) Step 2. Subtracting the total tenant payment from a HUD-supplied 'public housing maximum rent' applicable to the unit or the PHA. (This 'maximum rent' shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible ('family maximum subsidy').

(3) Step 3. Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ('eligible family member'). The subsidy per eligible family member is the 'member maximum subsidy'.

(4) Step 4. Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ('eligible family members').

(5) Step 5. The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ('eligible subsidy'). The family's rent is the 'public housing maximum rent' minus the amount of the eligible subsidy.

**5.522 Prohibition of assistance to noncitizen students.**

(a) *General.* The provisions of 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) *Family of noncitizen students.* (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

**5.524 Compliance with nondiscrimination requirements.**

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations in 24 CFR part 100.

**5.526 Protection from liability for responsible entities and State and local government agencies and officials.**

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

**5.528 Liability of ineligible tenants for reimbursement of benefits.**

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented eligible status, the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

**Subpart F Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance**

**5.601 Purpose and applicability.**

This subpart states HUD requirements on the following subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences; and

(3) Owner reexamination of family income and composition;

(d) Determining adjusted income, as provided in § 5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these programs; and

(e) Determining earned income disregard for persons with disabilities, as provided in § 5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

**5.603 Definitions.**

As used in this subpart:

(a) Terms found elsewhere in part 5.

(1) Subpart A. The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency (PHA)*, *responsible entity* and *Section 8* are defined in § 5.100.

(2) Subpart D. The terms 'disabled family', 'elderly family', 'family', 'live-in aide', and 'person with disabilities' are defined in 5.403.

(b) The following terms shall have the meanings set forth below:

*Adjusted income.* See 5.611.

*Annual income.* See 5.609.

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

*Dependent.* A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

*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.

*Economic self-sufficiency program.* Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

*Extremely low income family.* A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

*Full-time student.* A person who is attending school or vocational training on a full-time basis.

*Imputed welfare income.* See 5.615.

*Low income family.* A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

*Medical expenses.* Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

*Monthly adjusted income.* One twelfth of adjusted income.

*Monthly income.* One twelfth of annual income.

*Net family assets.* (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under 5.609, the term 'net family assets' does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

*Owner* has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term 'owner' shall also include a 'borrower' as defined in part 891 of this title.

*Responsible entity.* For § 5.611, in addition to the definition of *responsible entity* in § 5.100, and for § 5.617, in addition to only that part of the definition of *responsible entity* in § 5.100 which addresses the Section 8 program covered by § 5.617 (public housing is not covered by § 5.617), *responsible entity* means:

(1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

(2) For the Rent Supplement Payments Program, the owner of the multifamily project;

(3) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable "State" or "unit of general local government" or "nonprofit organization" as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;

(5) For the Shelter Plus Care Program, the "Recipient" as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the "recipient" as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the "Owner" as defined in 24 CFR 891.205;

(8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities, the "Borrower" as defined in 24 CFR 891.505; and

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the "owner" as defined in 24 CFR 891.305.

*Tenant rent.* The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

*Total tenant payment.* See 5.613.

*Utility allowance.* If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other

services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

*Utility reimbursement.* The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

*Very low income family.* A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

*Welfare assistance.* Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

*Work activities.* See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

### Family Income

#### 5.609 Annual income.

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

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

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

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts,

## Appendix B: Regulations and Guidebooks

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

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

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments: is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

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

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

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

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

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident

management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

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

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

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

### 5.611 Adjusted income.

*Adjusted income* means annual income (as determined by the responsible entity, defined in § 5.100 and § 5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions

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

(1) \$480 for each dependent;

(2) \$400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.*

(1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

(2) For the HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

**5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.**

(a) This section applies to the public housing program and the Section 8 tenant-based assistance program.

(b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:

(1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

**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 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 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 welfare income, the imputed welfare income is reduced to zero.

(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 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 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.

**5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

(a) *Applicable programs.* The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

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

*Disallowance.* Exclusion from annual income.

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

*Qualified family.* A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section:

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

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

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

(c) *Disallowance of increase in annual income.*—

(1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

### Family Payment

#### 5.628 Total tenant payment.

(a) *Determining total tenant payment (TTP).* Total tenant payment is the highest of the following amounts, rounded to the nearest dollar:

- (1) 30 percent of the family's monthly adjusted income;
- (2) 10 percent of the family's monthly income;

(3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or

(4) The minimum rent, as determined in accordance with 5.630.

(b) *Determining TTP if family's welfare assistance is ratably reduced.* If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section is the amount resulting from one application of the percentage.

#### 5.630 Minimum rent.

(a) *Minimum rent.* (1) The PHA must charge a family no less than a minimum monthly rent established by the responsible entity, except as described in paragraph (b) of this section.

(2) For the public housing program and the section 8 moderate rehabilitation, and certificate or voucher programs, the PHA may establish a minimum rent of up to \$50.

(3) For other section 8 programs, the minimum rent is \$25.

(b) *Financial hardship exemption from minimum rent.* (1) When is family exempt from minimum rent? The responsible entity must grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes these situations:

(i) When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a 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;

(ii) When the family would be evicted because it is unable to pay the minimum rent;

(iii) When the income of the family has decreased because of changed circumstances, including loss of employment;

(iv) When a death has occurred in the family; and

(v) Other circumstances determined by the responsible entity or HUD.

(2) What happens if family requests a hardship exemption?

(i) Public housing.

(A) If a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the PHA determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(B) The PHA must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

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

(D) If the PHA determines that a qualifying financial hardship is temporary, the PHA must reinstate the minimum rent from the beginning of the suspension of the minimum rent. The PHA must offer the family a reasonable repayment agreement, on terms and conditions established by the PHA, for the amount of back minimum rent owed by the family.

(ii) All section 8 programs.

(A) If a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption until the responsible entity determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.

(B) The responsible entity must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) If the responsible entity determines that a qualifying financial hardship is temporary, the PHA must not impose the minimum rent during the 90-day period beginning the month following the date of the family's request for a hardship exemption. At the end of the 90-day suspension period, the responsible entity must reinstate the minimum rent from the beginning of the suspension. The family must be offered a reasonable repayment agreement, on terms and conditions established by the responsible entity, for the amount of back rent owed by the family.

(iii) All programs.

(A) If the responsible entity determines there is no qualifying financial hardship exemption, the responsible entity must reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by the responsible entity.

(B) If the responsible entity determines a qualifying financial hardship is long term, the responsible entity must exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(C) The financial hardship exemption only applies to payment of the minimum rent (as determined pursuant to 5.628(a)(4) and 5.630), and not to the other elements used to calculate the total tenant payment (as determined pursuant to 5.628(a)(1), (a)(2) and (a)(3)).

(3) Public housing: Grievance hearing concerning PHA denial of request for hardship exemption. If a public housing family requests a hearing under the PHA grievance procedure, to review the PHA's determination denying or limiting the family's claim to a financial hardship exemption, the family is not required to pay any escrow deposit in order to obtain a grievance hearing on such issues.

### **5.632 Utility reimbursements.**

(a) *Applicability.* This section is applicable to:

(1) The Section 8 programs other than the Section 8 voucher program (for distribution of a voucher housing assistance payment that exceeds rent to owner, see 982.514(b) of this title);

(2) A public housing family paying an income-based rent (see 960.253 of this title). (Utility reimbursement is not paid for a public housing family that is paying a flat rent.)

(b) *Payment of utility reimbursement.* (1) The responsible entity pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment.

(2) In the public housing program (where the family is paying an income-based rent), the Section 8 moderate rehabilitation program and the Section 8 certificate or voucher program, the PHA may pay the utility reimbursement either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount paid to the utility supplier.

(3) In the other Section 8 programs, the owner must pay the utility reimbursement either:

(i) To the family, or

(ii) With consent of the family, to the utility supplier to pay the utility bill on behalf of the family.

### **5.634 Tenant rent.**

(a) *Section 8 programs.* For Section 8 programs other than the Section 8 voucher program, tenant rent is total tenant payment minus any utility allowance.

(b) *Public housing.* See 960.253 of this title for the determination of tenant rent.

**PART 982 SECTION 8 TENANT-BASED ASSISTANCE:  
HOUSING CHOICE VOUCHER PROGRAM**

**Subpart A General Information**

**982.1 Programs: Purpose and structure.**

*(a) General description.*

(1) In the HUD Housing Choice Voucher Program (Voucher Program) and the HUD certificate program, HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing. Both programs are generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the programs. PHAs are no longer allowed to enter into contracts for assistance in the certificate program.

(2) Families select and rent units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family. A PHA may not approve a tenancy unless the rents is reasonable.

(3) In the certificate program, the rental subsidy is generally based on the actual rent of a unit leased by the assisted family. In the voucher program, the rental subsidy is determined by a formula.

(4)(i) In the certificate program, the subsidy for most families is the difference between the rent and 30 percent of adjusted monthly income.

(ii) In the voucher program, the subsidy is based on a local 'payment standard' that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

*(b) Tenant-based and project-based assistance--* (1) Section 8 assistance may be 'tenant-based' or 'project-based'. In project-based programs, rental assistance is paid for families who live in specific housing developments or units. With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs a voucher program.

(2) To receive tenant-based assistance, the family selects a suitable unit. After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued assistance so long as the family is complying with program requirements.

**982.2 Applicability.**

(a) Part 982 is a unified statement of program requirements for the tenant-based housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based certificate program and the Section 8 voucher program.

(b) Unless specifically stated in this part, requirements for both tenant-based programs are the same.

**982.3 HUD.**

The HUD field offices have been delegated responsibility for day-to-day administration of the program by HUD. In exercising these functions, the field offices are subject to HUD regulations and other HUD requirements issued by HUD headquarters. Some functions are specifically reserved to HUD headquarters.

**982.4 Definitions.**

*(a) Definitions found elsewhere:*

(1) General definitions. The terms *1937 Act*, *HUD*, and *MSA*, are defined in 24 CFR part 5, subpart A.

(2) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act*, *covered person*, *drug*, *drug-related criminal activity*, *federally assisted housing*, *guest*, *household*, *HUD*, *MSA*, *other person under the tenant's control*, *public housing*, *Section 8*, and *violent criminal activity*.

(3) *Definitions concerning family income and rent.* The terms *adjusted income*, *annual income*, *extremely low income family*, *tenant rent*, *total tenant payment*, *utility allowance*, *utility reimbursement* and *welfare assistance* are defined in part 5, subpart F of this title. The definitions of *tenant rent* and *utility reimbursement* in part 5, subpart F of this title, apply to the certificate program, but do not apply to the tenant-based voucher program under part 982.

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

*Absorption.* In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

*Administrative fee.* Fee paid by HUD to the PHA for administration of the program. See 982.152.

*Administrative fee reserve* (formerly 'operating reserve'). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See 982.155.

*Administrative plan.* The plan that describes PHA policies for administration of the tenant-based programs. See 982.54.

*Admission.* The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

*Applicant* (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

*Budget authority.* An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

*Common space.* In shared housing: Space available for use by the assisted family and other occupants of the unit.

*Congregate housing.* Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 982.606 to 982.609.

*Continuously assisted.* An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the certificate or voucher program.

*Cooperative.* Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

*Cooperative member.* A family of which one or more members owns membership shares in a cooperative.

*Domicile.* The legal residence of the household head or spouse as determined in accordance with State and local law.

*Downpayment assistance grant.* A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.

*Fair market rent (FMR).* The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental

housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR part 888.

**Family.** A person or group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program. See discussion of family composition at 982.201(c).

**Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see 982.515(b).

**Family self-sufficiency program (FSS program).** The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

**Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see 982.515(a).

**Family unit size.** The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

**First-time homeowner.** In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term 'first-time homeowner' includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

**Funding increment.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

**Gross rent.** The sum of the rent to owner plus any utility allowance.

**Group home.** A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see 982.610 to 982.614.

**Home.** In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

**Homeowner.** In the homeownership option: A family of which one or more members owns title to the home.

**Homeownership assistance.** Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

**Homeownership expenses.** In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see 982.635).

**Homeownership option.** Assistance for a homeowner or cooperative member under 982.625 to 982.641. A special housing type.

**HAP contract.** Housing assistance payments contract.

**Housing assistance payment.** The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the tenant-based programs. See 982.401.

**Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**Initial payment standard.** The payment standard at the beginning of the HAP contract term.

**Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.

**Interest in the home.** In the homeownership option: (1) In the case of assistance for a homeowner, 'interest in the home' includes title to the home, any lease or other right to occupy the home, or any other present interest in the home. (2) In the case of assistance for a cooperative member, 'interest in the home' includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

**Jurisdiction.** The area in which the PHA has authority under State and local law to administer the program.

**Lease.** (1) A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA. (2) In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. For purposes of this part 982, the cooperative is the Section 8 'owner' of the unit, and the cooperative member is the Section 8 'tenant.'

**Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see 982.620 and 982.621.

**Manufactured home space.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 982.622 to 982.624.

**Membership shares.** In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular unit in the cooperative, and the right to participate in management of the housing.

**Merger date.** October 1, 1999.

**Notice of Funding Availability (NOFA).** For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

**Owner.** Any person or entity with the legal right to lease or sublease a unit to a participant.

**Participant (participant family).** A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

**Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**PHA plan.** The annual plan and the 5-year plan as adopted by the PHA and approved by HUD in accordance with part 903 of this chapter.

**Portability.** Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

**Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**Present homeownership interest.** In the homeownership option: "Present ownership interest" in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. "Present ownership interest" in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

**Private space.** In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

**Program.** The Section 8 tenant-based assistance program under this part.

**Program receipts.** HUD payments to the PHA under the consolidated ACC, and any other amounts received by the PHA in connection with the program.

**Public housing agency (PHA).** PHA includes both: (1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), and (2) Any of the following: (i) A consortia of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortium members); (ii) Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or (iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**Renewal units.** The number of units, as determined by HUD, for which funding is reserved on HUD books for a PHA's program. This number is used in calculating renewal budget authority in accordance with 982.102.

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**Residency preference.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ('residency preference area').

**Residency preference area.** The specified area where families must reside to qualify for a residency preference.

**Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see 982.615 to 982.618.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see 982.602 to 982.605.

**Special admission.** Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

**Special housing types.** See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for cooperative member or first-time homeowner).

**Statement of homeowner obligations.** In the homeownership option: The family's agreement to comply with program obligations.

**Subsidy standards.** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**Suspension.** Stopping the clock on the term of a family's voucher, for such period as determined by the PHA, from the time when the family submits a request for PHA approval of the tenancy, until the time when the PHA approves or denies the request.

**Tenant rent.** For a tenancy in the certificate program: The total tenant payment minus any utility allowance.

**Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner. (See 982.514(b)). (For the certificate program, 'utility reimbursement' is defined in part 5, subpart F of this title.)

**Voucher holder.** A family holding a voucher with an unexpired term (search time).

**Voucher (rental voucher).** A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

**Waiting list admission.** An admission from the PHA waiting list.

**Welfare-to-work (WTW) families.** Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

### **982.5 Notices required by this part.**

Where part 982 requires any notice to be given by the PHA, the family or the owner, the notice must be in writing.

### **Subpart B HUD Requirements And PHA Plan For Administration Of Program**

#### **982.51 PHA authority to administer program.**

(a) The PHA must have authority to administer the program. The PHA must provide evidence, satisfactory to HUD, of its status as a PHA, of its authority to administer the program, and of the PHA jurisdiction.

(b) The evidence submitted by the PHA to HUD must include enabling legislation and a supporting legal opinion satisfactory to HUD. The PHA must submit additional evidence when there is a change that affects its status as a PHA, authority to administer the program, or the PHA jurisdiction.

#### **982.52 HUD requirements.**

(a) The PHA must comply with HUD regulations and other HUD requirements for the program. HUD requirements are issued by HUD headquarters, as regulations, *Federal Register* notices or other binding program directives.

(b) The PHA must comply with the consolidated ACC and the PHA's HUD-approved applications for program funding.

#### **982.53 Equal opportunity requirements.**

(a) The tenant-based program requires compliance with all equal opportunity requirements imposed by contract or federal law, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.

(1) The Fair Housing Act, 42 U.S.C. 3610-3619 (implementing regulations at 24 CFR parts 100, et seq.);

(2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (implementing regulations at 24 CFR part 1);

(3) The Age Discrimination Act of 1975, 42 U.S.C. 6101-6107 (implementing regulations at 24 CFR part 146);

(4) Executive Order 11063, Equal Opportunity in Housing (1962), as amended, Executive Order 12259, 46 FR 1253 (1980), as amended, Executive Order 12892, 59 FR 2939 (1994) (implementing regulations at 24 CFR part 107);

(5) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (implementing regulations at 24 CFR part 8); and

(6) Title II of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.

(b) **Civil rights certification.** The PHA must submit a signed certification to HUD that:

(1) The PHA will administer the program in conformity with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

(2) The PHA will affirmatively further fair housing in the administration of the program.

(c) *Obligation to affirmatively further fair housing.* The PHA shall affirmatively further fair housing as required by 903.7(o) of this title.

(d) State and local law. Nothing in part 982 is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder. However, such State and local laws shall not change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program.

**982.54 Administrative plan.**

(a) The PHA must adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements. The administrative plan and any revisions of the plan must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials. The administrative plan states PHA policy on matters for which the PHA has discretion to establish local policies.

(b) The administrative plan must be in accordance with HUD regulations and requirements. The administrative plan is a supporting document to the PHA plan (part 903 of this title) and must be available for public review. The PHA must revise the administrative plan if needed to comply with HUD requirements.

(c) The PHA must administer the program in accordance with the PHA administrative plan.

(d) The PHA administrative plan must cover PHA policies on these subjects:

(1) Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list;

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension;

(3) Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families;

(4) Occupancy policies, including:

(i) Definition of what group of persons may qualify as a 'family';

(ii) Definition of when a family is considered to be 'continuously assisted';

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553;

(5) Encouraging participation by owners of suitable units located outside areas of low income or minority concentration;

(6) Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit;

(7) Providing information about a family to prospective owners;

(8) Disapproval of owners;

(9) Subsidy standards;

(10) Family absence from the dwelling unit;

(11) How to determine who remains in the program if a family breaks up;

(12) Informal review procedures for applicants;

(13) Informal hearing procedures for participants;

(14) The process for establishing and revising voucher payment standards;

(15) The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);

(16) Special policies concerning special housing types in the program (e.g., use of shared housing);

(17) Policies concerning payment by a family to the PHA of amounts the family owes the PHA;

(18) Interim redeterminations of family income and composition;

(19) Restrictions, if any, on the number of moves by a participant family (see 982.314(c)); and

(20) Restrictions, if any, on the number of moves by a participant family (see 982.314(c));

(21) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve;

(22) Procedural guidelines and performance standards for conducting required HQS inspections; and

(23) PHA screening of applicants for family behavior or suitability for tenancy.

**Subpart E Admission to Tenant-Based Program**

**982.201 Eligibility and targeting.**

(a) *When applicant is eligible: general.* The PHA may only admit an eligible family to the program. To be eligible, the applicant must be a 'family', must be income-eligible, and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5.

(b) *Income--* (1) Income-eligibility. To be income-eligible, the applicant must be a family in any of the following categories:

(i) A 'very low income' family;

(ii) A low-income family that is 'continuously assisted' under the 1937 Housing Act;

(iii) A low-income family that meets additional eligibility criteria specified in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;

(iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));

(v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in 248.101 of this title;

(vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under 248.173 of this title.

(2) *Income-targeting.*

(i) Not less than 75 percent of the families admitted to a PHA's tenant-based voucher program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in paragraph (e) of this section.

(ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under paragraph (b)(2)(i) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:

(A) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;

(B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;

(C) Notwithstanding such actions by the PHA (in accordance with paragraphs (b)(2)(ii)(A) and (B) of this section), there are not enough extremely low income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percent is approved by HUD; and

(D) Admission of the additional very low income families other than extremely low income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.

(iii) If approved by HUD, the admission of a portion of very low income welfare-to-work (WTW) families that are not extremely low income families may be disregarded in determining compliance with the PHA's income-targeting obligations under paragraph (b)(2)(i) of this section. HUD will grant such approval only if and to the extent that the PHA has demonstrated to HUD's satisfaction that compliance with such targeting obligations with respect to such portion of WTW families would interfere with the objectives of the welfare-to-work voucher program. If HUD grants such approval, admission of that portion of WTW families is not counted in the base number of families admitted to a PHA's tenant-based voucher program during the fiscal year for purposes of income targeting.

(iv) Conversion of assistance for a participant in the PHA certificate program to assistance in the PHA voucher program does not count as an 'admission,' and is not subject to targeting under paragraph (b)(2)(i) of this section.

(v) Admission of families as described in paragraphs (b)(1)(ii) or (b)(1)(v) of this section is not subject to targeting under paragraph (b)(2)(i) of this section.

(vi) If the jurisdictions of two or more PHAs that administer the tenant-based voucher program cover an identical geographic area, such PHAs may elect to be treated as a single PHA for purposes of targeting under paragraph (b)(2)(i) of this section. In such a case, the PHAs shall cooperate to assure that aggregate admissions by such PHAs comply with the targeting requirement. If such PHAs do not have a single fiscal year, HUD will determine which PHA's fiscal year is used for this purpose.

(vii) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the voucher program on or after the merger date, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA voucher program from the point of admission).

(3) The annual income (gross income) of a participant family is used both for determination of income-eligibility under paragraph (b)(1) of this section for targeting under paragraph (b)(2)(i) of this section. In determining annual income of a participant family which includes persons with disabilities, the determination must include the disallowance of increase in annual income as provided in 24 CFR 5.617, if applicable.

(4) The applicable income limit for issuance of a voucher when a family is selected for the program is the highest income limit (for the family size) for areas in the PHA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.

(c) *Family composition*—(1) A “family” may be a single person or a group of persons.

(2) A “family” includes a family with a child or children.

(3) A group of persons consisting of two or more elderly persons or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides is a family. The PHA determines if any other group of persons qualifies as a “family.”

(4) A single person family may be:

(i) An elderly person.

(ii) A displaced person.

(iii) A disabled person.

(iv) Any other single person.

(5) A child who is temporarily away from the home because of placement in foster care is considered a member of the family.

(d) *Continuously assisted*-- (1) An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

(2) The PHA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the voucher program will be considered to break continuity of assistance under the 1937 Housing Act.

(e) *When PHA verifies that applicant is eligible*. The PHA must receive information verifying that an applicant is eligible within the period of 60 days before the PHA issues a voucher to the applicant.

(f) *Decision to deny assistance*. (1) Notice to applicant. The PHA must give an applicant prompt written notice of a decision denying admission to the program (including a decision that the applicant is not eligible, or denying assistance for other reasons). The notice must give a brief statement of the reasons for the decision. The notice must also state that the applicant may request an informal review of the decision, and state how to arrange for the informal review.

(2) For description of the grounds for denying assistance because of action or inaction by the applicant, see 982.552(b) and (c) (requirement and authority to deny admission) and 982.553(a) (crime by family members).

## **Subpart K Rent and Housing Assistance Payment**

### **982.501 Overview.**

(a) This subpart describes program requirements concerning the housing assistance payment and rent to owner. These requirements apply to the Section 8 tenant-based program.

(b) There are two types of tenancies in the Section 8 tenant-based program:

(1) A tenancy under the voucher program.

(2) A tenancy under the certificate program (commenced before merger of the certificate and voucher programs on the merger date).

(c) Unless specifically stated, requirements of this part are the same for all tenancies. Sections 982.503, 982.504, and 982.505 only apply to a voucher tenancy. Sections 982.518, 982.519, and 982.520 only apply to a tenancy under the certificate program.

### **982.502 Conversion to voucher program.**

(a) *New HAP contracts*. On and after the merger date, the PHA may only enter into a HAP contract for a tenancy under the voucher program, and may not enter into a new HAP contract for a tenancy under the certificate program.

(b) *Over-FMR tenancy*. If the PHA had entered into any HAP contract for an over-FMR tenancy under the certificate program prior to the merger date, on and after the merger date such tenancy shall be considered and treated as a tenancy under the voucher program, and shall be subject to the voucher program requirements under this part, including calculation of the voucher housing assistance payment in accordance with 982.505. However, 982.505(b)(2) shall not be applicable for calculation of the housing assistance payment prior to the effective date of the second regular reexamination of family income and composition on or after the merger date.

(c) *Voucher tenancy*. If the PHA had entered into any HAP contract for a voucher tenancy prior to the merger date, on and after the merger date such tenancy shall continue to be considered and treated as a tenancy under the voucher program, and shall be subject to the voucher program requirements under this part, including calculation of the voucher housing assistance payment in accordance with 982.505. However, before the effective date of the second regular reexamination of family income and composition on or after the merger date, the payment standard for the family shall be the higher of:

(1) The initial payment standard for the family at the beginning of the HAP contract term; or

(2) The payment standard for the family as calculated in accordance with 982.505, except that 982.505(b)(2) shall not be applicable until the effective date of the second regular reexamination of family income and composition on or after the merger date.

(d) *Regular certificate tenancy.* The PHA must terminate program assistance under any outstanding HAP contract for a regular tenancy under the certificate program (entered prior to the merger date) at the effective date of the second regular reexamination of family income and composition on or after the merger date. Upon such termination of assistance, the HAP contract for such tenancy terminates automatically. The PHA must give at least 120 days written notice of such termination to the family and the owner, and the PHA must offer the family the opportunity for continued tenant-based assistance under the voucher program. The PHA may deny the family the opportunity for continued assistance in accordance with 982.552 and 982.553.

**982.503 Voucher tenancy: Payment standard amount and schedule.**

(a) *Payment standard schedule.* (1) HUD publishes the fair market rents for each market area in the United States (see part 888 of this title). The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. For each FMR area, the PHA must establish payment standard amounts for each 'unit size.' Unit size is measured by number of bedrooms (zero-bedroom, one-bedroom, and so on).

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount ("exception payment standard amount").

(3) The PHA voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

(b) *Establishing payment standard amounts.* (1)(i) The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range ('basic range').

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount ("exception payment standard amount").

(c) *HUD approval of exception payment standard amount.*

(1) HUD discretion. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the fair market rent area (called an exception area). HUD may approve an exception payment standard amount in accordance with this paragraph (c) of this section for all units, or for all units of a given unit size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

(2) *Above 110 percent of FMR to 120 percent of published FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(i)(B) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(A) *Median rent method.* In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data

from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(B) *40th or 50th percentile rent method.* In this method, HUD determines that the area exception payment standard amount equals either the 40th or 50th percentile of rents for standard quality rental housing in the exception area. HUD determines whether the 40th or 50th percentile rent applies in accordance with the methodology described in 888.113 of this title for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

(iii) Until September 30, the PHA may establish an exception payment standard amount for all or part of an FMR area in accordance with maximum payment standard amounts published in the *Federal Register* between September 25, 2000 and September 30, 2001 without requesting HUD approval, under the following conditions:

(A) The payment standard amounts referenced in paragraph (c)(2)(iii) are the maximum payment standard amounts until October 1, 2001 unless HUD has approved the PHA's establishment of a higher payment standard amount;

(B) The PHA's establishment of the maximum payment standard amounts in paragraph (c)(2)(iii)(A) of this section does not result in a payment standard amount that is greater than 120% of the published FMR;

(C) The PHA has adopted a new utility allowance schedule after October 1, 2000 which reflects that the total cost of all utilities for a typical two-bedroom unit has increased by more than ten percent based on the difference between the new utility allowance schedule and the previous schedule; and

(D) The current payment standard amounts are not adequate to meet increased utility costs at 100% of the FMR

(3) *Above 120 percent of published FMR.*

(i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

(A) Such approval is necessary to prevent financial hardship for families;

(B) Such approval is supported by statistically representative rental housing survey data to justify HUD approval in accordance with the methodology described in 888.113 of this title; and

(C) Such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section.

(ii) For purposes of paragraph (c)(3) of this section, the term 'place' is an incorporated place or a U.S. Census designated place. An incorporated place is established by State law and includes cities, boroughs, towns, and villages. A U.S. Census designated place is the statistical counterpart of an incorporated place.

(4) *Program justification.*

(i) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(2) or paragraph (c)(3) of this section) if HUD determines that approval of such higher amount is needed either:

(A) To help families find housing outside areas of high poverty, or

(B) Because voucher holders have trouble finding housing for lease under the program within the term of the voucher.

(ii) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(3) of this section) after six months from the date of HUD approval of an exception payment standard pursuant to paragraph (c)(2) of this section for the area.

(5) *Population.* The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

(6) Withdrawal or modification. At any time, HUD may withdraw or modify approval to use an exception payment standard amount.

(7) Transition: Area exception rents approved prior to merger date. Subject to paragraph (c)(6) of this section, the PHA may establish an exception payment standard amount up to the amount of a HUD-approved area exception rent in effect at the merger date.

(d) *HUD approval of payment standard amount below the basic range.* HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) *HUD approval of success rate payment standard amounts.* In order to increase the number of voucher holders who become participants, HUD may approve requests from PHAs whose FMRs are computed at the 40th percentile rent to establish higher, success rate payment standard amounts. A success rate payment standard amount is defined as any amount between 90 percent and 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in 888.113 of this title.

(1) A PHA may obtain HUD Field Office approval of success rate payment standard amounts provided the PHA demonstrates to HUD that it meets the following criteria:

(i) Fewer than 75 percent of the families to whom the PHA issued rental vouchers during the most recent 6 month period for which there is success rate data available have become participants in the voucher program;

(ii) The PHA has established payment standard amounts for all unit sizes in the entire PHA jurisdiction within the FMR area at 110 percent of the published FMR for at least the 6 month period referenced in paragraph (e)(1)(i) of this section and up to the time the request is made to HUD; and

(iii) The PHA has a policy of granting automatic extensions of voucher terms to at least 90 days to provide a family who has made sustained efforts to locate suitable housing with additional search time.

(2) In determining whether to approve the PHA request to establish success rate payment standard amounts, HUD will consider whether the PHA has a SEMAP overall performance rating of "troubled". If a PHA does not yet have a SEMAP rating, HUD will consider the PHA's SEMAP certification.

(3) HUD approval of success rate payment standard amounts shall be for all unit sizes in the FMR area. A PHA may opt to establish a success rate payment standard amount for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(f) *Payment standard protection for PHAs that meet deconcentration objectives.* Paragraph (f) of this section applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to 888.113(c), but is now set at the 40th percentile rent.

(1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in 985.3(h) in the prior year, or in two of the last three years.

(2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to 888.113(c). A PHA may opt to establish a payment standard amount based on the 50th percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(g) *HUD review of PHA payment standard schedules.* (1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

**982.504 Voucher tenancy: Payment standard for family in restructured subsidized multifamily project.**

(a) This section applies to tenant-based assistance under the voucher program if all the following conditions are applicable:

(1) Such tenant-based voucher assistance is provided to a family pursuant to 401.421 of this title when HUD has approved a restructuring plan, and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such families. Such tenant-based voucher assistance is provided for a family previously receiving project-based assistance in an eligible project (as defined in 401.2 of this title) at the time when the project-based assistance terminates.

(2) The family chooses to remain in the restructured project with tenant-based assistance under the program and leases a unit that does not exceed the family unit size;

(3) The lease for such assisted tenancy commences during the first year after the project-based assistance terminates.

(b) The initial payment standard for the family under such initial lease is the sum of the reasonable rent to owner for the unit plus the utility allowance for tenant-paid utilities. (Determination of such initial payment standard for the family is not subject to paragraphs (c)(1) and (c)(2) of 982.505. Except for determination of the initial payment standard as specifically provided in paragraph (b) of this section, the payment standard and housing assistance payment for the family during the HAP contract term shall be determined in accordance with 982.505.)

**982.505 Voucher tenancy: How to calculate housing assistance payment.**

(a) *Use of payment standard.* A payment standard is used to calculate the monthly housing assistance payment for a family. The 'payment standard' is the maximum monthly subsidy payment.

(b) *Amount of monthly housing assistance payment.* The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:

(1) The payment standard for the family minus the total tenant payment; or

(2) The gross rent minus the total tenant payment.

(c) *Payment standard for family.* (1) The payment standard for the family is the lower of:

(i) The payment standard amount for the family unit size; or

(ii) The payment standard amount for the size of the dwelling unit rented by the family.

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with 982.503 (including an exception payment standard amount as determined in accordance with 982.503(b)(2) and 982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.

(3) Decrease in the payment standard amount during the HAP contract term. If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly housing assistance payment for the family beginning at the effective

date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. The PHA must determine the payment standard for the family as follows:

(i) Step 1: At the first regular reexamination following the decrease in the payment standard amount, the PHA shall determine the payment standard for the family in accordance with paragraphs (c)(1) and (c)(2) of this section (using the decreased payment standard amount).

(ii) Step 2 (first reexamination payment standard amount): The PHA shall compare the payment standard amount from step 1 to the payment standard amount last used to calculate the monthly housing assistance payment for the family. The payment standard amount used by the PHA to calculate the monthly housing assistance payment at the first regular reexamination following the decrease in the payment standard amount is the higher of these two payment standard amounts. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard amount.

(iii) Step 3 (second reexamination payment standard amount): At the second regular reexamination following the decrease in the payment standard amount, the lower payment standard amount shall be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard amount, in which case the payment standard amount is determined in accordance with paragraph (c)(4) of this section.

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

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

(d) *PHA approval of higher payment standard for the family as a reasonable accommodation.* If the family includes a person with disabilities and requires a higher payment standard for the family, as a reasonable accommodation for such person, in accordance with part 8 of this title, the PHA may establish a higher payment standard for the family within the basic range.

### **982.506 Negotiating rent to owner.**

The owner and the family negotiate the rent to owner. At the family's request, the PHA must help the family negotiate the rent to owner.

### **982.507 Rent to owner: Reasonable rent.**

(a) *PHA determination.* (1) The PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

(2) The PHA must redetermine the reasonable rent:

(i) Before any increase in the rent to owner;

(ii) If there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary; or

(iii) If directed by HUD.

(3) The PHA may also redetermine the reasonable rent at any other time.

(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA.

(b) *Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

### **982.508 Maximum family share at initial occupancy.**

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

### **982.509 Rent to owner: Effect of rent control.**

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

### **982.510 Other fees and charges.**

(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.

(b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

### **982.514 Distribution of housing assistance payment.**

The monthly housing assistance payment is distributed as follows:

(a) The PHA pays the owner the lesser of the housing assistance payment or the rent to owner.

(b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment ('utility reimbursement') either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

### **982.515 Family share: Family responsibility.**

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

### **982.516 Family income and composition: Regular and interim examinations.**

(a) PHA responsibility for reexamination and verification.

(1) PHA responsibility for reexamination and verification. The PHA must conduct a reexamination of family income and composition at least annually.

(2) The PHA must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income.

## Appendix B: Regulations and Guidebooks

(b) *When PHA conducts interim reexamination.* (1) At any time, the PHA may conduct an interim reexamination of family income and composition.

(2) At any time, the family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must make the interim determination within a reasonable time after the family request.

(3) Interim examinations must be conducted in accordance with policies in the PHA administrative plan.

(c) *Family reporting of change.* The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(d) *Effective date of reexamination.* (1) The PHA must adopt policies prescribing how to determine the effective date of a change in the housing assistance payment resulting from an interim redetermination.

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment. (For a voucher tenancy, the housing assistance payment shall be calculated in accordance with 982.505. For a certificate tenancy, the housing assistance payment shall be calculated in accordance with 982.518.)

(e) *Family member income.* Family income must include income of all family members, including family members not related by blood or marriage. If any new family member is added, family income must include any income of the additional family member. The PHA must conduct a reexamination to determine such additional income, and must make appropriate adjustments in the housing assistance payment.

(f) *Accuracy of family income data.* The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant families is complete and accurate.

(g) *Execution of release and consent.* (1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a HUD-approved release and consent form (including any release and consent as required under 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The PHA and HUD must limit the use or disclosure of information obtained from a family or from another source pursuant to this release and consent to purposes directly in connection with administration of the program.

### **982.517 Utility allowance schedule.**

(a) *Maintaining schedule.*

(1) The PHA must maintain a utility allowance schedule for all tenant-paid utilities (except telephone), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).

(2) The PHA must give HUD a copy of the utility allowance schedule. At HUD's request, the PHA also must provide any information or procedures used in preparation of the schedule.

(b) *How allowances are determined.* (1) The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole and current utility rates.

(2)(i) A PHA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. However, the PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(ii) In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services. The PHA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners.

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms), and unit types (e.g., apartment, row-house, town house, single-family detached, and manufactured housing) that are typical in the community.

(4) The utility allowance schedule must be prepared and submitted in accordance with HUD requirements on the form prescribed by HUD.

(c) *Revisions of utility allowance schedule.* (1) A PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.

(2) At HUD's direction, the PHA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.

(d) *Use of utility allowance schedule.* (1) The PHA must use the appropriate utility allowance for the size of dwelling unit actually leased by the family (rather than the family unit size as determined under the PHA subsidy standards).

(2) At reexamination, the PHA must use the PHA current utility allowance schedule.

(e) *Higher utility allowance as reasonable accommodation for a person with disabilities.* On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability.

### **982.518 Regular tenancy: How to calculate housing assistance payment.**

The monthly housing assistance payment equals the gross rent, minus the higher of:

- (a) The total tenant payment; or
- (b) The minimum rent as required by law.

### **982.519 Regular tenancy: Annual adjustment of rent to owner.**

(a) *When rent is adjusted.* At each annual anniversary date of the HAP contract, the PHA must adjust the rent to owner at the request of the owner in accordance with this section.

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

- (i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor, published by HUD in the *Federal Register*, that is in effect 60 days before the HAP contract anniversary;
- (ii) The reasonable rent (as most recently determined or redetermined by the PHA in accordance with 982.503); or
- (iii) The amount requested by the owner.

(2) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(3) The rent to owner may be adjusted up or down in accordance with this section.

(4) Notwithstanding paragraph (b)(1) of this section, the rent to owner for a unit must not be increased at the annual anniversary date unless:

(i) The owner requests the adjustment by giving notice to the PHA; and

(ii) During the year before the annual anniversary date, the owner has complied with all requirements of the HAP contract, including compliance with the HQS.

(5) The rent to owner will only be increased for housing assistance payments covering months commencing on the later of:

(i) The first day of the first month commencing on or after the contract anniversary date; or

(ii) At least sixty days after the PHA receives the owner's request.

(6) To receive an increase resulting from the annual adjustment for an annual anniversary date, the owner must request the increase at least sixty days before the next annual anniversary date.

**982.520 Regular tenancy: Special adjustment of rent to owner.**

(a) *Substantial and general cost increases.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner to reflect increases in the actual and necessary costs of owning and maintaining the unit because of substantial and general increases in:

(i) Real property taxes;

(ii) Special governmental assessments;

(iii) Utility rates; or

(iv) Costs of utilities not covered by regulated rates.

(2) A PHA may make a special adjustment of the rent to owner only if the adjustment has been approved by HUD. The owner does not have any right to receive a special adjustment.

(b) *Reasonable rent.* The adjusted rent may not exceed the reasonable rent. The owner may not receive a special adjustment if the adjusted rent would exceed the reasonable rent.

(c) *Term of special adjustment.* (1) The PHA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

**982.521 Rent to owner in subsidized project.**

(a) *Applicability to subsidized project.* This section applies to a program tenancy in any of the following types of federally subsidized project:

(1) An insured or non-insured Section 236 project;

(2) A Section 202 project;

(3) A Section 221(d)(3) below market interest rate (BMIR) project;

or

(4) A Section 515 project of the Rural Development Administration.

(b) *How rent to owner is determined.* The rent to owner is the subsidized rent as determined in accordance with requirements for the applicable federal program listed in paragraph (a) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see 982.309).

(c) *Certificate tenancy--Rent adjustment.* Rent to owner for a certificate tenancy is not subject to provisions governing annual adjustment (982.519) or special adjustment (982.520) of rent to owner.

**Excerpts from *Housing Choice Voucher Program Guidebook (7420.10G)***

Chapter 5: Eligibility and Denial of Assistance

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## **CHAPTER 5 ELIGIBILITY AND DENIAL OF ASSISTANCE**

### **5.1 CHAPTER OVERVIEW**

This chapter outlines HUD's requirements for participation in the housing choice voucher program and provides guidance to PHAs in establishing additional criteria. The PHA should strive for objectivity and consistency when applying these criteria to evaluate the eligibility of families who apply for assistance. PHAs must provide families applying for assistance the opportunity to explain their circumstances, furnish additional information if required, and receive an explanation from the PHA of the basis for any decision regarding their eligibility.

### **5.2 ELIGIBILITY REQUIREMENTS**

There are four factors which affect eligibility:

- *Family definition.* Only applicants who meet a PHA's definition of family are eligible.
- *Income limits.* The household's annual income may not exceed the applicable income limit as established by HUD.
- *Citizenship status.* The applicant must meet the documentation requirements of citizenship or eligible immigration status.
- *Eviction for drug-related criminal activity.* Persons evicted from public housing or any Section 8 program for drug-related criminal activity are ineligible for assistance for at least three years from the date of the eviction.

The PHA's administrative plan must contain procedures for determining eligibility and denial of assistance.

#### **Definition of Family**

##### *Program Requirements*

Each applicant for assistance under the housing choice voucher program must meet the PHA's definition of family. Within guidelines provided by HUD, a PHA has discretion in its definition of what constitutes a family.

A family is either a single person or a group of persons and includes:

- A household with or without children. A child who is temporarily away from home due to placement in foster care should be considered a member of the family.

- An elderly family, which is defined as a family whose head, co-head, spouse, or sole member is at least 62 years of age; or two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.
- A disabled family, which means a family whose head, co-head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities; or one or more persons with disabilities with one or more live-in aides.
- A displaced family, which is a family in which each member or the sole member is a person displaced by governmental action, or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized by federal disaster relief laws.
- A remaining member of a tenant family is a family member of an assisted tenant family who remains in the unit when other members of the family have left the unit.
- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

#### *PHA Discretionary Policies and Procedures*

The PHA is responsible for defining family in its administrative plan. A PHA must include the HUD guidelines listed above in its definition.

#### **Income Limits**

HUD establishes income limits by family size for the area in which the PHA is located. The income limits are published annually in a HUD Notice and are generally effective on the date of publication. The income limits are available on the Internet at [www.huduser.com](http://www.huduser.com) at the “datasets” portal.

There are two income limits that are used to determine eligibility for the housing choice voucher program and a third that is used to ensure that the PHA has met its target for assisting the neediest families in the community.

The *very low-income limit*, which is set at 50 percent of the area median income, is the income limit generally used to determine initial program eligibility.

The *low income-limit*, set at 80 percent of the area median income, is used for families whose incomes fall above the very low-income limits but who are considered to be eligible for assistance because they are:

- Continuously assisted under the public housing or Section 8 programs;

- Non-purchasing households in the following homeownership programs: HOPE 1, HOPE 2, or other HUD-assisted multifamily home ownership programs covered under 24 CFR 284.173;
- Displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract.

A PHA may adopt local policies permitting the admission of additional categories of low-income families to address essential local housing needs.

HUD also publishes an *extremely low-income limit* that is set at 30 percent of the area median income. Each PHA must ensure that 75 percent of its admissions in each PHA fiscal year are families whose incomes are at or below the extremely low-income limit. Rules pertaining to “targeting” assistance to extremely low-income families are discussed under preferences in Chapter 4.

PHA DISCRETION IN  
LOW-INCOME ELIGIBILITY

One example of a policy a PHA might adopt to permit admission of low-income families is a policy aimed at reducing total subsidy cost. For instance: two sisters want to live together. Individually they meet the very low-income limit. Together they exceed the very low income limit, but not the low-income limit. It will be cheaper to house them in a two-bedroom unit rather than in two one-bedroom units.

### Applying Income Limits

Annual Income is compared to the applicable income limit to determine eligibility.

A family’s income must be within the income limits for the PHA’s jurisdiction at the time the family receives a voucher to search for housing. In addition, the family, when it is first admitted, must select a unit in an area in which the family meets the income limit for the housing choice voucher program.

A PHA with more than one set of income limits within its jurisdiction should use the highest income limit within its jurisdiction when determining initial household eligibility. However, a family whose income is above the limits in one or more areas of that PHA’s jurisdiction may lease only in an area where the family is income eligible when it executes its first lease assisted under the voucher program. Similarly, a family exercising portability when first admitted to the program must lease in an area where it is within the eligibility income limit.

### Citizenship Status

#### *Limits on Assistance to Non-Citizens*

Eligibility for federal housing assistance is limited to U.S. citizens and applicants who have eligible immigration status. Eligible immigrants are persons who qualify for one of the immigrant categories in Table 5-1. Persons claiming eligible immigration status must present appropriate immigration documents, which must be verified by the PHA through the Immigration and Naturalization Service (INS).

Every applicant household for (and participant in) the housing choice voucher program must sign a certification for every household member either claiming status as:

- A U.S. citizen, or
- An eligible alien, or
- Stating the individual's choice not to claim eligible status and acknowledge ineligibility.

*Declaration of U.S. Citizenship*

For household members claiming U.S. citizenship, only a declaration signed by the household member (or in the case of a minor child, parent) is required by regulation.

However, PHAs are permitted to adopt policies requiring verification through presentation of one of the following:

- United States passport;
- Resident alien card;
- Registration card;
- Social Security card;
- Other appropriate documentation.

If it is the PHA's policy to require verification of citizenship, the PHA administrative plan must clearly state this policy.

*Documentation of Eligible Immigration Status*

Non-citizens claiming eligible immigration status must provide all of the following evidence:

- The signed declaration of eligible immigration status;
- One of the INS documents specified in the rule. (See Exhibit 5-1, *Non-Citizen Rule – Summary of Documentation Requirements*.);
- A signed verification consent form describing transmission and use of the information obtained.

Families in which all members are citizens or have eligible immigration status are eligible for full housing assistance.

An applicant family without any citizens or members with eligible immigration status is not eligible for assistance.

Non-citizen students are not eligible to receive housing assistance. When a non-citizen student is accompanied by a non-citizen spouse and/or minor children, those family members are also ineligible for assistance. However, citizen spouses and the children of the citizen spouse and non-citizen student are eligible for assistance. When a household includes eligible and ineligible

members it is treated as a “mixed family” as described below. A non-citizen student is defined as a bona fide student who:

- Is pursuing a course of study in this country;
- Has a residence in another country outside of the United States that the person has no intention of abandoning; and
- Is admitted to this country temporarily, solely for the purpose of pursuing a course of study.

*Mixed Families*

Families that include members who are citizens or have eligible immigration status and members who do not have eligible immigration status (or elect not to state that they have eligibility status) are referred to as “mixed families”.

A mixed family is eligible for prorated assistance. Prorated assistance is a calculation of subsidy based on the number of members who are citizens or have eligible immigration status.

CALCULATING PRORATED ASSISTANCE									
<p>Assistance for mixed families is calculated based on the percentage of eligible individuals in the household. There are five steps in the calculation.</p>									
<i>Steps</i>	<i>Example</i>								
1. Determine the gross rent for the unit (rent to owner plus the utility allowance).	<table style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 20px;">1. Rent to owner</td> <td style="text-align: right;">\$500</td> </tr> <tr> <td style="padding-right: 20px;">Utility allowance</td> <td style="text-align: right;">+ \$50</td> </tr> <tr> <td style="padding-right: 20px;">Gross rent</td> <td style="text-align: right; border-top: 1px solid black;">\$550</td> </tr> </table>	1. Rent to owner	\$500	Utility allowance	+ \$50	Gross rent	\$550		
1. Rent to owner	\$500								
Utility allowance	+ \$50								
Gross rent	\$550								
2. Determine the HAP, taking into consideration the income of all family members, regardless of their eligibility status.	2. HAP = \$300								
3. Divide the number of eligible family members (citizens and those with eligible immigration status) by the total number of members in the household.	<table style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 20px;">3. 3 eligible family members</td> <td></td> </tr> <tr> <td style="padding-right: 20px;">÷ 4 total family members</td> <td></td> </tr> <tr> <td style="padding-right: 20px;">.75 proration factor</td> <td></td> </tr> </table>	3. 3 eligible family members		÷ 4 total family members		.75 proration factor			
3. 3 eligible family members									
÷ 4 total family members									
.75 proration factor									
4. Multiply the HAP calculated in Step 2 by the number calculated in Step 3 to determine the family’s eligible subsidy portion.	4. Prorated HAP = \$300 x .75 = \$225								
5. The amount of rent the family will pay will be the gross rent for the unit (step 1) less the prorated HAP calculated in Step 4.	<table style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 20px;">5. Prorated Family Share</td> <td></td> </tr> <tr> <td style="padding-right: 20px;">\$550 Gross rent</td> <td></td> </tr> <tr> <td style="padding-right: 20px;">- \$225 Prorated HAP</td> <td></td> </tr> <tr> <td style="padding-right: 20px;">\$325 Prorated Family Share</td> <td></td> </tr> </table>	5. Prorated Family Share		\$550 Gross rent		- \$225 Prorated HAP		\$325 Prorated Family Share	
5. Prorated Family Share									
\$550 Gross rent									
- \$225 Prorated HAP									
\$325 Prorated Family Share									

### *Notification Requirements*

At the time an application is filed, the PHA must notify all applicants for assistance about the rule restricting assistance based on citizenship status and of the requirement to submit documentation of eligible status or to elect not to claim eligible status. The PHA's notice must state the following:

- Financial assistance is contingent upon the appropriate submission and verification of documentation of citizenship or eligible immigration status.
- The types of documentation required and time period for submission. (See Exhibit 5-1.)

As appropriate, assistance will be prorated, denied, or terminated, based on a final determination of ineligibility after all appeals and, if requested, an informal hearing.

### *Submission of Documentation*

Documentation must be submitted by the time of the eligibility determination. Once documents have been submitted and verified for an individual, citizenship documentation for that individual will not need to be collected again.

If the family certifies that the required evidence is temporarily unavailable and it needs more time, the PHA may provide an extension of up to 30 days to submit evidence of eligible status, if the family has submitted the required declaration of eligible immigration status. To obtain an extension, the family must also certify that prompt and diligent efforts will be undertaken to obtain the evidence.

The PHA must inform the family, in writing, whether its request for a time extension of has been granted or denied. If granted, the notice must state the specific period of the extension. If the extension request is denied, the notice must explain the reasons for the denial.

If all required documents have been provided by the family, assistance may not be denied or delayed solely because verification or requested hearings have not been completed.

If required documents have not been submitted by all family members, only prorated assistance may be provided until the required documents have been submitted by all family members.

New family members in currently participating households must submit documentation at the first interim or annual reexamination following occupancy.

If a PHA suspects that an applicant or tenant has misreported his or her immigration status or altered or forged documents, it may refer the case to HUD's Office of Inspector General for investigation.

PHAs must apply all procedures in a uniform manner. No applicant or resident may be asked for additional information based on country of origin, speech, accent, language, or any other personal characteristic of the applicant or family member. Failure to maintain this performance standard could be a serious violation of the Fair Housing Act.

#### *Verification of Eligible Immigration Status*

The PHA must conduct primary verification of eligible immigration status through the INS automated system, Systematic Alien Verification for Entitlements (SAVE). The PHA must take the following steps to access SAVE:

- Complete and submit a Primary Verification User Access Code Agreement form before using SAVE for the first time.
- Each time, access the SAVE system by calling 1-800-365-7620.
- Use the assigned access code to enter the required information. One of the following messages will be received:
  - INS Status confirmed; or
  - Institute Secondary Verification.
- If the message is “Institute Secondary Verification”, the PHA must request a manual records search by completing form G-845S, Document Verification Request. This form must be sent to the INS along with photocopies of the original INS documents supplied by the applicant or currently assisted household member within 10 days of receiving the “Institute Secondary Verification” message.
- The PHA is not liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

#### *Delay, Denial, or Termination of Assistance*

The PHA may not delay, deny, or terminate assistance to an applicant or currently assisted household if any of the following circumstances apply:

- At least one person in the household has submitted appropriate INS documents;
- The documents were submitted to the INS on a timely basis, but the verification process has not been completed;
- The family member in question moves;
- The INS appeals process has not been completed;

- Assistance is prorated;
- Deferral of termination of assistance is granted; or
- For a program participant, the informal hearing process is not complete.

The PHA must terminate assistance for at least 24 months if it determines that a family has knowingly permitted an ineligible person to live in the assisted unit without informing the PHA.

Assistance may be denied or terminated when:

- Declaration of citizenship or eligible immigration status is not submitted by the specified deadline or any extension;
- Required documentation is submitted but INS primary and secondary verification does not verify immigration status and family does not pursue INS or PHA appeal; or
- Required documentation is submitted but INS primary and secondary verification does not verify immigration status, and INS or PHA appeal is pursued but decision(s) are rendered against the family.

When the PHA decides to deny or terminate assistance, it must send a written notice to the household which includes the following:

- A statement that financial assistance will be denied or terminated and an explanation of why;
- Notification that the family may be eligible for prorated assistance if it is a mixed family;
- In the case of a currently assisted household, the procedures for obtaining relief under the preservation of families provision (e.g. temporary deferral or proration of assistance);
- The right to appeal the results of the secondary verification to the INS; and
- The right to request an informal hearing from the PHA in lieu of an INS appeal or after an appeal.

In the case of applicants, the notice may advise that assistance may not be delayed until the conclusion of the INS appeal process, but may be delayed during the informal hearing process.

**EXHIBIT 5-1  
NON-CITIZEN RULE – SUMMARY OF DOCUMENTATION REQUIREMENTS**

STATUS	DOCUMENTATION
I A Citizen or National of the United States.	DECLARATION: For each family member with this status, a declaration of citizenship signed under penalty of perjury. For each adult, the declaration must be signed by the adult. For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.
II. A non-citizen claiming eligible immigration status who is 62 years of age or will be 62 years of age and receiving assistance on the effective date: 9/6/96.	DECLARATION: For each family member with this status, a declaration of eligible immigration status signed under penalty of perjury. Adults must sign their own declarations.  AND: Proof of age
<p>III. All other non-citizens claiming eligible immigration status.</p> <p>Categories of eligible immigration status:</p> <ol style="list-style-type: none"> <li>1. A non-citizen lawfully admitted for permanent residence as an immigrant (includes special agricultural workers granted lawful temporary resident status).</li> <li>2. A non-citizen who entered the United States before 1/1/72 (or such later date as enacted by law); and <ul style="list-style-type: none"> <li>- Has continuously maintained residence in the U.S. since then; and</li> <li>- Who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General.</li> </ul> </li> </ol>	<p>DECLARATION: See II above AND:</p> <p><u>A verification form</u>: For each adult, the adult must sign the form. For each child, an adult member of the family residing in the unit who is responsible for the child must sign the form.</p> <p>The verification form must state that evidence of eligible immigration status may be released by the PHA to HUD and the INS without responsibility for the future use or transmission of the evidence by the recipient. The form must also notify the signer of the possible release of evidence of eligible immigration status by HUD. Such evidence shall only be released by HUD to the INS for the purpose of establishing eligibility for financial assistance.</p> <p>AND:</p> <p><u>INS Primary Verification</u> of eligible immigration status must be conducted by the PHA through the INS automated SAVE system. If this method fails to verify status, or, if the verification received indicates ineligible immigration status, the PHA must request <u>Secondary INS Verification</u> within 10 days by sending to the local INS Office photocopies of INS documents receiving (front and back) attached to Form G-845S – Document Verification Request.</p> <p>AND: The PHA must request and review an original INS document of eligible immigration status and must retain photocopies and return the original to the individual.</p>

**EXHIBIT 5-1  
NON-CITIZEN RULE – SUMMARY OF DOCUMENTATION REQUIREMENTS**

STATUS	DOCUMENTATION
<p>III. All other Non-citizens with eligible immigration status (continued)</p> <p>3. A non-citizen who is lawfully present in the United States as a result of:</p> <ul style="list-style-type: none"> <li>- Refugee status (section 207); or</li> <li>- The granting of asylum (which has not been terminated (section 208); or</li> <li>- The granting of conditional entry (section 203 (a)(7) prior to 4/1/80 because of persecution of fear on account of race, religion, or political opinion, or because of being uprooted by catastrophic national calamity.</li> </ul> <p>4. A non-citizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergency reasons or reasons deemed strictly in the public interest (section 221(d)(5)) (e.g., parole status).</p> <p>5. A non-citizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation (section 243 (h)) (threat to life or freedom).</p> <p>6. A non-citizen lawfully admitted for temporary or permanent residence (245A) (amnesty granted).</p>	<p>Acceptable INS Document:</p> <ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> <li>- “Admitted as a Refugee Pursuant to Section 207”</li> <li>- “Section 208” or “Asylum”</li> <li>- “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>- “Paroled Pursuant to Section 221 (d)(5) of the INS”</li> </ul> </li> <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 an INS asylum officer granting asylum (if application is filed on or after 10/1/90) or from an INS 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> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> <li>• Form I-688B Employment Authorization Card annotate “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li> <li>• A receipt issued by the INS 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 INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i>.</li> </ul>

### *INS Appeals Process*

The PHA must notify the family in writing if the secondary verification process does not confirm eligible immigration status. The notice must indicate whether assistance has been delayed, denied, or terminated and inform the family of the right to file an appeal with the INS.

If the family wants to exercise its right of appeal with the INS, it must take the following steps:

- Within 30 days from the date of the PHA notification, submit a written request, for an appeal with the INS.
- Include with this request a cover letter and any support documentation as well as a copy of the verification request form (Form G-845S) which was submitted by the PHA for the secondary verification request.
- Provide the PHA with a copy of the request for an appeal with the INS.
- Provide any additional documentation that the INS may request.

Within 30 days the INS must render its decision to the family and forward a copy to the PHA.

### *Fair Housing Requirements*

Careless implementation of the rule limiting assistance to non-citizens may result in inadvertent discrimination.

PHAs must take care to comply with all applicable civil rights and other fair housing laws and regulations. The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions. Such protected classes do not exclude persons who have or are perceived to have HIV/AIDS. Failure to follow all required procedures or to apply program requirements consistently by protected class may result in discrimination and lead to administrative findings or legal action.

In implementing limits on assistance to non-citizens, PHAs must comply also with Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of any handicap or perceived handicap.

Where feasible, if applicants and participants are not proficient in English, PHAs are instructed to provide notices and documents related to these provisions in a language the individual understands.

## **Other Required Information**

Participation in the housing choice voucher program places an obligation on the family to provide information required by HUD and the PHA when requested, and to cooperate in efforts to verify the information provided. Disclosure of Social Security numbers and signatures on HUD's release authorization form are minimum program requirements.

### *Disclosure of Social Security Numbers*

The PHA must require applicants and program participants to disclose the Social Security numbers (SSN) of all family members age six or older as a condition of admission and continued assistance. Persons who have not been assigned a SSN must execute a certification stating that no SSN has been assigned. This process need occur only one time for each family member. New family members age six or older should be required to disclose or certify at the time the change in family composition is reported to the PHA or the next annual recitification after a family member reaches age six. A parent or guardian must provide the certification for a minor.

The PHA must document the SSN disclosed by each family member. If the family member cannot produce an original Social Security card issued by the Social Security Administration, the PHA may accept one of the following as verification if it includes the SSN:

- A driver's license with SSN.
- Identification card issued by a federal, state, or local agency.
- Identification card issued by a medical insurance company or provider (including Medicare and Medicaid).
- Identification card issued by an employer or trade union.
- Earnings statements on payroll stubs.
- Bank statements.
- IRS Form 1099.
- Benefit award letters from government agencies.
- Retirement benefit letter.
- Life insurance policies.
- Court records (real estate, tax notices, marriage and divorce, judgment, or bankruptcy records).

If applicants cannot produce an original Social Security card, they must certify that the document provided is complete and accurate.

*Authorization for the Release of Information/Privacy Act*

The PHA must require all adult applicants and participants (age 18 and over) to sign the Authorization for Release of Information/Privacy Act Notice (form HUD-9886) as a condition for admission and continued assistance. The form is valid for only 15 months and must be signed annually at each reexamination.

With each adult member of the household, the PHA should review the information that the form authorizes HUD and the PHA to collect. Once signed, the form provides authorization for the following:

- HUD and the PHA to obtain any information necessary from State Wage Information and Collection Agencies (SWICAs) to verify information provided at the time of application or recertification.
- HUD and the PHA to verify income information with previous and current employers that is pertinent to eligibility or level of assistance.
- HUD to request income tax return information from the IRS and Social Security Administration (SSA) to verify income related to eligibility or level of assistance.

The Privacy Act portion of the form informs applicants and participants that the information that is collected may be used for computer matching with other agencies including the SSA, the IRS, and SWICAs.

### **5.3 ANNUAL INCOME**

#### **Overview**

Determinations of program eligibility and total tenant payment for the housing choice voucher program require that the applicant or participant family's annual income be computed at least annually. Regulations specify the amounts to be included in the calculation of annual income.

#### **Definition of Annual Income**

Annual income means all amounts, monetary or not, that go to or are on behalf of, the family head or spouse (even if temporarily absent) or to any other family member, or all amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date. Exhibit 5-2, *Income Inclusions*, is the complete definition of annual income as published in the regulations and *Federal Register* notices. Annual income means all amounts that are not specifically excluded by regulation.

**EXHIBIT 5-2**  
**INCOME INCLUSIONS AND EXCLUSIONS**

**INCOME INCLUSIONS**

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, lotteries, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see No. 13 under Income Exclusions);
- (5) Payments in lieu of earnings, such as unemployment, worker's compensation, and severance pay (but see No. 3 under Income Exclusions);
- (6) Welfare Assistance.
  - a. Welfare assistance received by the household.
  - b. The amount of reduced welfare income that is disregarded specifically because the family engaged in fraud or failed to comply with an economic self-sufficiency or work activities requirement.
  - c. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustments by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare income to be included as income shall consist of:
    - (i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
    - (ii) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and
- (8) All regular pay, special pay, and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit (but see paragraph (7) under Income Exclusions).

**INCOME EXCLUSIONS**

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (but see No. 5 under Income Inclusions);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide (as defined by regulation);
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8)
  - (a) Amounts received under training programs funded by HUD;
  - (b) Amounts received by a person with disabilities 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);
  - (c) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - (d) A resident service stipend. This is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. This may include, but is not limited to fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time; or
  - (e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
- (9) Temporary, nonrecurring, or sporadic income (including gifts). For example, amounts earned by temporary census employees whose terms of employment do not exceed 180 days (Notice PIH 2000-1).
- (10) Reparations payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump-sum payment or in prospective monthly payments;
- (14) 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;
- (15) Amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; and

EXHIBIT 5-2 – (CONTINUED)

- (16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the 1937 Act. A notice will be published in the *Federal Register* and distributed to PHAs identifying the benefits that qualify for this exclusion. Updates will be distributed when necessary. The following is a list of income sources that qualify for that exclusion:
- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
  - b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
  - c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
  - d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
  - e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
  - f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);
  - g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);
  - h) The first \$2000 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 \$2000 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);
  - i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
  - j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));
  - k) 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-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.);
  - l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
  - m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
  - n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));
  - o) 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);
  - p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
  - q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
  - r) 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); and
  - s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).
- (17) Earned Income Disallowance for persons with disabilities [24CFR5.617]
- (a) Initial Twelve Month Exclusion [24CFR5.617(C)(1)]
  - (b) Second Twelve Month Exclusion and Phase-In [24CFR5.617(C)2]
  - (c) Maximum Four Year Disallowance [24CFR5.617 (C) (3)]

*Annualizing Anticipated Annual Income*

Once the PHA knows and verifies all sources of income are known and verified, the PHA must convert reported income to an annual figure. Convert periodic wages to annual income using the following:

- Multiply hourly wages by the number of hours worked per year (2080 hours for full-time employment with a 40 hour work week and no overtime).
- Multiply weekly wages by 52.
- Multiply bi-weekly wages (paid every other week) by 26.
- Multiply semi-monthly wages (paid twice each month) by 24.
- Multiply monthly wages by 12.

Generally the PHA should use current circumstances to anticipate annual income, unless verification forms indicate an imminent change (e.g., verification indicates an increase of 2.4 percent in Social Security benefits beginning on January 1).

PHAs may choose among several methods to determine the anticipated annual income. The following are two acceptable methods of calculating annual income:

- Calculating projected annual income by annualizing *current* income (and subsequently conducting an interim reexamination if income changes); or
- Using information available to average anticipated *income from* all known sources when the sources are expected to change during the year.

CALCULATING ANTICIPATED ANNUAL INCOME

A teacher's assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$600 per month. The PHA may calculate the family's income using either of the following two methods:

- *Calculate Annual Income Based on Current Income:* \$15,600 (\$1300 x 12 months). An interim reexamination would then be conducted at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of \$7200 (\$600 x 12 months).
- *Calculate Annual Income Based on Average Experience:*

\$11,700	(\$1300 x 9 months)
<u>+ 1,800</u>	(\$ 600 x 3 months)
\$13,500	

Using the second method, an interim reexamination would *not* be conducted at the end of the school year. In order to use this method effectively, some history of income from all sources in prior years should be available.

## **Elements of Annual Income**

### *Income from Assets*

Annual income includes income from assets earned during the 12-month period and to which any family member has access. Section 5.4 discusses calculations related to income from assets.

### *Income of Dependents*

A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student. The head of household, spouse, foster child, or live-in-aide are *never* dependents. Some income contributed to the household by dependents is counted and some is not.

*Earned* income of minors (family members 17 and under) *is not* counted.

Benefit or other *non-earned* income of minors *is* counted.

Although full-time students 18 years of age or older are technically identified as dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of \$480 per year for full-time students, age 18 or older, who are not the heads of household or spouse. If the income is less than \$480 annually, count it all. If the annual income exceeds \$480, count \$480 and exclude the amount that exceeds \$480.

All income of a full-time student, 18 years of age or older, is counted if that person is the head of household or spouse.

Payments received by the family for the care of foster children or foster adults are *not* counted. This applies only to payments made through the official foster care relationships with local welfare agencies.

### *Income of Temporarily Absent Family Members*

PHAs must count all income of family members whom the PHA has approved to reside in the unit, even if they are temporarily absent.

### *Regular Contributions and Gifts*

PHAs must count as income any *regular* contributions and gifts (monetary or not) from persons outside the family. This may include rent and utility payments paid on behalf of the family and other cash or non-cash contributions provided on a regular basis.

REGULAR CONTRIBUTIONS AND GIFTS EXAMPLES

1. A divorced woman and her three children are housing choice voucher program participants. The former husband does not pay child support, but each month he brings the family groceries, clothing, or money. On average he provides \$100 each month in goods or cash. The \$100 value per month is included in the family's annual income.
2. The daughter of an elderly housing choice voucher participant pays the mother's \$175 share of rent each month. The \$175 value must be included in the participant's annual income.

*Temporary Income*

Temporary, non-recurring, or sporadic income (including gifts) is not counted.

*Income from a Business (Includes Self-Employment Income)*

Include the *net income* from operation of a business or profession.

Generally, net income equals gross income less business expense.

Straight-line depreciation of capital assets used in the business or profession may be deducted as a business expense. Interest payments on business loans, and all business expenses other than expenses for expansion or capital improvements are also eligible business expenses. However, expenditures for amortization of capital indebtedness may not be deducted.

Withdrawal of cash or assets from a business is counted as income except when the withdrawal is for reimbursement of amounts the family has invested in the business.

CAPITAL ASSETS AND BUSINESS EXPENSES

A self-employed house painter owns a truck he uses for his business as well as several ladders, buckets and spray paint guns. He also purchases paint rollers and hand brushes each time he is hired to do a job. The painter may deduct as business expenses the depreciation on his truck and ladders (capital equipment) as well as the cost of the paint, paint thinner, disposable rollers and paint brushes he purchases throughout the year.

### *Student Financial Assistance*

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income. This is true whether the assistance is paid to the student or directly to the educational institution.

### *State or Local Employment Training Programs*

Exclude incremental earnings received from qualified employment training programs and training of resident management staff.

- A qualified training program is one that is part of a state or local employment training program and has clear goals and objectives. This would include programs that have the goal of assisting participants in obtaining employment skills, and are authorized or funded by federal, state, or local law, or operated by a public agency.
- Only exclude the compensation related to the training; other sources of household income are still included.
- Exclude the income only for the period during which the family member participates in the employment training program.

### *Public Assistance Income in As-Paid Localities*

Special calculations of public assistance income are required for "as-paid" state, county, or local public assistance programs.

An "as-paid" system is one in which the family:

- Receives an amount from a public agency specifically for shelter and utilities; *and*
- The amount is adjusted based upon the actual amount the family pays for shelter and utilities.

Since there are variations in how as-paid localities calculate shelter and utility, the PHA should discuss the rules for computing income and rents for welfare recipients with the HUD field office.

The public assistance amount specifically designated for rent and utilities is called the "welfare rent".

In general, the welfare rent is treated as a "pass through" from the welfare agency to the PHA.

To determine annual income for public assistance recipients in "as-paid" localities, include:

- The amount of the family's grant for other than shelter and utilities; plus

- The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.

CALCULATING THE “WELFARE RENT”

At application a family's welfare grant is \$300, which includes \$125 for basic needs and \$175 for shelter and utilities (based upon where the family is now living). The maximum the welfare agency allows, however, for shelter and utilities for a family of this size is \$190.

Count as Income:

\$125	Basic Needs
+ <u>\$190</u>	Shelter and Utilities
\$315	Monthly Public Assistance Income

In some as-paid systems, the shelter and utilities payment is "ratably reduced". (The grant the family actually receives is reduced from the scheduled amount by a percentage.)

In these circumstances, the income to be counted is the maximum amount payable for shelter and utilities reduced by the appropriate percentage.

*Treatment of Reductions in Welfare Assistance*

A voucher participant does not receive a reduced family share when the family’s welfare grant is reduced as the result of fraud, failure to participate in an economic self-sufficiency program, or failure to comply with a work requirement.

Before determining annual income when there has been a reduction in the welfare grant, the PHA must receive written verification from the welfare agency that the benefit reduction was caused by noncompliance or fraud before denying a family’s request for a reexamination of income and rent reduction.

The prohibition against reducing rent does not apply when welfare benefits are lost because the lifetime limit on receipt of benefits has expired or in a situation where the family has complied with welfare program requirements but cannot obtain employment.

The amount that the welfare benefit has been reduced because of fraud or a sanction for noncompliance with requirements to participate in an economic self-sufficiency program is identified as the “imputed welfare income”. The family’s annual income includes the amount of the imputed welfare income plus the total amount of other annual income.

The amount of imputed welfare income is offset by income from other sources received by the family that start after the sanction is imposed. Therefore, if the family has found employment in the time between the sanction and the income certification, the new employment income would be subtracted from the imputed welfare income. If the new employment income were to be greater than the imputed welfare income, there would be no need to include the imputed welfare income in the determination of annual income.

“IMPUTED WELFARE INCOME”	
The family’s welfare grant was	\$3600
The family’s welfare grant was reduced by	\$3600
The “imputed welfare income” equals	\$3600
When the family comes in for reexamination its other annual income from before the sanction is	\$2000
The family’s total annual income is (the “imputed welfare income” plus all other income)	\$5600
_____	
At its next reexamination, the family reports income from a new part-time job in the amount of (The family’s other income is unchanged.)	\$2000
	\$3600
The new income is subtracted from the “imputed welfare income”	<u>\$2000</u> \$1600
The amount remaining is added	\$1600
To the other annual income	<u>2000</u>
Total annual income	\$3600

PHAs are required to make good faith efforts to enter into cooperation agreements with local welfare agencies, both to obtain the necessary information regarding welfare sanctions and to target economic self-sufficiency and other services to housing choice voucher program families. Any housing choice voucher family whose assistance is adversely affected because of PHA enforcement of these requirements must be notified of its right to an informal hearing.

*Income of Confined Family Members*

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

*Alimony or Child Support*

PHAs must count alimony or child support amounts awarded as part of a divorce or separation agreement *unless* the PHA verifies that the payments are not being made.

The PHA must determine what documentation is required to show that the family receives less than the court-ordered amount. For example, if the household has filed with the local support enforcement agency, print-outs from the agency may indicate the frequency and amount of payments actually received.

*Lump Sum Payments Counted as Income*

Generally, lump sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income.

When Social Security or SSI benefit income is paid in a lump sum as a result of deferred periodic payments, that amount is excluded from annual income.

However, lump sum payments caused by delays in processing periodic payments for unemployment or welfare assistance are included as income. However, any portion of the lump sum that is payment for a period prior to the family's participation in the housing choice voucher program would be counted as an asset instead of as annual income. A lump sum payment resulting from delayed benefit or other income may be treated in either of the two ways illustrated in the interim reexamination shown on the next page.

TREATMENT OF DELAYED BENEFIT PAYMENTS RECEIVED IN A LUMP SUM					
Family loses job on October 19 and applies for unemployment benefits. The family receives a lump sum payment of \$700 in December to cover the period from 10/20 to 12/5 and begins to receive \$100 a week effective 12/6.					
Option A: PHA processes one interim reexamination immediately effective 11/1 and a second interim after unemployment benefits are known.					
	10/1	11/1	12/1	1/1	2/1
Monthly Gross income	800	*0	*0	492**	492**
Monthly Allowances (3 minors x 480 – 12 month)	120	-	-	120	120
Monthly Adjusted Income	680	0	0	372	372
Total Tenant Payment	204	0	0	0***	112***
<p>* The family's income is calculated at \$0/month beginning November 1, continuing until benefits actually begin and new income is calculated.</p> <p>** Family's actual income for 1/1 is \$100/week x 52 weeks = \$5,200 ) 12 = \$433. However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the the \$700 lump sum payment), the annual income to be used in calculating monthly gross income should be:</p> <p>\$100/week benefit x 52 weeks = \$5,200 + \$700 lump sum payment = \$5,900 annual gross income ) 12 = \$492.</p> <p>*** Increased rent does not start until 2/1 in order to give family notice of rent increase.</p>					

TREATMENT OF DELAYED BENEFIT PAYMENTS: OPTION B					
Option B: PHA processes one interim reexamination after unemployment benefits are known.					
	10/1	11/1	12/1	1/1	2/1
Monthly Gross Income	800	0/800*	0/800*	433*	433*
Monthly Allowances (3 Minors x 480 ) 12 Months)	120	120	120	120	120
Monthly Adjusted Income	680	0/680	0/680	313	313
Total Tenant Payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent Credit (204-94=)	-	110	110	-	-
<p>* Family's actual income for 11/1 and 12/1 is zero but because the PHA does not process an interim reexamination, the family's TTP continues to be calculated using \$800 as monthly gross income. Beginning 1/1, monthly gross income is known to be \$100/week, or \$433/month.</p> <p>** The lump sum payment is taken into account by making the recertification retroactive to 11/1. Annual income is calculated as \$5,200 ) 12 = \$433 monthly gross income.</p> <p>*** TTP for November and December recalculated as \$433 monthly gross income and \$313 monthly adjusted income x .30 = 94 with credit or refund to family of \$110/month for each of these two months for difference between TTP paid of \$204 and recalculated TTP of \$94.</p>					

#### 5.4 DETERMINING INCOME FROM ASSETS

PHAs are required to include in the calculation of annual income any interest or dividends earned on assets held by the family. See paragraph (3) under Exhibit 5-2 for the full HUD definition of asset income to be included in the calculation of annual income, and see Exhibit 5-3, *Summary of Asset Inclusions and Exclusions*, for a more detailed description.

##### *Calculation When Assets Exceed \$5,000*

When net family assets are \$5,000 or less, use the actual income from assets.

When family assets are more than \$5,000, use the greater of:

- Actual income from assets; or
- A percentage of the value of such assets based upon the current passbook savings rate as established by HUD. This is called imputed income from assets.

**EXHIBIT 5-3  
SUMMARY OF ASSET INCLUSIONS AND EXCLUSIONS**

<b>A. ASSETS INCLUDE:</b>	<b>B. ASSETS DO NOT INCLUDE:</b>
<ol style="list-style-type: none"> <li>1. Amounts in savings and checking accounts.</li> <li>2. Stocks, bonds, savings certificates, money market funds and other investment accounts.</li> <li>3. Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the assets <i>and</i> reasonable costs (such as broker fees) that would be incurred in selling the assets.</li> <li>4. The cash value of trusts that may be withdrawn by the family.</li> <li>5. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in a penalty.</li> <li>6. Some contributions to company retirement/pension funds. Note the discussion below on accessibility of the funds.</li> <li>7. Assets, which although owned by more than one person, allow unrestricted access by the applicant.</li> <li>8. Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.</li> <li>9. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.</li> <li>10. Cash value of life insurance policies.</li> <li>11. Assets disposed of for less than fair market value during the two years preceding certification or recertification.</li> </ol>	<ol style="list-style-type: none"> <li>1. Necessary personal property, except as noted in A.9.</li> <li>2. Interest in Indian trust lands.</li> <li>3. Assets that are part of an active business or farming operation.</li> <li>4. <i>NOTE:</i> Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant's/tenant's main occupation.</li> <li>5. Assets not controlled by or accessible to the family and which provide no income for the family.</li> <li>6. Vehicles especially equipped for the disabled.</li> <li>7. Equity in owner-occupied cooperatives and manufactured homes in which the family lives.</li> </ol>

NOTE: A key factor in whether or not to include an asset in the calculation of annual income is whether any member of the family has access to the asset.

COMPARE ACTUAL INCOME FROM ASSETS TO IMPUTED INCOME FROM ASSETS

Applicant has \$7,900 in assets. (Assume passbook rate of 3.5 percent.)

Applicant actual income from assets is paid at 1.5% simple interest annually - \$119.

Assets:	\$ 7,900
HUD-determined passbook rate	<u>x .035</u>
Imputed income from assets	<u>\$ 277</u>

Compare actual interest of \$119 to imputed interest of \$277. The interest of \$277 (the greater of the two) will be used as income from assets in the calculation of annual income.

**Additional Guidance On Calculating The Value Of Assets And Income From Assets**

*Contributions to Company Retirement/Pension Funds*

While an individual is employed, count as an asset only amounts the family could withdraw from a company retirement or pension fund without retiring or terminating employment.

After retirement or termination of employment, count as an asset any amount the employee elects to receive as a lump sum from the company retirement/pension fund.

Include in *annual income* any retirement benefits received through periodic payments.

In order to correctly include or exclude as assets any amount now held in retirement/pension funds for employed persons, the PHA must know whether the money is accessible before retirement.

*Equity in Real Property*

Real property includes land or real estate owned by the applicant or participant household. Equity is the portion of the market value of the asset which is owned by the applicant/participant (the amount which would be available to the household if the property were to be sold). It is equal to the market value less any mortgage or loans secured against the property (which must be paid off upon sale of the property).

Calculate equity in real property as follows:

$$\text{Market Value} - \text{Loan (Mortgage)} = \text{Equity}$$

Calculate the cash value of real property as follows:

$$\text{Equity} - \text{Expense to Convert to Cash} = \text{Cash Value}$$

Expenses to convert to cash may include costs such as sales commissions, settlement costs, and transfer taxes.

*Assets Disposed of for less than Fair Market Value*

At initial certification or reexamination, PHAs must ask whether a household has disposed of an asset for less than its market value within the past two years. If the family has, the PHA must determine the difference between the cash value of the asset at time of sale or other disposal and the actual payment received of for the asset.

Generally, assets disposed of as a result of a divorce, separation, foreclosure, or bankruptcy are *not* considered assets disposed of for less than fair market value. Some of the types of assets that must be considered include cash, real property, stocks, bonds, and certificates of deposit. They must be counted if the household gave them away or sold them for less than the market value.

HUD does not specify a minimum threshold for counting assets disposed of for less than fair market value. A PHA may establish a threshold in its administrative plan that will enable the PHA to ignore small amounts such as charitable contributions. (HUD Handbook 4350.3, for multifamily subsidized housing, uses \$1,000 as a threshold.)

ASSET DISPOSED OF FOR LESS THAN FAIR MARKET VALUE: REAL ESTATE

Mrs. Jones "sold" her home to her daughter for \$5,000. The home was valued at \$19,500 and had no loans secured against it. Mrs. Jones paid broker's fees and settlement costs of \$1,700 (8.7% of the sales price – this is a realistic estimate for the locality). The amount to be included in family assets is \$12,800.

\$19,500	(Market Value)
<u>- 1,700</u>	(Expense to Convert to Cash)
\$17,800	(Cash Value)
<u>- 5,000</u>	(Amount Received when Asset Disposed)
\$12,800	(Value of Asset Disposed for Less than Fair Market Value)

ASSET DISPOSED OF FOR LESS THAN FAIR MARKET VALUE: STOCKS

Ten months ago the Daniel family gave their son 300 shares of ABC, Inc. stock. The market value was \$3,735 (\$12.45/share). They incurred a broker's fee of \$175 for the transaction.

\$ 3,735.00	(Market Value)
<u>- 175.00</u>	(Expense to Convert to Cash)
\$ 3,560.00	(Cash Value)
<u>- 00</u>	(Amount Received when Asset Disposed)
\$ 3,560.00	(Value of Asset Disposed for Less than Fair Market Value)

Verification of assets disposed of for less than fair market value is generally done by applicant certification. PHAs need verify only those certifications that warrant documentation.

### *Valuing Assets*

Because of the requirement to include the greater of the actual interest/dividend income earned or a percentage based upon a HUD published passbook rate when assets are greater than \$5,000, the value of assets *may* affect the family's annual income.

The PHA must determine the *market value* of the asset and then calculate the *cash value* by subtracting the estimated expense required were the family to convert the asset to cash.

Expense to convert to cash includes costs such as:

- Penalties for premature withdrawal (e.g. the 10% penalty paid when a retirement account is closed prior to retirement age, or a certificate of deposit is withdrawn prior to maturity);
- Broker and legal fees (e.g. a percentage of the value of the asset incurred in the sale of stocks, bonds, real estate, etc.); and
- Settlement costs incurred in real estate transactions (e.g. the typical percentage of sales price for settlement in the locality).

*NOTE: PHAs must not require families to dispose of assets in order to determine the costs to convert to cash. These amounts simply reflect a realistic estimate of costs, and by deducting them from the market value of the asset, the imputed income from the asset is based on an amount the family would have in hand if they converted their assets to cash.*

## **5.5 ADJUSTED INCOME**

### **Definition of Adjusted Income**

Adjusted income is the annual income of the members of the family residing in or intending to reside in the dwelling unit, less the following mandatory deductions:

- \$480 for each dependent;
- \$400 for any elderly family or disabled family;
- Child care;
- Disability assistance; and.
- Medical expenses

### **Dependent Allowance**

The family receives an allowance of \$480 for each family member who is 1) under 18 years of age, 2) a person with disabilities, or 3) a full-time student.

A household head, spouse, foster child, or live-in aide may *never* be counted as a dependent.

A full-time student is one carrying a full time subject load (as defined by the institution) at an institution with a degree or certificate program.

### **Elderly or Disabled Household Allowance**

An elderly or disabled family is any family in which the head or spouse (or the sole member) is at least 62 years of age *or* a person with disabilities.

Each elderly or disabled family receives a \$400 household allowance. Because this is a “household allowance” each household receives only one allowance, even if both the head and the spouse are elderly.

### **Child Care Allowance**

Reasonable child care expenses for the care of children including foster children, age 12 and younger, may be deducted from annual income if all of the following are true:

- The care is necessary to enable a family member to work, look for work, or further his/ her education (academic or vocational);
- The expense is not reimbursed by an agency or individual outside the household; and
- The expenses incurred to enable a family member to work do not exceed the amount earned.

Child support payments made to another on behalf of a minor who is not living in the applicant household are not child care and *cannot be deducted*.

Care expenses for the care of disabled family members over the age of 12 cannot be deducted as a child care expense, but see the section on *Allowance for Disability Assistance Expenses* below.

When more than one family member works, the PHA must determine which family member is being enabled to work because child care is provided. This is necessary because the child care allowance cannot exceed the income that family member earns. A good general rule is to assume that the child care expenses enable the lowest paid individual to work, unless this is obviously not the case.

When a family member works and goes to school, the PHA must prorate the child care expense so that the portion of the total child care expense that is specifically related to the hours the family member works can be compared with the amount earned.

PHAs must determine whether child care costs are "reasonable". Reasonable means reasonable for the care being provided. Reasonable costs for in-home care may be very different from reasonable day-care center costs. Families may choose the type of care to be provided. The PHA may not decide that the family may receive a deduction only for the least expensive type of care available.

### **Allowance for Disability Assistance Expense**

Families are entitled to a deduction for unreimbursed expenses to cover care attendants and auxiliary apparatus for any family member who is a person with disabilities, to the extent these expenses are necessary to enable a family member (including the member who is a person with disabilities) 18 years of age or older to be employed.

EXAMPLES OF ELIGIBLE DISABILITY ASSISTANCE EXPENSES

The payments made on a motorized wheelchair for the 42 year old son of the head of household enable the son to leave the house and go to work each day on his own. Prior to the purchase of the motorized wheelchair, the son was unable to make the commute to work. These payments are an eligible disability assistance expense.

Payments to a care attendant to stay with a disabled 16-year-old child allow the child's mother to go to work every day. These payments are an eligible disability assistance allowance.

This allowance is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds three percent (3%) of gross annual family income. However, the allowance may not exceed the earned income received by the family member who is 18 years of age or older who is able to work because of such attendant care or auxiliary apparatus.

Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work.

CALCULATION OF THE ALLOWANCE FOR DISABILITY ASSISTANCE EXPENSES			
Head	36	Earned Income	\$12,000
Spouse	35	Earned Income	\$10,000
Son	15		
Expenses for care of disabled son = \$3,500			
Disability Assistance Allowance:			
\$22,000		Annual Income	
<u>x .03</u>			
\$ 660		3% of Annual Income	
\$ 3,500		Total disability assistance expenses	
<u>- 660</u>			
\$ 2,840		<i>Allowable</i> disability assistance expenses	
NOTE: \$2,840 is less than the income earned, so the full allowance may be deducted.			

**Allowance for Medical Expenses**

The medical expense deduction is permitted only for households in which the head or spouse is at least 62 or disabled (elderly or disabled households).

If the household is eligible for a medical expense deduction, the medical expenses of all family members may be counted (e.g., the orthodontist expenses for a child’s braces may be deducted if the household is an elderly or disabled household).

Medical expenses are expenses anticipated to be incurred during the 12 months following certification or reexamination which are not covered by an outside source such as insurance. The medical 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.

Not all elderly or disabled applicants or participants are aware that their expenses for medical care are included in the calculation of adjusted income for elderly or disabled households. For that reason, it is important for PHA staff to probe for information on allowable medical expenses. These may include:

- Services of doctors and health care professionals.
- Services of health care facilities.
- Medical insurance premiums.

- Prescription/non-prescription medicines (prescribed by a physician).
- Transportation to treatment (cab fare, bus fare, mileage).
- Dental expenses, eyeglasses, hearing aids, batteries.
- Live-in or periodic medical assistance.
- Monthly payment on accumulated medical bills (regular monthly payments on a bill that was previously incurred). The allowance may include only the amount expected to be paid in the coming 12 months.

If a family has medical expenses and no disability assistance expenses, the allowable medical expense is that portion of total medical expenses that exceeds three percent of annual income.

CALCULATING MEDICAL EXPENSES			
Head	64	Spouse	63
Annual Income			\$12,000
Total Medical Expenses			\$ 1,500
\$12,000		Annual Income	
<u>x .03</u>			
\$ 360		3% of Annual Income	
\$ 1,500			
<u>- 360</u>			
\$ 1,140		Allowable Medical Expense	

### Special Calculation for Households Eligible for Disability Assistance and Medical Expenses

If an elderly family or disabled family has both medical expenses and disability assistance expenses, a special calculation is required to insure that the family's three-percent share of these expenses is applied only one time. Because the allowance for disability assistance expenses is limited by the amount earned by the person freed for work, the disability allowance must be calculated before the medical allowance is calculated.

When the family has disability assistance expenses greater than or equal to three percent of annual income, an allowance for disability assistance expenses is computed as described above. In such an instance, the allowance for medical expenses will be equal to the family's total medical expenses.

EXAMPLE:  
DISABILITY ASSISTANCE AND MEDICAL EXPENSES

An elderly family has \$2,000 in medical expenses and \$3,000 in expenses for disability assistance. Annual income is \$20,000. \$2,400 of annual income is earned because the disability assistance enables a family member to work. Three percent of annual income is \$600.

Total Disability Assistance Expense:	\$3,000
Less: Three percent of Annual Income:	<u>- 600</u>
	\$2,400
Disability Assistance Allowance:	\$2,400
Total Medical Expense:	\$2,000
(entire 3% of annual income deducted to compute disability allowance)	

When a family has disability assistance expenses that are less than three percent of annual income, the family will receive no allowance for disability assistance expense. However, the allowance for medical expenses will be equal to the amount by which the sum of both disability and medical expenses exceeds three percent of annual income.

EXAMPLE:  
DISABILITY ASSISTANCE AND MEDICAL EXPENSES

An elderly family has \$1,000 in medical expenses and \$500 in expenses for disability assistance. Annual income is \$20,000. \$4,000 of annual income is earned because the disability assistance enables a family member to work. Three percent of annual income is \$600.

Total Disability Assistance Expense:	\$ 500
Less: Three percent of Annual Income	<u>- 600</u>
	(\$ 100)
Disability Assistance Allowance:	\$ 0
Total Medical Expense:	\$1,000
Less: Balance of 3% of Annual Income:	<u>- 100</u>
Medical Expense Allowance:	\$ 900

If the disability assistance expense exceeds the amount earned by the person who was freed for work, the allowance for disability assistance will be capped at the amount earned by that individual. When the household is also eligible for a medical expense allowance, however, the three percent may have been exhausted in the first calculation and it then will not be applied to medical expenses. The following example illustrates application of the cap on disability

allowance permitting a maximum allowance equal to the income earned by the household member enabled to work.

EXAMPLE:	
DISABILITY ASSISTANCE AND MEDICAL EXPENSES	
<p>An elderly family has \$2,000 in medical expenses and \$3,500 in expenses for disability assistance. Annual income is \$20,000. \$2,400 of annual income is earned because the disability assistance enables a family member to work. Three percent of annual income is \$600.</p>	
Total Disability Assistance Expense:	\$3,500
Less: Three percent of Annual Income	- <u>600</u>
	\$2,900
Disability Assistance Allowance: (cannot exceed \$2,400 income generated)	\$2,400
Total Medical Expense: (entire 3% of Annual Income was deducted to compute the disability allowance)	\$2,000
Medical Expense Allowance:	\$2,000

*Errors in Determining Annual and Adjusted Income*

There are two major sources of most errors in calculating annual income. Those are: 1) applicants and participants failing to fully disclose all income information; and 2) incorrect allowance calculations often resulting from failure to obtain third party verification.

**5.6 VERIFICATION OF FACTORS AFFECTING ELIGIBILITY AND FAMILY RENT**

Accurate determination of income eligibility, allowances, and family rent can occur only with full verification of all factors related to income and family circumstances. While the regulations regarding verification are brief, this activity takes a significant amount of time and attention in administration of the program. Well-designed verification procedures are essential to obtaining full and accurate information, which is essential for the best use of program funds and fair and equitable treatment of all participants.

The tenant file must include third party verification of the following factors:

- Reported family annual income;
- The value of assets;
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.

If third party verification is not available, the file must document efforts to obtain it and why they were unsuccessful.

Third party verification is also required for all factors which affect eligibility and preference. Exhibit 5-5 indicates the appropriate types of third party verification and other sources of verification which may be used when third party verification cannot be obtained.

A PHA policy regarding verification can be helpful in assuring consistent documentation. Such a policy might require that staff mail initial requests for written verification to the source of income (or expense). If the information is not returned within a specified number of days, the PHA may attempt telephone verification. If both written and oral third party verification attempts fail, the applicant or participant may be required to provide documents as verification. The client file must include notes as to why documents provided by the client have been used instead of the preferred third party verification.

A PHA may resort to use of family certification of facts only when neither a third party nor documents are available. The client file would include notes documenting efforts to obtain third party verification and documents for review and an explanation why those were not obtained.

## **5.7 DENIAL OF ASSISTANCE**

An applicant may be denied assistance under the housing choice voucher program only for program violations that are identified as grounds for denial of assistance. Denial of assistance includes:

- Denial of listing on the PHA waiting list;
- Denial or withdrawal of a voucher;
- Refusal to enter into a HAP contract or approve a unit; and
- Refusal to process or provide assistance through portability.

Assistance must be denied for each of the following reasons:

- The applicant does not meet the eligibility criteria described earlier in this chapter (e.g., the applicant family's annual income exceeds the income limit for a family of that size).
- Any adult family member refuses to sign or submit required consent forms (such as the authorization for release of information form or the declaration of citizenship and non-citizen status).
- Any family member has been convicted of manufacturing or producing methamphetamine (commonly referred to as "speed") on the premises of an assisted housing project (including the building or complex in which the unit is located and the associated common areas and grounds).

While the PHA is required to deny assistance to applicants for the reasons listed above, PHAs must establish local policies concerning denial of assistance to applicants for the following reasons:

- The family has violated program obligations. (See Exhibit 5-4.)

**EXHIBIT 5-4**  
**FAMILY OBLIGATIONS**

Family obligations under the housing choice voucher program include:

- Supplying required information deemed necessary by HUD or the PHA to administer the program. This includes information related to the calculation of income, family composition, signatures on consent forms, submission of documents related to eligible immigration status, and disclosure and verification of social security numbers.
- Responsibility for any breach of HQS caused by the family.
- Permitting HQS inspections.
- Complying with the lease.
- Submitting notices to the PHA and owner before moving out of unit or terminating the lease.
- Supplying the PHA with any eviction notice received from the owner.
- Using the assisted unit as the family's only residence and providing notification of any changes in household composition including the departure of a household member.
- May not sublet or assign the lease.
- May not be absent in violation of the PHA policy on absences from the unit and must provide PHA-requested information on the purposes of family absences.
- Must not own or have any interest in the unit, except ownership in a cooperative.
- Must not be receiving any other form of tenant-based or duplicative assistance.
- Must not engage in drug-related criminal or violent criminal activity.
- Must not commit fraud, bribery or any other corrupt or criminal act in connection with the program.

- Any family member has been evicted from public housing.
- The PHA has terminated assistance for any family member under the certificate or voucher program.
- Any member of the family has committed drug-related criminal activity or violent criminal activity (see further discussion below).
- Any member of the family has committed fraud, bribery, or any other corrupt or criminal act related to any federal housing program.

### **Crime by Family Members**

- The family currently owes rent or other amounts to the PHA or another PHA for amounts in connection with the housing choice voucher, certificate, moderate rehabilitation, or public housing programs.
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached an agreement with the PHA to pay amounts owed to a PHA or amounts paid to an owner by a PHA.

If the PHA denies assistance to an applicant because of illegal use, or possession for personal use, of a controlled substance, such use or possession must have occurred within one year before the date that the PHA provides notice to the family of the determination to deny assistance. The PHA cannot deny assistance for such use or possession by a family member, if the family member can demonstrate that he or she:

- Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and
- Is recovering, or has recovered from, such addiction and does not currently use or possess controlled substances. The PHA may require a family member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

In determining whether to deny assistance based on drug-related criminal activity or violent criminal activity, the PHA may deny assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

### **PHA Discretion to Consider Circumstances**

In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the PHA has discretion to consider any of the circumstances in each particular case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure to act.

The PHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

#### MAKING THE DECISION TO DENY ASSISTANCE

In each instance before making a decision to deny housing choice voucher program assistance, PHA staff will want to consider the specific circumstances of the family under review and determine if denial is the best response.

In some instances, the PHA may determine that the seriousness of the situation does not warrant denial. For example, a family whose assistance was terminated for failure to recertify may be evaluated differently than an applicant family who was terminated from public housing for wanton destruction of public housing property.

Timing may also influence the judgment of PHA staff. A family that was terminated very recently for failure to recertify might be denied, while staff might determine that a family evicted from public housing 10 or 12 years ago for property destruction might be given more consideration, particularly if more recent evidence suggests a change in family behavior.

Similarly, if damage caused by a family evicted 10 years ago was attributed to a teenager no longer living with the family, admission to the program might seem a reasonable decision.

### **5.8 SCREENING**

The housing choice voucher program is a rental assistance program designed to provide subsidy in the private rental market. Typical private market rental management practices by owners are encouraged, including screening voucher holders for their suitability as tenants. The PHA's selection of a family to participate in the voucher program is not in any way an endorsement of tenancy nor a prediction of positive family behavior.

Owners are encouraged to screen families on the basis of their tenancy histories and to inquire about factors such as:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of others to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the life, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

Before approval of an assisted tenancy, the PHA must tell the owner that screening for suitability is the owner's responsibility. If the PHA has adopted a screening plan, as described below, the PHA should also inform the owner of the specific type of screening conducted.

The PHA is required to provide the owner with:

- The family's current and prior address (as shown in the PHA records); and
- The name and address (if known) of the landlord at the family's current and prior addresses.

This information is intended to assist the owner in conducting his or her own screening.

The PHA may choose to provide a prospective owner with additional information it possesses about the family, including information about the tenancy history of family members or about drug-trafficking by family members. If the PHA chooses to provide such information, it should describe how the information was obtained, and encourage the owner to confirm such information.

When developing such a policy, the PHA should consider whether all information contained in the tenant file should be provided, or if the PHA should provide only information that has been independently confirmed. The policy must provide that the PHA will give comparable information about all families to all owners.

The PHA must provide each family with a statement of PHA policy on providing information to owners. The statement describing the policy must be included in the information packet that is given to each family selected to participate in the program.

SAMPLE POLICY ON INFORMATION PROVIDED TO OWNERS

When the family submits a request for tenancy approval, the PHA will provide the prospective owner with the family's current and prior address as shown in the PHA's records. If the PHA has this information, it will also provide the name and address of the landlord at the family's current and prior address.

The PHA will inform the owner that it is the landlord's responsibility to screen prospective tenants for suitability as tenants as evidenced by the family's previous rental history. When the PHA has information related to a family's previous tenancies, the PHA will inform the landlord that the information is available and provide it upon a written request from the landlord. Information will be provided when it is part of the PHA tenant file from a previous housing choice voucher, certificate, moderate rehabilitation, or public housing tenancy, or when the PHA has been able to verify that information it has regarding any other tenancy is reliable. Only the Housing Coordinator may provide information about previous tenancies other than landlord names and addresses. The information may be provided in writing or during an in-person meeting with the prospective landlord. Any information available to the PHA about any potential housing choice voucher program will be provided upon landlord request.

All new families and all families preparing to move will be informed about this policy through information included in the information packet provided at the briefings for new and moving families.

### **Screening by the PHA**

Screening family behavior or suitability for tenancy is a practice which PHAs may adopt to preclude families with poor rental histories from participation in the program. However, even when it adopts screening, the PHA has no liability or responsibility to the owner or other person for the family's behavior or the family's conduct in tenancy.

Performing screening on program applicants and denying program participation for those who have poor rental histories may be a good marketing tool within the community, and may potentially reduce the number of terminations of assistance for program and lease violations. Owner outreach may be more successful if the PHA can describe a reasonable screening methodology that weeds out applicants with specific types of undesirable tenancy behaviors.

However, the PHA must carefully communicate the fact that this screening is not a guarantee of good behavior by voucher holders and that it does not replace the screening an owner may choose to conduct.

A PHA that has adopted a screening policy must include a statement of its policy in the information packet given to each family. The PHA's policy must provide that the PHA will give the same types of information to all families and to all owners.

## **5.9 DETERMINATION OF UNIT SIZE REQUIREMENTS**

The appropriate number of bedrooms needed by an applicant family must be determined by the PHA when it determines family eligibility for a housing choice voucher. The PHA must establish standards that determine the number of bedrooms needed for families of different sizes and composition. For each family, the PHA determines the appropriate number of bedrooms under the subsidy standards. Family unit size is entered on the housing choice voucher issued to the family.

The following requirements apply when determining the family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards (HQS).
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family's unit size.
- A family that consists of a pregnant woman only, and (no other persons), must be treated as a two-person family.
- Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size.
- Two elderly or disabled household members may be given separate bedrooms.
- Unless a live-in-aide resides with the family, the family unit size for any family consisting of a single person must be either a zero or one-bedroom unit, as determined under the PHA's subsidy standards.

In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances. (For a single person other than a disabled or elderly person or a remaining family member, such exception may not override the requirement of providing only a zero or one-bedroom unit to a single person.)

Typical PHA Standards Used to Issue Housing Choice Voucher			Standards Used to Determine Acceptability of Unit Size (HQS Rules)	
Housing Choice Voucher Size	Minimum No. of Persons in Household	Maximum No. of Persons in Household	Unit Size	Maximum Occupancy Assuming a Living Room Is Used as a Living/Sleeping Area
0-BR	1	1	0-BR	1
1-BR	1	2	1-BR	4
2-BR	2	4	2-BR	6
3-BR	4	6	3-BR	8
4-BR	6	8	4-BR	10
5-BR	8	10	5-BR	12
6-BR	10	12	6-BR	14

### 5.10 NON-DISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS

#### Overview

PHAs must comply with the following non-discrimination and equal opportunity requirements:

- Executive Orders 11246, 11625, 12138, 12432, and 12259, 46FR 1253 (1980) as amended;
- Executive Order 11063, which prohibits discrimination based on religion or sex;
- Title VI of the 1964 Civil Rights Act, which prohibits discrimination based on race, color, or national origin;
- Section 3 of the Housing and Urban Development Act of 1968;
- The Fair Housing Act (Title VIII of the 1968 Civil Rights Act) which prohibits discrimination in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin, handicap, or familial status (which refers to the age and number of children in the family and pregnant women);
- Section 504 of the Rehabilitation Act of 1973;
- The Age Discrimination Act of 1975; and
- Title II of the Americans with Disabilities Act (ADA) (see HUD Notice PIH 95-48).

The PHA is required to make the housing choice voucher program available and accessible to all eligible families and must provide a family with information on how to complete and file a housing discrimination complaint if a family claims illegal discrimination because of race, color, religion, sex, national origin, age, familial status, or disability.

The Fair Housing Act amendments ensure that persons with a disability and families with children are not discriminated against.

It is unlawful to discriminate in private or federally assisted housing against households including one or more persons under age 18 in the household or against people who are pregnant or pursuing custody. The following types of housing intended for the elderly, however, are exempt from this rule:

- State and federal housing that is specifically designed and operated to assist the elderly;
- Housing intended for and solely occupied by persons 62 and older; and
- Housing intended and operated for occupancy by at least one person 55 and older per unit. To qualify for this exemption, 80% of the units must have at least one person 55 or older.

It is unlawful to discriminate against a renter because of the disability of the renter or other household member or the disability of any person associated with the renter or the perceived disability of any of those individuals.

In the Fair Housing Act amendments, the definition of disability includes:

- Physical or mental impairments which limit major life activities;
- A record of having such impairments or being regarded by others as having an impairment.

The example list of impairments is long and includes learning disabilities, diabetes, alcoholism, emotional illness, cancer, heart disease, AIDS, etc. It does *not* include current, illegal use of or addiction to a controlled substance.

Private owners of rental units must permit disabled persons, at their own expense, to make reasonable modifications to the premises (both interior unit and common area) if necessary, to obtain full enjoyment of a dwelling. However, permission may be conditioned on the renter agreeing to restore the unit interior to its previous condition. Permission may also be conditioned on provision of a description of work, assurance it will be done in "workmanlike" manner and that necessary building permits will be obtained.

If requested, owners must make reasonable accommodations to rules and policies to give persons with disabilities equal opportunity to enjoy dwelling and/or common areas (e.g., through assigned parking for persons with disabilities, or animals assisting disabled tenants, even if pets are not generally allowed).

## Section 504 Requirements

Section 504 of the Rehabilitation Act of 1973 (as amended) prohibits discrimination under any program or activity receiving federal financial assistance solely on the basis of a disability. The rule requires those who are considered "recipients" of federal funds to ensure that individuals with disability will receive equal opportunity to participate in programs and services in the most appropriate integrated setting.

PHAs are considered "recipients" for this purpose. Owners under the housing choice voucher program are not considered recipients for this purpose, but must comply with the "reasonable accommodation" provisions of the Fair Housing Act amendment.

The definition of an individual with disabilities in Section 504 includes any person who has:

- Physical or mental impairment(s) that substantially limits one or more major life activities; or
- A record of having such impairments or is regarded as having such impairments.

### *Program Accessibility/Eligibility*

To ensure that persons with disabilities have an opportunity to participate in the program, Section 504 requires "recipients" to assure that outreach materials and the application process are open to persons with disabilities. For example, the PHA's application process must be accessible to persons with disabilities, or the PHA must make provisions to take applications from these persons.

To ensure communication accessibility, recipients are required to have TDD or TTY machines (teletypewriter machines used by hearing impaired individuals) or an equally effective communication system. Recipients must pay for the cost of an interpreter for a hearing impaired person upon request, although advance notice may be required, and must provide copies of legal documents and informational materials in braille or on tape for visually impaired applicants. Recipients are not required to take any actions which would result in a fundamental alteration in the nature of the program or undue financial or administrative burden.

### *Special Rules for the Housing Choice Voucher Program*

The PHA must ensure that outreach efforts reach eligible persons with disabilities and that owners with accessible units are encouraged to participate in the program. In addition, PHAs should help families that include an individual with a disability in locating an available, accessible unit. When considering requests for extensions of the voucher term, a PHA must take into account the special problems associated with locating an accessible unit. When required as a reasonable accommodation for a family that includes a person with disabilities, a PHA may establish a higher payment standard.

Chapter 3 describes the requirement for the PHA to execute and include in the PHA plan a certification of its compliance with affirmative, fair housing, and equal opportunity requirements.

*Filing a Fair Housing Discrimination Complaint*

At the housing choice voucher program briefing, the PHA must instruct families about the potential for encountering housing discrimination and about the procedures for filing a Fair Housing discrimination complaint. The information packet must include the housing discrimination complaint form (form HUD-903) and families must be informed that PHA staff will provide assistance in completing the forms on request.

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips	
	Third Party		Documents Provided by Applicant		Self-Declaration
	Written	Oral			
<ul style="list-style-type: none"> <li>• Employment Income.</li> </ul>	<ul style="list-style-type: none"> <li>• Verification Form with signed Consent to Release completed by employer.</li> </ul>	<p>Wages and Salaries</p> <ul style="list-style-type: none"> <li>• Telephone or in person contact with employer, specifying amount to be paid per pay period and length of pay period. Document in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>• W-2 Forms, if applicant has had some employer for at least two years and increases can be accurately projected, or check stub or earning statements.</li> <li>• Paycheck stubs or earning statements.</li> </ul>	<ul style="list-style-type: none"> <li>• Notarized statements or affidavits signed by applicant which describe amount &amp; source of income.</li> </ul>	<ul style="list-style-type: none"> <li>• Frequency of gross pay (i.e., hourly, bi-weekly, monthly, bi-monthly).</li> <li>• Anticipated increases in pay effective dates.</li> <li>• Require most recent 6-8 consecutive paystubs; do not use check without stub.</li> </ul>
<ul style="list-style-type: none"> <li>• Self-employment, tips, gratuities, etc.</li> </ul>	<p>None available.</p>	<p>None available.</p>	<ul style="list-style-type: none"> <li>• Form 1040/1040A showing amount earned and employment period.</li> </ul>	<ul style="list-style-type: none"> <li>• Notarized statement or affidavit signed by applicant showing amount earned and pay period.</li> </ul>	
<ul style="list-style-type: none"> <li>• Income maintenance payments, benefits, income other than wages (i.e., welfare, Social Security, (SS), Supplemental Security Income (SSI), Disability Income, Pensions).</li> </ul>	<ul style="list-style-type: none"> <li>• Award or benefit notification letters prepared and signed by authorizing agency.</li> <li>• Print-out of benefit amounts generated by PHA through automated tie-in to welfare department computers.</li> </ul>	<ul style="list-style-type: none"> <li>• Telephone or in-person contact with income source, documented in file by the PHA.</li> <li>• Note: For all oral verification, file documentation must include facts, time &amp; date of contract, and name &amp; title of third party.</li> </ul>	<ul style="list-style-type: none"> <li>• Current or recent check with date, amount, and check number recorded by the PHA.</li> <li>• Award Letters.</li> <li>• Copies of validated bank deposit slips/with identification by bank.</li> <li>• Most recent quarterly pension account statement.</li> </ul>		<ul style="list-style-type: none"> <li>• Checks or automatic bank deposit slips may not provide gross amounts of benefits if applicant has deductions made for Medicare Insurance. Confirm amount of the Medicare premium with the Social Security Administration (SSA).</li> <li>• If local Social Security Administration (SSA) fails to provide verification, checks or automatic deposit slips may be accepted as interim verification of SS or SSI; however, the PHA must notify the HUD Field Office of SSA's refusal to verify.</li> <li>• Copying of U.S. Treasury checks is not permitted.</li> </ul>

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips	
	Third Party		Documents Provided by Applicant		Self-Declaration
	Written	Oral			
<ul style="list-style-type: none"> <li>Welfare payments (as-paid states only).</li> </ul>	<ul style="list-style-type: none"> <li>Verification form completed by welfare department indicating maximum amount family may receive.</li> <li>Maximum shelter schedule by household size with ratable reduction schedule.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with income source, documented in file by PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Maximum shelter allowance schedule with ratable reduction schedule with ratable reduction schedule provided by applicant.</li> </ul>	<ul style="list-style-type: none"> <li>Not appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>Actual welfare benefit amount not sufficient as proof of income in "as paid" states or localities since income is defined as maximum shelter amount.</li> </ul>
<ul style="list-style-type: none"> <li>Unemployment compensation.</li> </ul>	<ul style="list-style-type: none"> <li>Verification form, with signed Consent to Release, completed by source.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in person contact with agency documented in a PHA file.</li> </ul>	<ul style="list-style-type: none"> <li>Copies of checks or records from agency provided by applicant stating payment amounts and dates.</li> <li>Benefit notification letter signed by authorizing agency.</li> </ul>		<ul style="list-style-type: none"> <li>Frequency of payments and expected length of benefit term must be verified.</li> <li>Income not expected to last full 12 months must be calculated based on 12 months and interim-completed when benefits stop.</li> </ul>
<ul style="list-style-type: none"> <li>Alimony or child support.</li> </ul>	<ul style="list-style-type: none"> <li>Copy of separation or divorce agreement provided by ex-spouse or court indicating type of support, amount, and payment schedule.</li> <li>Written statement provided by ex-spouse or income source indicating of all of above.</li> <li>If applicable, written statement from court/attorney that payments are not being received and anticipated date of resumption of payments.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in person contact with ex-spouse or income source documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Copy of most recent check, recording date, amount, and check number.</li> <li>Recent original letters from the court.</li> </ul>	<ul style="list-style-type: none"> <li>Notarized statement or affidavit signed by applicant indicating amount received.</li> <li>If applicable, notarized statement or affidavit from applicant indicating that payments are not being received and describing efforts to collect amounts dues.</li> </ul>	<ul style="list-style-type: none"> <li>Amounts awarded but not received can only be excluded from annual income when applicants have made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.</li> </ul>
<ul style="list-style-type: none"> <li>Recurring contributions and gifts.</li> </ul>	<ul style="list-style-type: none"> <li>Notarized statement or affidavit signed by the person providing the assistance giving the purpose, dates, and value of gifts.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in person contact with source documented in file by PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>Notarized statement or affidavit signed by applicant stating purpose, dates, and value of gifts.</li> </ul>	<ul style="list-style-type: none"> <li>Sporadic contributions and gifts are not counted as income.</li> </ul>

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips
	Third Party		Documents Provided by Applicant	
	Written	Oral		
<ul style="list-style-type: none"> <li>Net Income for a business.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>IRS Form 1040 with Schedule C, E, or F.</li> <li>Financial Statement(s) of the business (audited or unaudited) including an accountant's calculation of straight-line depreciation expense if accelerated depreciation was used on the tax return or financial statement.</li> <li>Any loan application listing income derived from business during proceeding 12 months.</li> <li>For rental property, copies of recent rent checks, on lease and receipts for expenses or IRS Schedule E.</li> </ul>	
<ul style="list-style-type: none"> <li>Dividend income and savings account interest income.</li> </ul>	<ul style="list-style-type: none"> <li>Verification form with signed consent to release, completed by bank.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with appropriate party, documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Copies of current statements, bank passbooks, certificates of deposit, if they show required information (i.e., current rate of interest).</li> <li>Copies of IRS Form 1099 from the financial institution and verification of projected income for the next 12 months.</li> <li>Broker's quarterly statements showing value of stocks/bonds and earnings credited the applicant.</li> </ul>	<ul style="list-style-type: none"> <li>Not appropriate.</li> <li>The PHA must obtain enough information to accurately project income over next 12 months.</li> <li>Verify interest rate as well as asset value.</li> </ul>

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips
	Third Party		Documents Provided by Applicant	
	Written	Oral		
<ul style="list-style-type: none"> <li>Interest from sale of real property (e.g., contract for deed, installment sales contract, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>Verification form, with signed consent to release, completed by an accountant, attorney, real estate broker, the buyer, or a financial institution which has copies of the amortization schedule from which interest income for the next 12 months can be obtained.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with appropriate party, documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Copy of the amortization schedule, with sufficient information for the PHA to determine the amount of interest to be earned during the next 12 months.</li> <li>Note: Copy of a check paid by the buyer to the applicant is not acceptable.</li> </ul>	<ul style="list-style-type: none"> <li>Only the interest income is counted; the balance of the payment applied to the principal is merely a liquidation of the asset.</li> <li>The PHA must get enough information to compute the actual interest income for the next 12 months.</li> </ul>
<ul style="list-style-type: none"> <li>Current net family assets.</li> </ul>	<ul style="list-style-type: none"> <li>Verification forms, letters or documents with signed Consent to Release, forms from financial institutions, stock brokers, real estate agents, employers indicating the current value of the assets and penalties, or reasonable costs to be incurred in order to convert non-liquid assets into cash.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with appropriate source, documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Passbooks, checking or savings account statements, certificates of deposit, property appraisals, stock or bond documents or other financial statements completed by financial institution.</li> <li>Copies of real estate tax statements, if tax authority uses approximate market value.</li> <li>Quotes from attorneys, stock brokers, bankers, real estate agents, verifying penalties, reasonable costs incurred to convert asset to cash.</li> <li>Copies of real estate closing documents which indicate distribution of sales proceeds and settlement costs.</li> </ul>	<ul style="list-style-type: none"> <li>Notarized statement or signed affidavit stating cash value of assets or verifying cash held at applicant's home or in safe deposit box.</li> <li>Use current balance in saving accounts, average monthly balance in checking accounts for last 6 months.</li> <li>Use cash value of all assets: the net amount the applicant would receive if the asset were converted to cash.</li> <li>Note: This information can usually be obtained simultaneously with income from asset verification and employment verification (value of pension).</li> </ul>

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips	
	Third Party		Documents Provided by Applicant		
	Written	Oral			
<ul style="list-style-type: none"> <li>Assets disposed of for less than fair market value.</li> </ul>	<ul style="list-style-type: none"> <li>None required.</li> </ul>	<ul style="list-style-type: none"> <li>None required.</li> </ul>	<ul style="list-style-type: none"> <li>None required.</li> </ul>	<ul style="list-style-type: none"> <li>Certification signed by applicant that no member of family has disposed of assets for less than fair market value during preceding 2 years.</li> <li>If applicable, certification signed by applicant that shows:                             <ul style="list-style-type: none"> <li>Type of assets disposed of,</li> <li>Date disposed of,</li> <li>Amount received, and</li> <li>Market value of asset at the time of disposition.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Only count assets disposed of within a two year period prior to examination or re-examination.</li> </ul>
<ul style="list-style-type: none"> <li>Family composition.</li> </ul>	<ul style="list-style-type: none"> <li>None required.</li> </ul>	<ul style="list-style-type: none"> <li>None required.</li> </ul>	<ul style="list-style-type: none"> <li>Income tax returns, school records, marriage certificates, birth certificates, divorce actions, Veterans Administration (VA) records, support payment records.</li> </ul>		
<ul style="list-style-type: none"> <li>Family type.</li> <li>(Information verified only to determine eligibility for preferences and allowances.)</li> </ul>	<ul style="list-style-type: none"> <li>Disability Status: statement from physician or other reliable source, if benefits documenting status are not received.)</li> <li>Displacement Status: Written statement or certificate of displacement by the appropriate governmental authority.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with source documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Elderly Status (when there is reasonable doubt that applicant is at least 62): birth certificate, baptismal certificate, social security records, driver's license, census record, official record of birth or other authoritative document or receipt of SSI old age benefits or SS benefits.</li> <li>Disabled, blind – evidence of receipt of SSI or Disability benefits.</li> </ul>	<ul style="list-style-type: none"> <li>Elderly Status: Applicant's signature on Application is generally sufficient.</li> </ul>	<ul style="list-style-type: none"> <li>Unless the applicant receives income or benefits for which elderly or disabled status is a requirement, such status must be verified.</li> <li>Status of disabled family members must be verified for entitlement to \$480 dependent deduction and disability assistance allowance.</li> </ul>

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips	
	Third Party		Documents Provided by Applicant		
	Written	Oral			
<ul style="list-style-type: none"> <li>Medical expenses.</li> </ul>	<ul style="list-style-type: none"> <li>Verification by a doctor, hospital, or clinic, dentist, pharmacist, etc. of estimated medical costs to be incurred or regular payments expected to be made on outstanding bills which are not covered by insurance..</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with these sources, documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Copies of cancelled checks which verify payments on outstanding medical bills which will continue for all or part of the next 12 months.</li> <li>Copies of income tax forms (Schedule A, IRS Form 1040) which itemize medical expenses, when the expenses are not expected to change over the next 12 months.</li> <li>Receipts, cancelled checks, pay stubs, which indicate health insurance premium costs, or payments to a resident attendant.</li> <li>Receipts or ticket stubs which verify transportation expenses directly related to medical expenses.</li> </ul>	<ul style="list-style-type: none"> <li>Notarized statement or signed affidavit of transportation expenses directly related to medical treatment, if there is no other source of verification.</li> </ul>	<ul style="list-style-type: none"> <li>Medical expenses are not allowable as deduction unless applicant is elderly or disabled household. Status must be verified.</li> </ul>
<ul style="list-style-type: none"> <li>Care attendant for disabled family members.</li> </ul>	<ul style="list-style-type: none"> <li>Written verification from attendant stating amount received, frequency of payments, hours of care.</li> <li>Written certification from doctor or rehabilitation agency that care is necessary to employment of household member.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with source documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Copies of receipts or cancelled checks indicating payment amount and frequency.</li> </ul>	<ul style="list-style-type: none"> <li>Notarized statement or signed affidavit attesting to amounts paid.</li> </ul>	<ul style="list-style-type: none"> <li>The PHA must determine if this expense is to be considered medical or disability assistance.</li> </ul>

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips
	Third Party		Documents Provided by Applicant	
	Written	Oral		
<ul style="list-style-type: none"> <li>Auxiliary apparatus.</li> </ul>	<ul style="list-style-type: none"> <li>Written verification from source of costs and purpose of apparatus.</li> <li>Written certification from doctor or rehabilitation agency that use of apparatus is necessary to employment of any household member.</li> <li>In case where the disabled person is employed, statement from employer that apparatus is necessary for employment.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with these sources documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Copies of receipts or evidence of periodic payments for apparatus.</li> </ul>	<ul style="list-style-type: none"> <li>The PHA must determine if expense is to be considered medical or disability assistance.</li> </ul>
<ul style="list-style-type: none"> <li>Child care expenses</li> </ul>	<ul style="list-style-type: none"> <li>Written verification from person who provides care indicating amount of payment, hours of care, names of children, frequency of payment, and whether or not care is necessary to employment or education.</li> </ul>	<ul style="list-style-type: none"> <li>Telephone or in-person contact with these sources documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>Copies of receipts or cancelled checks indicating payments.</li> </ul>	<ul style="list-style-type: none"> <li>Allowance provided only for care of children 12 and younger</li> <li>When same care provider takes care of children and disabled person, the PHA must pro-rate expenses accordingly.</li> <li>PHAs should keep in mind that costs may be higher in summer months, and during holiday periods.</li> <li>The PHA must determine which household member has been enabled to work.</li> <li>Care for employment and education must be prorated to compare to earnings.</li> <li>Costs must be "reasonable".</li> </ul>

**EXHIBIT 5-5  
VERIFICATION REQUIREMENTS**

Factor to be Verified	ACCEPTABLE SOURCES			Information Which Must Be Obtained/ Verification Tips
	Third Party		Documents Provided by Applicant	
	Written	Oral		
<ul style="list-style-type: none"> <li>• Full-time student status (of family member 18 or older, excluding head, spouse, or foster children).</li> </ul>	<ul style="list-style-type: none"> <li>• Verification from the Admissions or Registrar's Office or dean, counselor, advisor, etc. or from VA Office.</li> </ul>	<ul style="list-style-type: none"> <li>• Telephone or in-person contact with these sources documented in file by the PHA.</li> </ul>	<ul style="list-style-type: none"> <li>• School records, such as paid fee statements, which show a sufficient number of credits to be considered a full-time student by the educational institution attended.</li> </ul>	
	<ul style="list-style-type: none"> <li>• Verification from reliable medical source.</li> </ul>	<ul style="list-style-type: none"> <li>• Telephone or in-person contact with these sources documented in file by the PHA.</li> </ul>		

Chapter 6: Calculating Rent and HAP Payments

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## CHAPTER 6 CALCULATING RENT AND HAP PAYMENTS

### 6.1 CHAPTER OVERVIEW

The determination of the family's share of total housing costs and the PHA's housing assistance payment (HAP) is a two step process. When the housing choice voucher is issued, the applicant or participant must be given information on the minimum the family is expected to contribute to housing costs and the maximum subsidy that the PHA can pay. Because the family has the option of selecting a unit with a rent that is more or less than the PHA payment standard, the final calculation of the family's share of the housing costs and the HAP amount cannot be completed until the family has selected a unit.

### 6.2 INFORMATION THE APPLICANT OR PARTICIPANT IS GIVEN AT HOUSING CHOICE VOUCHER ISSUANCE

#### Minimum and Maximum Tenant Contributions to Housing Costs

It is critical that families receive complete and accurate information on how the program works, what their unit selection options are and the variables that affect the amount the family will be required to contribute to its total housing costs.

#### *Total Tenant Payment*

The total tenant payment (TTP) represents the minimum amount a family must contribute toward rent and utilities regardless of the unit selected. The TTP is calculated using a statutory formula and individual income information (see Chapter 5). To calculate TTP, annual adjusted income and annual (gross) income must be converted to monthly adjusted income and monthly gross income by dividing the annual figures by 12 months. The TTP is the greater of:

- 30 percent of monthly adjusted income;
- 10 percent of monthly gross income;
- The welfare rent (in as-paid states only); or
- The PHA minimum rent (PHA determined, see page 6-8).

#### CALCULATING TOTAL TENANT PAYMENT

30% of Monthly Adjusted Income:  $\$700 \times .30 = \$210$

10% of Monthly Gross Income:  $\$740 \times .10 = \$74$

Welfare Rent: N/A

PHA Minimum Rent: \$25

Total Tenant Payment: \$210

The participant will never pay less than the TTP (\$210) regardless of the unit selected.

*Maximum Initial Rent Burden*

When a family selects a unit with a gross rent exceeding the PHA payment standard, the PHA must determine whether the family’s share for that unit would exceed the maximum initial rent burden. The family share may not exceed 40 percent of the family’s monthly adjusted income when the family initially moves into the unit or signs the first assisted lease for a unit. The maximum initial rent burden applies only when the gross rent for the unit selected exceeds the applicable payment standard.

The level at which the PHA establishes the payment standard will affect a family’s ability to find a unit with a rent that will not require the family to pay more than 40 percent of its monthly adjusted income.

The maximum initial rent burden may be calculated when the housing choice voucher is issued so the family will know the maximum amount it can pay for a unit while it is searching for housing.

CALCULATING MAXIMUM INITIAL RENT BURDEN	
Payment Standard:	\$450
Total Tenant Payment:	\$210
40% of Monthly Adjusted Income:	$\$700 \times .40 = \$280$
Amount family is limited to contributing to total housing costs.	\$ 280
PHA maximum subsidy (see below)	<u>+\$ 240</u>
Maximum gross rent for this family	\$ 520

*Maximum Subsidy*

The maximum subsidy the PHA can pay in the housing choice voucher program is the payment standard minus the TTP. The maximum subsidy calculation is done at the time the family is issued a housing choice voucher. It is important for the family to know the maximum the PHA will pay while searching for a unit. The actual PHA subsidy can be calculated only after the family has selected a specific unit.

CALCULATING MAXIMUM SUBSIDY	
Payment Standard	\$450
Minus TTP	<u>\$210</u>
Equals Maximum Subsidy	\$240

In the examples given, the family knows that, with its monthly adjusted income of \$700, it must contribute at least \$210 and may pay up to a maximum of \$280. The maximum the PHA will contribute is \$240. In this case the PHA may tell the family that the maximum gross rent that can be approved is between \$450 and \$520.

HELPING THE FAMILY DETERMINE WHAT RENT IT CAN AFFORD			
Family TTP (Minimum the family will pay)	\$210		
Maximum Initial Rent Burden			\$280
plus Maximum Subsidy	<u>\$240</u>		<u>\$240</u>
Family may consider units with gross rents between	\$450	and	\$520
If the family selects a unit with a gross rent at or below \$450, the family will pay \$210.			

Exhibit 6-1, *Sample Handout 1*, provides a sample handout that can be used at the briefing to help families understand how the maximum initial rent burden and the maximum subsidy affect and limit their unit choices.

### Total Housing Costs

When searching for a unit, it is important for a family to understand that total housing costs include both the rent to the owner and any additional utility costs that the family will need to pay. Exhibit 6-2, *Sample Handout 2*, can help a family understand the total housing cost for an actual unit.

#### Utility Allowance

The *utility allowance* is calculated for each family based on a PHA schedule of average utility consumption by unit size for each of the family paid utilities. For example, if the family is expected to pay hot water, heat, and other electric, the PHA uses the utility schedule for the appropriate unit size for each of the utilities and adds the amounts allowed on the utility schedule for the cost of utilities to be paid by the family to determine the total utility allowance for the family. If all the utilities are included in the unit rent, there is no utility allowance.

*Rent to Owner and Gross Rent*

The *rent to the owner* is the full rent the owner is charging for the unit including any utilities the owner provides under the lease. The *gross rent* represents the entire housing cost. It is calculated by adding the rent to the owner and the utility allowance for the unit. If all the utilities are included in the rent, the rent to the owner and the gross rent will be the same.

GROSS RENT	
Rent to Owner	\$300
Utility Allowance	+ \$125
Gross Rent	\$425

**6.3 CALCULATIONS COMPLETED FOLLOWING UNIT SELECTION**

**HAP Subsidy**

The actual HAP payment can be calculated only after the family has selected a unit and the gross rent for the unit is known. The subsidy cannot exceed the maximum subsidy calculated above but may be less than the maximum subsidy if the gross rent for the unit is less than the payment standard amount. The HAP is the lower of:

- The payment standard for the family minus the TTP, or
- The gross rent minus the TTP.

CALCULATING THE HAP PAYMENT	
Payment Standard	\$450
TTP	\$210
If the family selects a unit with a gross rent of \$425, the HAP is the lower of:	
Payment standard – TTP (\$450 - \$210) = \$240; or	
Gross rent – TTP (\$425 - \$210) = \$215.	
HAP = \$215	
If the family selects a unit with a gross rent of \$500, the HAP is the lower of:	
Payment standard – TTP (\$450-\$210) = \$240	
Gross rent – TTP (\$500 - \$210) = \$290	
HAP = \$240	

**Family Share**

The *family share* is the family’s contribution toward the gross rent. The family share may be the TTP or a higher amount, depending on the unit the family selects. For a family leasing a unit with a gross rent at or below the payment standard for the family, the family share will be the same as the TTP.

If a family leases a unit with a gross rent above the payment standard for the family, the family share is the TTP plus any amount by which the gross rent exceeds the payment standard. Although it is important for families to understand this concept while searching for housing, the family share cannot be calculated until a unit is selected.

CALCULATING FAMILY SHARE FOR A 2 BEDROOM FAMILY

2 Bedroom Payment Standard:	\$450
Monthly Adjusted Income:	$\$700 \times .30 = \$210$
Monthly Income:	$\$740 \times .10 = \$ 74$
Welfare Rent:	N/A
PHA Minimum Rent:	\$25
Total Tenant Payment:	\$210
Maximum initial rent burden:	$\$700 \times 40\% = \$280$

Family selects a 2 Bedroom unit with a gross rent of \$425.

Compare the gross rent to the payment standard of \$450.  
The gross rent is less than the payment standard, therefore,  
Family Share equals the TTP of \$210.

FAMILY SHARE WHEN THE GROSS RENT EXCEEDS THE APPLICABLE PAYMENT STANDARD

2 Bedroom Payment Standard:	\$450
Total Tenant Payment:	\$210
Maximum initial rent burden:	\$280

Family selects a 2 Bedroom unit with a gross rent of \$500.

Compare the gross rent to the payment standard. The gross rent exceeds the payment standard by \$50.

Family share =  $\$210$  (TTP) +  $\$50 = \$260$   
This unit can be rented because the family’s share is less than the maximum initial rent burden of \$280.

In the example above, if the family had selected a unit with a gross rent of \$550, the unit could not be approved by the PHA because the family share would exceed the maximum initial rent burden. The gross rent of \$550 exceeds the payment standard by \$100. The family share is calculated as the TTP of \$210 + \$100 or \$310, which exceeds the maximum initial rent burden of \$280.

Note that a subsequent rent increase during the family’s occupancy of the unit that causes the family share to exceed 40 percent of monthly adjusted income is permissible so long as the new rent to owner is determined to be reasonable. The maximum initial rent burden applies only at the commencement of an assisted occupancy in a particular unit.

**Impact of Unit Selection on Subsidy**

When a family selects a unit with fewer bedrooms than the family unit size listed on the housing choice voucher, the PHA is required to recompute maximum subsidy. The PHA must apply the payment standard amount for the smaller of the family unit size listed on the family’s housing choice voucher or the unit size selected by the family. The utility allowance to be used is always based on the actual size of the selected unit.

**Family Rent to Owner**

The family rent to owner is the portion of the family share that is paid to the owner for rent. If the family is not responsible for paying any utilities under the lease, family rent to owner will equal family share. Where families are responsible for directly paying some or all of the utilities, family rent to owner is calculated by subtracting the HAP from the rent to the owner.

CALCULATING FAMILY RENT TO OWNER	
Rent to the Owner (including all utilities)	\$450
Less HAP	<u>\$240</u>
Family Rent to Owner	\$210

**Utility Reimbursement**

The amount of the utility reimbursement is the amount by which the HAP payment exceeds the rent to the owner. When there is a utility reimbursement, the PHA pays the full amount of the rent to the owner and sends the utility reimbursement to the family or the utility company.

CALCULATING A UTILITY REIMBURSEMENT	
HAP	\$415
Less Rent to Owner (including all utilities except electric)	<u>\$390</u>
Utility Reimbursement	\$25

*Note:* In this example the tenant pays no rent to the owner.

**Prorated Assistance**

For families that include both members who are citizens or have eligible immigration status and members who do not have eligible immigration status (or elect not to state that they have

eligibility status), the amount of assistance is prorated, based on the percentage of household members who are citizens or documented eligible immigrants. To calculate prorated assistance, the PHA must follow these steps:

1. Determine gross rent (rent to owner plus utilities) for the unit.
2. Determine the HAP amount, taking into consideration the income of all household members.
3. Determine the proration factor by dividing the number of eligible family members (citizens and those with eligible immigration status) by the total number of members in the household.
4. Multiply the HAP amount calculated in Step 2 by the proration factor calculated in Step 3 to determine the family's eligible subsidy portion or prorated HAP.
5. Subtract the prorated HAP (Step 4) from the gross rent (Step 1).

PRORATION OF HAP: FAMILY OF FOUR  
WITH ONE INELIGIBLE NONCITIZEN

Gross Rent:	\$550
Payment Standard Amount:	\$600
TTP based on all household income:	\$250

HAP equals the lesser of:

Payment Standard less TTP ( $\$600 - \$250 = \$350$ ) or  
Gross Rent less TTP ( $\$550 - \$250 = \$300$ )  
HAP = \$300

Proration Factor: 3 eligible members of 4 total members =  $\frac{3}{4} = .75$   
Prorated HAP:  $\$300 \times .75 = \$225$

Calculate Family Share:

Gross Rent less Prorated HAP equals Family Share  
 $\$550 - \$225 = \$325$

#### 6.4 MINIMUM RENT

The Public Housing Reform Act of 1998 makes permanent a minimum rent requirement of between \$0 and \$50. PHAs are required to formally adopt a minimum rent policy. The policy can establish the minimum rent anywhere within the statutory range. PHAs must amend their PHA administrative plans to reflect the policy. The PHA's minimum rent is a minimum TTP and becomes a part of the TTP formula as indicated on page 6-1. A family whose TTP has been set at the minimum rent may receive a utility reimbursement.

CALCULATION OF UTILITY REIMBURSEMENT FOR  
FAMILY PAYING MINIMUM RENT

Rent to Owner	\$390	
Less HAP	<u>\$415</u>	
Utility Reimbursement	(\$25)	
Family's TTP (PHA's minimum rent)		\$50
Plus Utility Reimbursement		<u>\$25</u>
Equals the appropriate Utility Allowance for the unit		\$75

*Exemptions from the Minimum Rent Requirement*

If a PHA adopts a minimum rent policy of greater than \$0, the PHA must grant exemptions from the minimum rent requirement to any family if the PHA determines that the family is unable to pay the amount due to financial hardship, unless the hardship is temporary. Financial hardship includes circumstances in which families:

- Have lost eligibility or are awaiting an eligibility determination for a federal, state or local assistance program, including a family having a noncitizen household member lawfully admitted for permanent residence and who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996;
- Would be evicted as a result of imposing the minimum rent requirement;
- Experience income decreases because of changed circumstances including the loss of employment;
- Have a death in the family; or
- Have other circumstances as determined by the PHA or HUD.

If a family requests a hardship exception, the PHA must suspend the minimum rent charge and adjust the HAP payment effective on the first of the month following the change in the family's circumstances. The PHA may request documentation of the hardship and must determine promptly if the hardship is temporary or long term.

If the hardship is determined to be temporary, the minimum rent is suspended for a period of 90 days from the date of the family's request. At the end of the 90-day period, the minimum rent is reinstated retroactively to the date of suspension. The PHA must offer to execute a reasonable repayment agreement to cover the minimum rent charges accumulated during the suspension period. Hardship determinations are subject to the PHA's informal hearing process.

**EXHIBITS 6-1**

**SAMPLE HANDOUT1: HOW MUCH DOES THIS UNIT COST?**

Rent to Owner \$ \_\_\_\_\_

**Utilities not included**

List appropriate utility allowances from the utility allowance schedule in your briefing pocket.

Heat \$ \_\_\_\_\_

Lights \$ \_\_\_\_\_

Cooking gas/electric \$ \_\_\_\_\_

Water \$ \_\_\_\_\_

Appliance \$ \_\_\_\_\_

Air Conditioning \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Total Utility Allowance \$ \_\_\_\_\_

Gross Rent \$ \_\_\_\_\_

**EXHIBIT 6-2**

**SAMPLE HANDOUT 2  
CAN I AFFORD THE UNIT I HAVE FOUND?**

*Note: Use this handout when the gross rent is greater than the payment standard.*

In the housing choice voucher program, the maximum subsidy is set first. That maximum subsidy is based on a “payment standard” established by the PHA. If you wish to lease a unit with a gross rent (rent plus utilities) that is more than the payment standard, you will have to pay that excess, in addition to a designated “total tenant payment” that is based on a percentage of your income.

Program regulations prohibit a family from paying more than 40 percent of its adjusted monthly income if the gross rent for the unit is more than the payment standard when rental assistance begins. The following information is provided to assist you in finding a unit that is affordable to you and eligible within the 40 percent maximum guidelines.

PAYMENT STANDARD		\$ _____
TOTAL TENANT PAYMENT*		\$ _____
MAXIMUM SUBSIDY	=	\$ _____
MAXIMUM SUBSIDY		\$ _____
40 PERCENT OF MONTHLY ADJUSTED INCOME	+	\$ _____
MAXIMUM ALLOWABLE GROSS RENT**	=	\$ _____

\*Total Tenant Payment greater of (1) 10 percent of monthly income, (2) 30 percent of adjusted monthly income, (3) the welfare rent, or (4) the minimum rent.

\*\*Gross Rent = rent plus all utilities to be paid by tenant.

Chapter 7: Payment Standards

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## CHAPTER 7 PAYMENT STANDARDS

### 7.1 CHAPTER OVERVIEW

Payment standards are used to calculate the housing assistance payment (HAP) that the PHA pays to the owner on behalf of the family leasing the unit. Each PHA has latitude in establishing its schedule of payment standard amounts by bedroom size. The range of possible payment standard amounts is based on HUD's published fair market rent (FMR) schedule for the FMR area in which the PHA has jurisdiction. FMRs are based on either the 40<sup>th</sup> or 50<sup>th</sup> percentile of rents charged for standard rental housing in the FMR area. A PHA may set its payment standard amounts from 90 percent to 110 percent of the published FMRs, and may set them higher or lower with HUD approval.

The level at which the payment standard amount is set directly affects the amount of subsidy a family will receive, and the amount of rent paid by program participants.

If the family leases a unit with a gross rent at or below the payment standard for the family, the family's share of the rent will be its TTP. If the rent for the unit is higher than the payment standard, the family's share will be higher than the TTP.

If the payment standard amount is too *low*:

- Families may need to pay more than they can afford; or
- Families may have a hard time finding acceptable units or units in more desirable areas;
- Housing choices will be narrowed and the PHA's efforts to affirmatively further fair housing will be undermined.

If the payment standard amount is too *high*, owners may be encouraged to ask for higher than reasonable rents.

Payment standard amounts should be high enough to allow families a reasonable selection of modest, decent, safe, and sanitary housing in a range of neighborhoods in the PHA's jurisdiction. To meet that objective and to support families wishing to move to areas with lower concentrations of poor and minority households, a PHA may establish higher payment standard schedules for certain areas within its jurisdiction so that program families can rent units in more desirable areas.

The PHA's procedures for establishing and revising its payment standard schedule must be set forth in its administrative plan.

## 7.2 ESTABLISHING PAYMENT STANDARD AMOUNTS

A PHA is required to establish payment standard amounts for each unit size in an FMR area. The payment standard amounts may be within several ranges depending on facts about the rental market. Payment standard amounts may be established:

- Within the “basic range”, which is between 90 percent to 110 percent of the 40th percentile FMR;
- Between 90 percent and 110 percent of the 50th percentile FMR if the PHA is within a 50th percentile FMR area;
- Between 90 percent and 110 percent of the 50<sup>th</sup> percentile rent if the PHA has obtained HUD approved for “success rate” payment standard amounts; or
- As exception payment standard amounts below 90 percent or above 110 percent of the 40th or 50th percentile FMR with HUD approval.

### Payment Standard Amounts within the Basic Range

Most PHAs will establish payment standard amounts within the basic range; the other options for setting payment standard amounts are made available as tools for PHAs with special market problems.

Within the basic range, the payment standard is set between 90 percent and 110 percent of the 40th percentile FMR. Whenever the FMR increases or decreases, the PHA must ensure that its payment standard amounts remain within the basic range.

#### KEEPING THE PAYMENT STANDARD AMOUNT WITHIN THE BASIC RANGE

In October, a PHA established its payment standard for a two-bedroom unit at the FMR limit, which was \$300. The following October, an increased FMR was published at \$320.

90% of the new FMR = \$288

110% of the new FMR = \$352

The PHA could:

- Leave the payment standard (\$300) in place; \$300 is more than 90% and less than 110% of the new FMR.
- Adopt a higher payment standard at any amount up to \$352.
- Adopt a lower payment standard down to \$288.

### Payment Standard Amounts Based on the 50th Percentile FMR: Housing Choice

Payment standards based on the 50th percentile FMR are made available to PHAs in FMR areas where higher payment standards are necessary to increase housing choice throughout a metropolitan area.

#### 50<sup>TH</sup> PERCENTILE FMRs TO INCREASE HOUSING CHOICE

HUD will establish 50<sup>th</sup> percentile FMRs to ensure that low-income families have access to a broad range of housing opportunities throughout the metropolitan area and are free to move to neighborhoods of their choice.

The areas where HUD will establish the higher FMRs are those where there is:

- A concentration of voucher holders; and
- Evidence suggesting that this problem may be due to the distribution of affordable rental units in the area.

To increase housing choice throughout a metropolitan area, HUD will increase FMRs to the 50th percentile in metropolitan areas that meet the following criteria:

The FMR area contains at least 100 census tracts;

70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

25 percent or more of the tenant-based rental program participants in the FMR area reside in the five percent of the census tracts within the FMR area that have the largest number of program participants.

In those areas where HUD has published 50th percentile FMRs, a PHA may establish its payment standard amounts between 90 and 110 percent of the 50th percentile FMR. All PHAs must use the published FMR or request an exception payment standard (see below).

A PHA that sets a payment standard amount at more than 100 percent of the 50<sup>th</sup> percentile FMR will be measured under SEMAP to determine its performance in achieving deconcentration.

### Payment Standard Amounts Based on the 50th Percentile Rent: Success Rate

PHAs not in metropolitan areas with published 50th percentile FMRs may request HUD approval to use the 50th percentile rent if the higher rent levels are needed to ensure that more voucher holders will be successful in finding decent affordable housing.

The term “success rate” refers to the percent of applicants issued vouchers who successfully find and lease a program unit before the voucher expires.

To qualify for “Success Rate” payment standard amounts using the 50th percentile rent, a PHA must have:

- Maintained its payment standard amounts for all unit sizes in the entire PHA jurisdiction at 110 percent of the (40th percentile) FMR for a period of at least six months and up to the time of the PHA request for approval of success rate payment standard amounts; and
- Demonstrate that fewer than 75 percent of applicant voucher holders have successfully leased a program unit during the most recent six months; and
- Have a policy of granting automatic extensions of voucher terms to at least 90 days to provide an applicant who has made sustained efforts to locate suitable housing with additional search time.

PHAs adopting success rate payment standard amounts will be measured under SEMAP to determine their performance in improving voucher holder success rates using the higher payment standard amounts.

### **Requesting HUD Approval of Exception Payment Standard Amounts**

A PHA may request HUD approval of payment standard amounts higher or lower than the established 40<sup>th</sup> or 50<sup>th</sup> percentile FMR for designated parts of the FMR area (the “exception areas”). The exception payment standard amounts may be for all units in the exception areas, or for all units of a given bedroom size in these areas. Any PHA with jurisdiction in the exception areas may use the HUD-approved exception payment standard amounts without requesting specific HUD approval.

- Requests for exception payment standard amounts from 110 percent to 120 percent of FMR must be supported by the median rent method or the 40<sup>th</sup> or 50<sup>th</sup> percentile method discussed below.
- HUD will only approve exception payment standard amounts if the exception payment standard amounts are needed to help families find housing outside areas of high poverty concentrations, or because voucher holders have trouble finding housing to lease under the program within the voucher term.
- The total population of all HUD-approved exception areas may not include more than 50 percent of the population of the FMR area.

### **Requesting HUD Approval of Exception Payment Standard Amounts over 120 percent of the FMR**

A PHA may request HUD approval to adopt exception payment standard amounts above 120 percent of the published FMRs for the same area but not until at least six months from the date of HUD’s approval of a 120 percent exception payment standard.

- The exceptions must be necessary to prevent financial hardship for families.
- The Assistant Secretary for Public and Indian Housing must approve requests for exception payment standard amounts over 120 percent of the published FMR.

METHODS FOR DETERMINING EXCEPTION PAYMENT STANDARD AMOUNTS  
 MEDIAN RENT METHOD

$$\frac{\text{Median Exception Area Gross Rent}}{\text{Median FMR Area Gross Rent}} = \text{Exception Payment Standard Percentage}$$

The Anytown PHA is concerned that voucher families are concentrated in some of the city's poorest neighborhoods. Even with voucher assistance, they cannot afford other areas without paying more than 40 percent of their monthly adjusted income for rent, the maximum initial rent burden allowed under the housing choice voucher program. The PHA is requesting HUD approval for exception payment standards for two-BR, three-BR, and four-BR units in the Broadview area of the city, which has decent housing, good schools, and a low concentration of poor and minority families.

Using Census data, the PHA determines that the median rents for the 2-BR units in the three census tracts that comprise Broadview are \$897, \$872, and \$901, with an \$890 overall median. The median rent for the Anytown MSA is \$781.

$$\frac{\$890}{\$781} = 1.14 \text{ OR } 114\%$$

With HUD approval, Anytown PHA's payment standards for each unit size in the Broadview exception payment standard area may be up to 114 percent of the Anytown Area FMR.

Anytown's FMRs are set at the 40<sup>th</sup> percentile of area rents. A PHA using an approved 50<sup>th</sup> percentile FMR could make a similar request for exceptions above the 50<sup>th</sup> percentile FMR if local market data supported the request.

METHODS FOR DETERMINING EXCEPTION PAYMENT STANDARD AMOUNTS  
 40<sup>TH</sup> OR 50<sup>TH</sup> PERCENTILE RENT METHOD

The Central State PHA, responding to complaints from voucher holders who need large units about their difficulty finding affordable housing, is requesting HUD approval for exception payment standards for four and five bedroom units throughout its jurisdiction. Census and other available data for the area, which includes only aggregate rent figures for units of all sizes, do not support a request under the median rent method.

Under the 40<sup>th</sup> or 50<sup>th</sup> percentile rent method, Central State must support its request for an exception with "statistically representative" rental housing survey data demonstrating that, for four- and five-bedroom units in its jurisdiction, the 40<sup>th</sup> or 50<sup>th</sup> percentile rent levels are greater than the HUD established FMRs. Suggestions for obtaining this data can be found in two HUD publications:

- Random Digit Dialing Surveys for large PHAs, and
- Rental Housing Surveys for smaller PHAs.

The PHA is required to conduct an RDD survey for only the portion of the FMR area for its jurisdiction.

The Central State PHA is disputing the published 40<sup>th</sup> percentile FMRs; if the PHA were in a 50<sup>th</sup> percentile FMR area, it could use the same approach to challenge published 50<sup>th</sup> percentile FMRs.

### **Establishing the Payment Standard Schedule**

A PHA initially establishes the payment standard amounts on the payment standard schedule at 90 percent to 110 percent of the published FMR. Like the FMR, the payment standard schedule is established by bedroom size category. The payment standard schedule applies to all voucher units administered by the PHA regardless of the source of funding (e.g., formula allocation, Welfare to Work, or vouchers targeted to specific groups of recipients) or the date on which the vouchers were awarded by HUD.

The PHA may establish one or more separate payment standard amounts within the basic range for designated parts of an FMR area. This may be appropriate where a PHA has determined that its general payment standards are too low to allow families seeking housing in areas with low concentrations of poverty and minority families to lease in these areas.

### **7.3 REVISING THE PAYMENT STANDARD**

Prior to the effective date of any new FMRs, the PHA must review its payment standard schedule and amend it as needed to ensure that the payment standards remain within the basic range (90 percent to 110 percent of the new FMR). If the FMR increases, the PHA must be sure that the payment standards for each unit size are at least 90 percent of the new FMR. Similarly, if the FMR decreases, the PHA must be sure that the payment standards are not more than 110 percent of the new FMR.

PHAs will likely increase payment standards as FMRs increase, to help voucher holders find units and current participants to continue to afford the units they have selected. However, the PHA is not *required* to increase payment standards when FMRs increase so long as the payment standards is from 90 percent to 110 percent of the new FMR.

### **Annual Review of Payment Standard Amounts**

At least annually, generally prior to the preparation of its housing choice voucher program budget, the PHA should review its payment standards to determine whether adjustments are needed for some or all unit sizes. In reviewing the adequacy of its payment standard amounts, the PHA should consider the following:

- *Assisted Families' Rent Burdens:* The PHA should review the percentage of income voucher families use to pay rent to determine the extent to which rent burdens exceed 30 percent of income due to the fact that gross rent levels are above the PHA's payment standard amounts.
- *Availability of Suitable Vacant Units with Rents Below the Payment Standard Amounts:* The PHA should review its rent reasonableness data, vacancy rate data, and other relevant information to determine whether there is an ample supply of vacant units with rents below the payment standard amounts, particularly in areas with low concentrations of poor and minority families.

- *Size and Quality of Units Selected:* The PHA should review the size and quality of units selected by assisted families before concluding that there is a need for a change in the payment standard amounts. Payment standard amount increases should be made only when they are needed to reach units of adequate size and quality in the mid-range of the market.
- *Time to Locate Housing:* The PHA should review the average time required for voucher holders to find units. If the PHA determines that the amount of time required is excessive (i.e. 90 days or more), an increase in the payment standard amount may be needed.
- *Vouchers Expired without Leasing:* The PHA should also review the number of voucher holders whose vouchers expire without their having leased a unit. While some voucher drop-out is to be expected, a substantial number of families unable to lease units with assistance under the housing choice voucher program suggests that payment standard amount may be too low.
- *Large Numbers of Families Moving Out of the PHA's Jurisdiction:* The PHA should review the number of families exercising the portability option to lease in other jurisdictions. Again, while some exercise of portability is to be expected, and may in fact indicate that the PHA is meeting its objectives in expanding housing opportunities for participating families, an excessively high number of families moving out may indicate that the PHA's payment standard amounts are too low.

SEMAP Indicator 7, Expanding Housing Opportunities, further requires a PHA to identify and provide information to voucher holders about housing opportunities outside areas of poverty and minority concentration in their jurisdiction. The PHA is required to look at difficulties experienced by voucher holders in finding housing in these areas, and, if appropriate, to seek HUD approval of exception payment standards for these areas.

### **Lowering the Payment Standard Amount**

The PHA's analysis may indicate that the payment standard amount is too high, in which case the PHA should lower its payment standard to some appropriate amount within the basic range. The lower payment standard amount will not apply to families who have already leased units under the higher standard until they move to a new unit or have a change in their family size or composition, or at the second annual reexamination after the PHA lowers its payment standard.

### **File Documentation**

The PHA should retain documentation of its review of its payment standard schedule to support its determination to change or not to change the payment standard amounts on the payment standard schedule.

## **7.4 APPLYING THE PAYMENT STANDARD**

The payment standard is used to calculate the monthly housing assistance payment for a family under the housing choice voucher program. The HAP is arrived at by taking the *lower* of the:

- Payment standard minus the TTP *or*
- Gross rent for the unit minus the TTP.

Under the housing choice voucher program, if the gross rent for the unit is lower than the payment standard, the family will pay the full TTP. If the gross rent for the unit is higher than the payment standard, the family will pay the TTP plus the amount by which the gross rent exceeds the payment standard.

If during the term of the HAP contract the owner *lowers* the rent for a unit, the HAP will be recalculated using the lower of the initial payment standard or the lower gross rent for the unit.

### **Payment Standard Amount for a Family**

The payment standard amount for a family is the *lower* of:

- Payment standard amount for the family unit size, or
- Payment standard amount for the size of the unit leased by the family.

If the unit is located in an exception area, the PHA must use the appropriate payment standard amount for the exception area.

### **When the Payment Standard Increases**

The payment standard in place on the effective date of the HAP contract remains in place for the duration of the contract term unless the PHA increases or decreases its payment standard. If a payment standard is increased, the higher payment standard is first used in calculating the HAP at the time of the family's regular (annual) reexamination. Families requiring or requesting interim reexaminations will *not* have their HAP payments calculated using the higher payment standard until their next annual reexamination.

### **When the Payment Standard Decreases**

If the PHA lowers its payment standards, the payment standard in effect on the effective date of the HAP contract will remain in effect until the family moves to another unit, has a change in its family size or composition, or until the second annual reexamination after the PHA decreases its payment standard.

Decreases in the applicable payment standard due to changes in family size or composition are effective as of the next regular (annual) reexamination following the change. At that time, the new family size will be used to determine the payment standard.

### Higher Payment Standard Amount as a Reasonable Accommodation

Although the housing choice voucher program does not generally allow unit-by-unit exceptions, a PHA may establish a higher payment standard amount within the basic range as a reasonable accommodation for a family with a family member with disabilities.

ESTABLISHING A HIGHER PAYMENT STANDARD AMOUNT AS A  
REASONABLE ACCOMMODATION

The Williams family has five children and requires a four-bedroom unit. Mrs. Williams is in a wheelchair and cannot go up stairs.

The family has located a modest 4-bedroom ranch house on the outskirts of Midtown that would meet their needs, but the rent is higher than the Midtown PHA's four-bedroom payment standard. The higher rent would require the Williams to pay more than 40 percent of their income for rent, so they cannot lease the unit without a higher payment standard.

The Midtown Housing Authority (MHA) can provide the Williams with an exception payment standard to enable the family to lease the unit if MHA determines the rent to be reasonable.

### 7.5 RELATED SEMAP INDICATORS

SEMAP Indicator 8 measures the PHA's compliance in setting its payment standards within the basic range, or other amount approved by HUD:

The PHA's voucher program payment schedule contains payment standards which do not exceed 110 percent of the current applicable published FMR and which are not less than 90 percent of the current applicable published FMR (unless a higher or lower payment standard amount is approved by HUD).

SEMAP Indicator 7 requires the PHA to analyze difficulties experienced by voucher holders finding housing in areas of low poverty and minority concentration and, if appropriate, seek approval from HUD for exception payment standards for these areas.

A new SEMAP Indicator applies only to PHAs that have received approval to establish success rate payment standard amounts. The indicator measures whether voucher holders have been more successful leasing units than before the success rate payment standard amounts were adopted. To earn the five points available through this indicator, the PHA must document improvement using one of two measures:

- More than 75 percent of applicant families issued vouchers were able to lease successfully; or
- The percent of successful applicant families is at least five percentage points higher than when the success rate payment standard was established, *and* the PHA's voucher utilization for the fiscal year is at 95% of units leased or 95% of funds expended.

This new SEMAP indicator will apply in the second full PHA fiscal year that follows the date of HUD approval of success rate payment standard amounts.

Submission of data under the SEMAP Deconcentration bonus is mandatory for a PHA using a payment standard amount that exceeds 100 percent of the 50<sup>th</sup> percentile FMR when HUD has published 50<sup>th</sup> percentile FMRs to provide a broad range of housing opportunities throughout a metropolitan area. The submission becomes mandatory starting with the second full PHA fiscal year following initial use of the payment standard amount above the 50<sup>th</sup> percentile FMR.

Submission of deconcentration data for the bonus indicator is optional for other PHAs.

The Deconcentration bonus measures the percent of voucher families with children who have moved to low poverty census tracts. Success under the indicator is measured one of three ways:

- Half or more of all voucher families with children in the PHA's jurisdiction reside in low poverty census tracts; or
- The percent of voucher families with children moving to low-poverty census tracts within the PHA's jurisdiction in the fiscal year is at least 2 percentage points higher than those who reside in those areas at the end of the year; or
- The percent of voucher families with children moving to low-poverty census tracts within the PHA's jurisdiction during the last two PHA fiscal years is at least 2 percentage points higher than the percentage of those families who lived there at the end of the last year.

Chapter 12: Reexaminations

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## CHAPTER 12 REEXAMINATIONS

### 12.1 CHAPTER OVERVIEW

The PHA is required to reexamine the income and composition of housing choice voucher families at least annually. The annual reexamination determines the continued eligibility of the family and establishes the housing assistance payment (HAP) to be made on behalf of the family. The PHA *may* require families to report interim changes in family income or family circumstances as well. A family's failure to comply with PHA reexamination requirements is grounds for terminating assistance.

The PHA must establish reexamination procedures that allow for proper and timely verification of all information and advance notification to the family of any rent change.

### 12.2 FREQUENCY OF ANNUAL REEXAMINATIONS

The PHA must establish a policy regarding annual reexamination effective dates that ensures that reexamination for every family takes effect *within* a 12-month period. PHAs may require reexaminations more frequently when the family has seasonal or irregular income, to balance the PHA's workload, or for other good reasons.

The reexamination date may correspond with the date when other annual functions are performed (e.g., annual HQS inspections). However, this is not required.

It is recommended that PHAs choose one of the following reexamination dates:

- *The anniversary date of the HAP contract.* Most PHAs choose this as the reexamination date for administrative ease. This choice allows the effective date of changes in HAP resulting from the reexamination process to coincide with the anticipated effective date of any changes in the rent to owner.
- *Twelve (12) months from the date of initial verification.* The PHA may choose to establish reexamination cycles based upon the date of initial information verification. In this case the reexamination effective date is the first of the month following the month in which family information was initially verified. This choice allows the PHA to issue new housing choice vouchers to families who move at the anniversary date without necessarily having to conduct a reexamination at that time.

### 12.3 MONITORING

It is important that the PHA has tracking and monitoring procedures and systems in place to ensure that the required reexaminations for each assisted family are initiated and completed on time.

The PHA's plan for reexaminations should provide for supervisory monitoring of the timely initiation of the reexamination process, the progress of each reexamination, and its completion. Computer software programs customized for the housing choice voucher program should be able to identify reexaminations due and monitor PHA monthly reexamination activity through computer-generated reports. The software should allow for reporting on various date-driven fields. At a minimum, the dates tracked for each family should include:

- Lease and HAP contract effective date
- Reexamination effective date
- Initial reexamination notification date
- Second notice date
- Termination notice date
- Notice of rent adjustment date
- Date of the next annual reexamination

Computer software should be able to provide audit reports identifying annual reexaminations that have not been completed.

In lieu of computer generated reports, many PHAs maintain manual reexamination activity or progress logs. These logs are used to assist staff in managing the on-time completion of the reexamination process.

#### **12.4 REEXAMINATION PROCEDURES**

##### **Notification to Participant that the Annual Reexamination is Due**

The PHA should initiate reexamination procedures 90 to 120 days before the date reexamination results are to take effect. This allows the PHA ample time to obtain all required verifications and provide reasonable advance notice to both the family and the property owner of any change in the family share and HAP.

Most PHAs require families to complete the reexamination in person. Families are notified in writing of the date of the reexamination appointment, the location of the appointment, and what they are required to bring to the interview. The notification letter generally directs the family to request another appointment if there is a scheduling conflict. Some PHAs complete reexaminations by mail, scheduling appointments only if there is no response to the mailed reexamination request or the documentation returned to the PHA is incomplete. Another option is do both in-person and mail reexaminations depending upon circumstances. For example, a PHA's procedures might call for mail reexaminations only for elderly participants and participants with disabilities with a straightforward income and allowance profile or those who may have difficulty keeping interview appointments. Alternatively, the PHA may conduct "in-

home” reexamination interviews for the elderly and for families in which the head of household is a person with disabilities.

If the assisted family head of household does not respond to the reexamination notification, the PHA usually mails a second notice. The second notice is more forceful in nature. The notice reminds the family that the annual reexamination is a family obligation and that failure to complete a reexamination could result in termination from the program. The notice contains instructions on what the participant must do to comply. (Samples of both initial notice and second notice letters are provided in Appendix 12-1 and 12-2.)

If the assisted family does not respond to the second notice, the PHA must send a termination notice to both the family and the owner. This notice advises the family that assistance will be terminated and states the effective date of the termination and the reason. This termination notice must also inform the participant of his or her right to a hearing (see Chapter 16). (A sample termination notice is provided in Appendix 12-3.)

### **Reexamination Documents**

The following are standard forms used by PHAs when completing reexaminations:

*Application for Continued Occupancy.* Developed by the PHA, this is the document that records all updated information reported by the family. It generally contains sections for household composition, student/disability status of household members, income and assets, medical and disability expenses, and rent calculation. While HUD does not require that this form be used, it is recommended as an organized way to record family information. PHA staff often use it as an interview tool. The participant and PHA signatures on the form serve as certifications of the information collected (see sample, Exhibit 12-4).

*Form HUD-50058, Family Report.* This is a HUD required form on which PHAs record pertinent family, demographic and program information. PHAs must transmit this form electronically to HUD’s Multifamily Tenant Characteristics System (MTCS) database. The completed form HUD-50058 is the PHA’s official notice to HUD of the terms of the contract for each family.

*Form HUD-9886, Authorization for Release of Information/Privacy Act Notice.* This is a HUD-required consent form authorizing HUD and the PHA to request information from third parties to verify a household’s eligibility for assistance and factors affecting the rent calculation or the family’s selection preference. Each member of the household age 18 and older must sign the form at every annual reexamination as a condition of continued assistance. PHA use of the form is restricted as described in the accompanying instructions. The signed form is valid for a period of 15 months from the date of the signature.

*Verification forms.* Developed by the PHA, these forms are used to obtain income, expense and other information directly from third parties (e.g., employers, benefit providers).

Copies of completed forms for each family should be provided to the family and retained in the tenant's file.

### **Third Party Verifications**

At the annual reexamination, PHAs use the same procedures for obtaining and verifying information that were used at admission (see Chapter 5). Verification obtained at reexamination must be no more than 120 days old on the effective date.

The PHA must obtain and document in the tenant file third party verification of the following specific items:

- Reported family annual income;
- The cash value of assets and income derived from assets;
- Expenses related to deductions from annual income; and
- Any other factors that affect the calculation of adjusted income.

#### VERIFICATION METHODS

Three methods of verification are acceptable for the tenant file to be properly documented. In order of acceptability they are:

- *Third Party:* Written (provided directly to the PHA by the source and not hand-carried by the family) or oral (direct contact by PHA with a reliable source).
- *Review of Documents:* Original documents provided by family, viewed by PHA staff, copied and placed in the tenant file.
- *Family certification or notarized statement:* Written statement signed by the family certifying that the information provided is complete and correct.
- When the preferred verification form is not successful and staff resort to the second or third alternative, staff must record in the tenant file efforts to obtain preferred forms of verification and the reason an alternative method was used.

If third party verification is not received in a timely fashion, the PHA should choose an acceptable alternate form of verification and document the effort made by the PHA to obtain third party verification.

Some PHAs allow families to submit current award letters for Social Security, Supplemental Security Income (SSI), or Transitional Assistance for Needy Families (TANF), if the PHA has attempted and been unsuccessful in obtaining a response to the income verification request.

*Verification of Social Security Numbers (SSN).* Each family member, regardless of age, must submit to the PHA evidence of a valid SSN or a certification that an SSN has not been assigned. This submission needs to occur only once during continuously assisted occupancy. However, the PHA should review the file at each reexamination to assure that the required documentation is present. When a new family member moves into an assisted unit, the required SSN evidence must be submitted at the first reexamination following occupancy.

*Verification of Citizenship/Alien Status.* Each member of the assisted family, regardless of age, must certify citizenship or eligible immigration status at least once during continuously assisted occupancy. Documentation of eligible immigration status must be obtained, verification through the INS must be completed, and the documentation must be maintained in the tenant file. If new members join the household, the certification/verification process must be completed when the change in household composition is reported. The PHA should review the file at each reexamination to assure that this documentation is present. The PHA must apply all procedures in a uniform manner. No applicant or resident may be asked for additional information based on the personal characteristics of the family member.

### **Calculation of Total Tenant Payment and Housing Assistance Payment**

The calculation of the total tenant payment (TTP) and the housing assistance payment (HAP) for the reexamination is completed following the same procedures as those used for the initial eligibility determination (see Chapter 5). The PHA should enter updated information regarding the family's composition, income, assets, and deductions on a family information form, and complete a form HUD-50058.

Assisted families are not required to demonstrate income eligibility at the time of reexamination.

When completing a reexamination, PHAs must carefully consider the following:

- Changes in income, assets, and family composition and circumstances, especially significant changes, should be evaluated and the family should provide an explanation if there appear to be discrepancies with past information or other current information.
- Changes in family composition may require the family to move to a larger or smaller unit (see Chapters 5, 7 and 10).
- The HAP calculation must use the correct payment standard for the family and for the appropriate size unit and area.
- The HAP calculation must reflect any changes in the utility arrangement or in the PHA's utility allowance schedule.
- Rent increases requested by owners must be processed (see Section 12.5).

### **Notification of Annual Reexamination Results**

The PHA must notify the family and the owner of the results of the annual reexamination in writing. Generally:

- *Decreases* in the family's share of the rent are effective on the first day of the month following the change.
- *Increases* are effective on the first day of the month after reasonable advance notice to the family. Reasonable notice is generally assumed to be at least 30 days from the first of the month.

The notice should inform the family and the owner of the following:

- The amount and effective date of the new HAP;
- The amount and effective date of the new family share of the rent; and
- The amount and effective date of the new rent to owner.

If the TTP increases as a result of the reexamination, the assisted family must be given the opportunity for an informal hearing (see Chapter 16).

If owner or family agrees to a new lease, a new HAP contract and tenancy addendum must be executed.

### **Families Ineligible for Continued Assistance**

If the annual reexamination results in a zero HAP, the family may continue as a program participant for six months from the date of the reexamination effective date. During that period the HAP contract between the PHA and the owner remains in effect. If the family circumstances change during the six month period and the family again needs assistance, the PHA conducts an interim reexamination and reinstates assistance. At the end of six months, if the subsidy has not been restored, the HAP contract will terminate. The PHA must provide the family and the owners at least 30 days advance notification of the proposed termination and an opportunity to request an informal hearing.

### **Applying a Different Payment Standard**

The PHA must apply a new payment standard at the annual reexamination if any of the following events occur:

- If the PHA has increased the payment standard applicable to the family or area, it must use the increased payment standard.

- If the PHA has adopted new subsidy standards, the payment standard for the appropriate unit size under the PHA’s new subsidy standard is used if the family moves. If the family does not move, the payment standard for the new subsidy standards applies only if it is higher than the family’s previous payment standard. If the payment standard for the appropriate unit size under the PHA’s new subsidy standard is lower than the family’s previous payment standard, the payment standard for the new subsidy standards applies at the effective date of the family’s second regular reexamination following the effective date of the decrease in the payment standard amount.
- If the family’s size or composition changes, the payment standard for the appropriate unit size is used.

APPLYING A REVISED PAYMENT STANDARD  
AT ANNUAL REEXAMINATION

Main Street Housing Authority has increased its two-bedroom payment standard from \$650 to \$690. At their annual reexamination, the subsidy for Aaron and Anna Maples’ two-bedroom unit will be increased to reflect the new payment standard.

Old payment standard	\$650	New payment standard	\$690
Old TTP	<u>320</u>	New TTP	<u>390</u>
Old HAP	\$330	New HAP	\$300

(Because the Maples’ income—and TTP—increased, the HAP has actually decreased. If the Maples’ income and TTP had stayed the same, the HAP would have increased to \$370.)

APPLYING THE PAYMENT STANDARD  
FOR A NEW SUBSIDY STANDARD

The Sample Housing Authority changed its subsidy standard to permit separate bedrooms for adults of the same sex. (Previously SHA had required any two people of the same sex to share a bedroom.)

The elderly Sample sisters shared a two-bedroom apartment with their one bedroom voucher under the SHA’s previous subsidy standard. At the time of the Sample sister’s reexamination, SHA will increase the Sample’s voucher size to two bedrooms and will pay subsidy based on a two-bedroom voucher for a two-bedroom unit.

John and Joshua Blue, elderly brothers who share a one-bedroom unit with their one-bedroom voucher, will also receive a two-bedroom voucher at reexamination. However, unless they decide to move to a two-bedroom unit, their subsidy will continue to be based on the one-bedroom payment standard since the HAP is always based on the lower of the voucher size or the size of the actual unit.

See Chapter 7 for a complete discussion of payment standards.

### **12.5 INCREASES IN RENT TO OWNER**

An owner may increase the unit rent any time an increase is allowed under the terms of the lease. The owner must give the PHA at least 60 days advance notice of any changes in the amount of rent to the owner.

The allowed rent increase is the *lesser* of the following:

- The reasonable rent as determined by the PHA (see Chapter 9); or
- The amount requested by the owner.

#### TIPS FOR ACHIEVING REEXAMINATION GOALS

- Know the reexamination schedule for the entire year and update it regularly.
- Begin the reexamination process on time to avoid missed deadlines.
- Allocate adequate staff and other resources for the volume of reexaminations due.
- Prepare written procedures governing the reexamination process and enforce their use.
- Assign clear staff responsibility for completing reexaminations and supervising work. Train staff members and hold them accountable for on-time completion.
- Develop tracking systems that document every stage of the reexamination process. These systems may be manual (e.g., handwritten logs) or automated (spreadsheets or software programs).
- Develop a reporting system (manual or automated) that summarizes activities and outcomes on a monthly or more frequent basis. Share outcomes with staff.
- Do not allow delayed responses from third parties to prevent timely verification of information. Use other permissible verification methods without delay.
- Perform regular quality control reviews of completed reexaminations consistent with SEMAP requirements.
- Implement employee recognition and reward programs to encourage good performance.
- Regularly evaluate success and consider changes to systems, policies, procedures and staff training programs that might improve PHA performance.

## 12.6 INTERIM REEXAMINATION

### Interim Reporting Policies

PHAs must develop their own interim reporting requirements, which must be stated in the administrative plan and the briefing materials. The policy must include:

- Clear guidance on when (how soon after the change occurs) and under what circumstances the family must report a change in family income or composition; and
- Rules on effective dates of any changes in the HAP resulting from an interim reexamination.

While HUD allows PHAs to develop their own interim reexamination policies, HUD requires that these policies:

- Require participants to report changes in family composition;
- Require PHAs to process interim reexaminations when a family reports a reduction in income; and
- Prohibit processing of an interim reexamination when the family reports a loss of welfare benefits due to fraud or a failure to participate in self-sufficiency or work activity.

PHAs may require a family to report some, all, or none of the changes in income or expenses that would result in a rent increase. If only certain changes must be reported, the PHA policy should state that no action would be taken if a family reports changes it is not required to report.

#### INTERIM REPORTING POLICY

A family reports an increase in Social Security benefits and part-time earnings of a previously unemployed household member. The PHA's policy requires that increases in earnings be reported on an interim basis, but not Social Security increases, which are reported only at annual reexamination. The PHA's policy should state that the Social Security increase in this example would not be used in calculating the new TTP at the interim reexamination.

When deciding the type of changes families should be required to report on an interim basis, the PHA should:

- Consider the administrative costs of processing interim increases in income versus the cost savings if the HAP is reduced;
- Concentrate on the type of interim changes that are most likely to result in large increases in a family's share of the rent (and a corresponding large reduction in subsidy); and,

- Develop a policy that can be easily explained and understood by participants as well as staff who must enforce it.

PHAs must apply interim reporting rules uniformly to all families. Verification rules are the same as those used for annual reexaminations, except only those factors that changed will need to be verified at an interim reexamination.

A family's failure to abide by a PHAs interim reporting requirements is cause for termination of assistance.

### **Notification Requirements**

Families and owners must be notified in writing of interim reexamination results and the effective date of the change in HAP and family share of the rent. Generally:

- Decreases in the family share of the rent are effective on the first day of the month following the date of the reported change. At the PHA's policy discretion, if the family failed to report the change as required, the notice may or may not be effective retroactively.
- Increases are effective on the first day of the month after giving reasonable written notice. (At the PHA's policy discretion, if the family failed to abide by reporting requirements, the notice may or may not include a demand for repayment of excess assistance received for prior months.)

The notification to the family must advise the family of the opportunity for an informal hearing.

### **12.6 RELATED SEMAP INDICATORS**

SEMAP Indicator 9 requires that annual reexaminations take effect at intervals not exceeding 12 months, allowing an additional two months for electronic reporting to HUD of the annual reexamination form HUD-50058, and processing of the data into MTCS.

The SEMAP ratings for this indicator are:

- If fewer than five percent of all PHA annual reexaminations are no more than two months overdue, the PHA will receive 10 points;
- If five to 10 percent are more than two months overdue, the PHA will receive five points; and
- If more than 10 percent are more than two months overdue, the PHA will receive zero points.

SEMAP Indicator 3, Determination of Adjusted Income, measures whether, at admission and during annual reexamination, the PHA verifies and correctly determines adjusted annual income for each assisted family. The indicator also measures whether the PHA uses the appropriate utility allowances when determining gross rent for the unit when the family is responsible for utilities under the lease.

The PHA must conduct a quality control review of tenant files from new admissions and annual reexaminations to support its certification of performance under this indicator.

The SEMAP ratings for this indicator are:

- The maximum points a PHA can receive for Indicator 3 is 20 points.
- The PHA will receive 20 points if the PHA's SEMAP certification indicates, based on its quality control review of tenant files, that for at least 90 percent of families the following statements are true:
  - The PHA obtains third party, written verification from independent sources of all factors affecting the determination of adjusted income, including family income, assets totaling more than \$5,000 and expenses related to income and deductions. The PHA uses the verified information to determine adjusted income or documents the tenant files to indicate why independent verification is not possible.
  - The PHA properly attributes and calculates allowances for any medical, child care, and disability assistance expenses; and
  - The PHA uses the appropriate utility allowances to determine gross rent for the unit leased.
- The PHA receives 15 points if the PHA's SEMAP certification form indicates the statements above, except that the PHA obtains and uses third party verification, properly attributes allowance, and uses the appropriate utility allowances for only 80-89 percent of families.
- The PHA receives zero points for this indicator if the PHA's SEMAP certification form does not support the statements above.

**EXHIBIT 12-1**

**SAMPLE**

**NOTICE TO PARTICIPANT THAT THE ANNUAL REEXAMINATION IS DUE**

Date \_\_\_\_\_ Participant Name: \_\_\_\_\_

To: \_\_\_\_\_ Housing Voucher #: \_\_\_\_\_

\_\_\_\_\_ Review Month: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear Participant:

Federal regulations require that all families participating in the housing choice voucher program report their income and family composition at least once every year. **THIS IS TO INFORM YOU THAN AN APPOINTMENT HAS BEEN SCHEDULED FOR YOU ON \_\_\_\_\_ IN ORDER TO COMPLETE YOUR ANNUAL REEXAMINATION.**

Your appointment will be held at \_\_\_\_\_. Please complete the attached documents before coming to your appointment. Make sure that you sign and date all forms.

In addition, please bring income verification for all family members and information regarding bank accounts and other assets. Any documents used to verify income and/or assets must be original documents and must be dated after the date of this letter. Examples of income/asset verification are listed on the 2<sup>nd</sup> page of this letter.

If you have any questions, please contact \_\_\_\_\_, your housing specialist, at \_\_\_\_\_.

If you are 62 years of age or older or a person with disabilities and require special assistance to complete your annual reexamination, please contact your housing specialist and arrangements will be made to accommodate your needs. ***Please be advised that if you fail to keep this appointment your housing choice voucher assistance may be terminated.***

Sincerely,

Housing Specialist

Page 1 of 2

**SAMPLE**

**NOTICE TO PARTICIPANT THAT THE ANNUAL REEXAMINATION IS DUE (CONT'D)**

**Public Aid**, caseworker's computer printed statement or cancellation letter;

**Employment Verification**, three current consecutive check stubs (last one no more than 60 days from date of your certification/recertification appointment) with year to date earnings or letter from employer including fax number;

**Unemployment**, original award letter from Unemployment Compensation and current stub or exhaust letter;

**Child Support/Alimony**, notarized letter from the provider, and/or court order;

**DCFS**, statement of income, name and telephone number of caseworker.

**Pension/Annuity**, award letter including fax number and copy of current check (last one no more than 60 days from date of your certification/recertification appointment);

**SSI/Social Security Benefits**, award letter and current statement from the Social Security Administration;

**Bank Accounts/Assets** (saving, checking, stocks, bonds, property, IRA's mutual funds, annuities, trust, inheritances, settlements) two most recent monthly statements or letters from bank stating current balance and annual interest rate or bank/pass book;

**Original Social Security Cards and Birth Certificates**, also, please bring in any of the following verification that applies to your family;

**Full-time Student Status**, (for students 18 years or older), current letter from the registrar or admissions officer;

**Medical Deduction** (for households in which the head or spouse is at least 62 or a person with disabilities), printout from pharmacy or receipts for medications and/or medical visits anticipated to be paid by you within then next 12 months.

**Child Care**, provider's name, address, and Social Security Number/I.D. Number and phone number.

**If you will claim no income, you must bring verification of loss of all income sources previously counted.**

If you have any questions, please contact your Housing Specialist.

**EXHIBIT 12-2**

**SAMPLE**

**SECOND NOTICE TO PARTICIPANT THAT THE ANNUAL REEXAMINATION IS DUE**

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, I sent you a letter dated \_\_\_\_\_ scheduling an annual reexamination appointment. You failed to keep the appointment and we have had no contact with you regarding that appointment.

I have scheduled a second appointment for you on \_\_\_\_\_ at \_\_\_\_\_. Please bring your income verification for all family members and information regarding bank accounts and other assets. Any documents used to verify income and/or assets must be original documents and must be dated after the date of this letter. Examples of income/assets are attached.

If you do not attend this appointment or if I do not hear from you within thirty (30) days of the date of this letter, I will assume that you are no longer interested in participating in the housing choice voucher program and your housing assistance will be terminated.

Please contact \_\_\_\_\_ at \_\_\_\_\_ extension \_\_\_\_\_ if you have any questions.

Sincerely,

Housing Specialist

**EXHIBIT 12-3**

**SAMPLE**

**INTENT TO TERMINATE NOTICE**

DATE: \_\_\_\_\_

TO: \_\_\_\_\_ Housing Choice Voucher # \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear \_\_\_\_\_:

This is to advise you that effective \_\_\_\_\_, \_\_\_\_\_ intends to terminate your participation in the housing choice voucher program. This means that you will no longer receive assistance in your current unit or in any future units.

This action is taking place because:

\_\_\_\_\_  
\_\_\_\_\_

As required by HUD guidelines, you have the right to request an informal hearing regarding this decision. Your written request for a hearing must be received by this office within thirty (30) days from the date of this letter. You can mail or deliver your written hearing request to: \_\_\_\_\_.

***Please indicate:  
Your name, housing voucher #, current address and a brief statement of the reason(s) for requesting an informal hearing.***

If you have any questions, please contact \_\_\_\_\_ at extension \_\_\_\_\_.

Sincerely,

**EXHIBIT 12-4**

**APPLICATION FOR CONTINUED OCCUPANCY**

Family Head	Contact Person
Address	Telephone No.
Telephone No.	

**STATEMENT OF FAMILY COMPOSITION AND INCOME**

List all persons presently living in your unit: (Use the back of this sheet if necessary)

Full Name	Social Security Number	Date of Birth	Age	Sex	Relationship to Head
1.					<b>HEAD</b>
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					

List all persons who moved out during the past 12 months (include deaths, marriages, permanent placement in nursing home, etc.)

Full Name	Relationship	Out	Date	Reason
1.				
2.				

Fill in these blanks for you or each person in your unit who is working.

Worker	Employer's Name & Address	Dates Worked	Pay Rates
1.		From:      To:	\$                      Per
2.		From:      To:	\$                      Per

If you or any person in your unit receives income from any of the following sources check the source(s) and fill in the blanks.

- Welfare Assistance                       Retirement/Pension     Supplemental Security Income (SSI)  
 Unemployment Compensation    VA Benefits                       Child Support     Social Security     Other

Received by (Name)	Received From (Source)	Amount
		\$                      Per
		\$                      Per
		\$                      Per

Do you or any member of your family have the following assets?

Savings/Checking Account (give name of bank) attach bank statement	Stocks or Bonds (List by company)	Cash Value of Insurance Policy	Property

**\*\*ALL REPORTED INCOME MUST BE DOCUMENTED**

I/We certify that the information given to the \_\_\_\_\_ Housing Authority on household composition, income, net family assets, allowances and deductions is accurate and complete to the best of my/our knowledge and belief. I/We understand that giving false statements or information can be grounds for punishment under federal and state laws. I/We also understand that giving false statements or information can be grounds for termination of housing assistance.

HEAD	DATE	SPOUSE	DATE
------	------	--------	------

Chapter 18: Allowances for Utilities and Other Services

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## **CHAPTER 18**

### **ALLOWANCES FOR UTILITIES AND OTHER SERVICES**

#### **18.1 CHAPTER OVERVIEW**

In calculating the gross rent for units leased under the housing choice voucher program, as well as the HAP payment for which the family qualifies, the PHA must consider not only the contract rent that is paid to the owner, but also the anticipated cost of any utilities that the tenant family is required to pay. The request for tenancy approval submitted by the owner and the prospective tenant tells the PHA the utilities the tenant will pay for directly, and the utilities that are included in the rent. These provisions are incorporated into the lease and the HAP contract. Any time a change is made in the responsibility for payment of utility expenses, the owner and the tenant must report the change to the PHA so that the contract rent and the utility allowance can be adjusted accordingly.

A PHA is responsible for establishing and maintaining a utility allowance schedule that provides reasonable allowances for tenant-paid utilities. The utility allowance is intended to enable participating families to pay typical costs for utilities and services paid by energy-conserving households occupying units of similar size and type in the same locality. If the family is extravagant in its use of utilities, the additional costs incurred are not the responsibility of the PHA. A family complaining that its utility allowance is inadequate should be counseled about reasonable conservation measures, such as turning down the thermostat at night or setting the air conditioner at a higher temperature during the day when family members are out of the unit. Many utility companies also provide useful materials on energy conservation and/or energy audit services that can help participants identify conditions or practices that result in high utility bills.

Payment of bills for tenant-paid utilities is the responsibility of the family, and any interruption or termination of utility services because of the family's failure to pay is considered a breach of the family's obligations under the housing choice voucher program. The PHA administrative plan should include the PHA's policies regarding the termination of assistance to families who cause their unit to be in violation of HQS because of failure to pay for necessary utilities or services.

#### **18.2 PROGRAM REQUIREMENTS FOR THE UTILITY ALLOWANCE SCHEDULE**

A PHA is required to maintain a utility allowance schedule for tenant-paid utilities, tenant-supplied refrigerators and ranges, and other tenant-paid housing services (such as trash collection). The utility allowance schedule must include the utilities and services necessary to provide housing that complies with HQS. In areas where the majority of housing units provide central air conditioning or wiring for tenant-installed air conditioners, the utility allowance schedule must provide an allowance for tenant-paid air conditioning costs. The utility allowance schedule should not include allowances for personal expenses, such as telephone, and non-essential utility costs such as the cost of cable or satellite TV.

The PHA must classify utilities and other housing services according to the following general categories:

- Space heating
- Air conditioning
- Cooking
- Water heating
- Water
- Sewer
- Trash collection
- Other electric
- (Tenant-provided) refrigerator
- (Tenant-provided) range
- Other specified housing services

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

- *Unit types* each requiring separate utility allowances typically include garden and high-rise apartments, row houses or town houses, end-of-row or semi-detached units, detached units, and manufactured homes.
- *Unit sizes* are classified by number of bedrooms. When calculating the utility allowance for a family, the PHA must use the allowance for the unit size actually leased by the family, rather than the family unit size determined under the PHA's subsidy standards.
- *Type of Utility* generally refers to the type of fuel used. The utility allowance schedule should include allowances for each type of utility or fuel commonly used in the community. If the utility or fuel is available from more than one supplier, the PHA can determine an average cost across all suppliers, or can use different allowances for utilities or fuels purchased from different suppliers.

The PHA's utility allowance schedule must be entered on form HUD-52667, Allowances for Tenant Furnished Utilities and Other Services. Separate forms should be completed for each housing type. Allowances for other electric, water heating, and water/sewer costs will typically be the same across all unit types for each unit size, while the allowance for cooking may vary slightly based on the type of utility. Allowances for heating and air conditioning will vary based primarily on the number of exterior walls exposed and the type of utility. An example of a correctly completed form HUD-52667 for detached units is included as Exhibit 18-1.

**Allowances for  
Tenant-Furnished Utilities  
and Other Services**

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing

OMB Approval No. 2577-0188  
(exp. 9/30/2002)

**EXHIBIT 18-1**

See Public Reporting Statement and Instructions on back

Locality <b>Anywhere MN</b>		Unit Type <b>Detached, Manufactured home</b>					Date (mm/dd/yyyy) <b>10/01/99</b>
Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas			68	83	106	121
	b. Bottle Gas			75	92	117	133
	c. Oil / Electric			78	95	121	139
	d. Coal / Other						
Cooking	a. Natural Gas			11	13	17	20
	b. Bottle Gas			13	16	20	25
	c. Oil / Electric			14	17	22	25
	d. Coal / Other						
Other Electric				32	39	50	57
Air Conditioning				N/A	N/A	N/A	N/A
Water Heating	a. Natural Gas			25	31	39	44
	b. Bottle Gas			29	35	45	52
	c. Oil / Electric			34	42	53	60
	d. Coal / Other						
Water				15	16	18	20
Sewer				12	12	12	12
Trash Collection				25	25	30	30
Range/Microwave				8	10	10	10
Refrigerator				10	12	14	16
Other -- specify				15	15	15	15

**Actual Family Allowances:** To be used by the family to compute allowance. Complete below for the actual unit rented.

Name of Family

**S. Debo**

Address of Unit

**Old Canada Hwy  
RD3**

Number of Bedrooms

**4**

Utility or Service	per month cost
Heating	\$ 121
Cooking	22
Other Electric	50
Air Conditioning	
Water Heating	53
Water	
Sewer	
Trash Collection	30
Range/Microwave	
Refrigerator	14
Other	
<b>Total</b>	<b>\$ 105</b>

Previous editions are obsolete

Form HUD-52667 (12/97)  
ref. Handbook 7420.8

The PHA should maintain copies of all supporting documentation used in determining both the initial allowances and any revisions. Such documentation might include the consumption estimates that are the basis of the dollar allowances, letters or rate schedules from local utility companies, as well as worksheets used to develop the schedule.

A copy of the initial utility allowance schedule, and any later revisions, must be sent to the HUD field office. If directed by HUD, the PHA must revise the utility allowance schedule to correct any errors to update the schedule to reflect changes in utility costs or as necessary.

### **18.3 ESTABLISHING A UTILITY ALLOWANCE SCHEDULE**

When establishing a utility allowance schedule, a PHA should make every effort to base the allowances on actual rates and average consumption estimates that will be adequate to cover expected average utility costs over a twelve month period. (Like the “budget plans” available through many local utility companies, the allowances are based on an estimated full year of usage divided equally over 12 months, although the family’s actual usage may fluctuate from month to month.) Information regarding typical utility usage and the cost of utilities and services is generally available through the following local sources:

- Electric utility suppliers
- Natural gas utility suppliers
- Water and sewer suppliers
- Fuel oil and bottled gas suppliers
- Public utility commissions
- Real estate and property management firms
- State and local agencies
- Appliance sales and leasing firms
- Neighboring PHAs

#### **Average Consumption Data**

If a PHA is unable to find adequate sources for local information regarding utility consumption, HUD will approve use of national average consumption data. These national average consumption figures represent average amounts for an “average” 2 ½ bedroom unit in a locality that has approximately 4,000 heating degree days and an average local water temperature of 50 degrees. The consumption figures must be adjusted for the size of the dwelling unit. The allowances for units in the PHA’s locality may need to be adjusted to reflect the higher or lower cost of utilities resulting from variations in typical outdoor temperatures and/or the temperature of the local water supply. Data on the average number of heating or cooling degree days for the locality (the sum of the number of days that the indoor temperature must be raised or lowered from the outdoor temperature level to maintain a comfortable temperature on each day for which heating or cooling is required) is generally available from the National Weather Service or other local sources. Data on the average local “degree days” will provide a basis for making local adjustments to these average consumption figures.

**NATIONAL AVERAGE MONTHLY UTILITY CONSUMPTION  
FOR A 2½ BEDROOM DWELLING UNIT**

<b>Utility Service Category E</b>	<b>Fuel/Utility Units of Measurement</b>	<b>Consumption</b>
<b>I. Electricity</b>		
a. Lighting and Refrigeration	KWH	250-400
b. Cooking	KWH	110
c. Domestic Hot Water	KWH	340
d. Space Heating	KWH	680
e. Air Conditioning	KWH	180
<b>II. Natural Gas and Bottled Gas</b>		
a. Cooking	Therms	8
b. Domestic Hot Water	Therms	21
c. Space Heating	Therms	48
<b>III. Fuel Oil</b>		
a. Domestic Hot Water	Gals.	17
b. Space Heating	Gals.	40
<b>IV. Water</b>		
a. Domestic Use	Gals.	8,000
b. Lawn	Gals.	2,000

**Allowances by Unit Size**

Whenever possible, consumption data should be obtained for each unit size and type. If consumption data is available only for an average unit size (2 ½ bedrooms), the utility costs should be multiplied by the following factors to determine the costs for a specific unit size:

**ADJUSTMENT FACTORS BY UNIT SIZE**

<b>Unit Size</b>	<b>Adjustment Factor (Times 2½ BR Monthly Consumption Figure)</b>
0-BR	0.5
1-BR	0.7
2-BR	0.9
3-BR	1.1
4-BR	1.4
5-BR	1.6

### Calculating a Utility Allowance

In the absence of reliable third-party average utility expense data, monthly utility allowances can be calculated by multiplying estimated monthly consumption times the local utility rate.

#### ESTIMATING UTILITY EXPENSE FROM AVERAGE CONSUMPTION DATA

The average consumption of electricity used for domestic hot water is 340 KWH.

At a scheduled rate of \$.0552362 per KWH, the *average* monthly allowance for domestic hot water for a 2½ bedroom unit would be:

$$\begin{aligned} & 340 \text{ KWH} \times \$.0552362 \text{ (rate per KWH)} \\ & = \$19 \text{ (rounded to nearest dollar)} \end{aligned}$$

- The allowance for a 0-bedroom unit will be:

$$\begin{aligned} & \$19 \text{ (average } 2\frac{1}{2} \text{ BR cost )} \times 0.5 \text{ (0-bedroom adjustment factor)} \\ & = \$10 \end{aligned}$$

- The allowance for a 5-bedroom unit will be:

$$\begin{aligned} & \$19 \text{ (average } 2\frac{1}{2} \text{ BR cost)} \times 1.6 \\ & \text{(5-bedroom adjustment factor)} \\ & = \$30 \text{ (rounded to nearest dollar)} \end{aligned}$$

### Utility Rate Schedules

The cost of gas and electricity generally varies according to the amounts consumed, as shown on the utility suppliers' rate schedules. For this reason, it may not be possible to accurately calculate the cost for a utility in any one-service category until the usage of that utility for all service categories is known. For example, a unit with electric heating, may qualify for a lower "All-Electric" rate if electricity is also used for cooking, lighting, refrigeration, and domestic hot water. Rates for gas usage may decline with the volume of gas used, resulting in a lower cost for gas used for heating, cooking, and domestic hot water than for each use considered separately. For convenience in calculating the utility allowances for any combination of utilities, it is recommended that the PHA use the higher rates. Allowances for electric cooking, water heating, and space heating should be calculated using the lower rates at the middle or bottom of the company's rate schedule.

**Ranges and Refrigerators**

If rental units in the PHA’s jurisdiction are typically leased without owner-provided ranges and/or refrigerators, an allowance must be made for the cost to the family of providing its own. Allowances for tenant-provided ranges and refrigerators should be based on the lower of the cost of leasing the equipment or the cost of purchasing it on an installment plan.

**Other Utilities and Services**

The utility allowance schedule should also provide allowances for all other utilities and services for which, in the PHA’s locality, the tenant is typically responsible, and which are required for compliance with HQS. Examples would be firewood used as a primary heating fuel, or the required annual flushing of a septic tank in an area without public sewers.

**18.4 USING THE UTILITY ALLOWANCE SCHEDULE**

The PHA should provide a utility allowance schedule to families receiving a housing choice voucher. The schedule will allow the family to calculate the estimated cost for tenant-paid utilities, and to compare gross rents for various units with local payment standards and personal affordability limits.

When a family has located a unit and submitted a request for tenancy approval (form HUD-52517) the PHA can calculate the actual utility allowance for the family.

Section 11 of the request for tenancy approval as illustrated on the following page will indicate the utilities the tenant must pay and the utilities the owner will cover.

Using the information from the request for tenancy approval and the utility allowance schedule (see Exhibit 18-1) the PHA can compute the utility allowance for a two bedroom unit for the family submitting a request for tenancy approval using the information below.

Heating	\$ 68
Cooking (gas)	11
Water Heating (gas)	25
Other Electric	32
Refrigerator	10
Utility Allowance	<u>          </u> \$ 146

## 11. Utilities and Appliances

The owner shall provide or pay for the utilities and appliances indicated below by an “O”. The tenant shall provide or pay for the utilities and appliances indicated below by a “T”. Unless otherwise specified below, the owner shall pay for all utilities and appliances provided by the owner.

Item	Specify fuel type	Provided by	Paid by
Heating	<input checked="" type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or other		T
Cooking	<input checked="" type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or other		T
Water Heating	<input checked="" type="checkbox"/> Natural gas <input type="checkbox"/> Bottle gas <input type="checkbox"/> Oil or Electric <input type="checkbox"/> Coal or other		T
Other Electric			T
Water		O	O
Sewer		O	O
Trash Collection		O	O
Air Conditioning		O	O
Refrigerator		T	T
Range/Microwave		O	O
Other (specify)			N/A

Because the allowances for utilities and services are subject to change over time, the utility allowance should be recalculated every year at the family’s annual reexamination. The PHA should ensure that the most recent update of the utility allowance schedule has been used to calculate the family’s utility allowance, and that there has been no change in the utilities and allowances supplied by the tenant.

### 18.5 USING A HIGHER UTILITY ALLOWANCE AS A REASONABLE ACCOMMODATION

Housing choice voucher program regulations require a PHA to approve a utility allowance amount higher than the applicable amount on its utility allowance schedule if a higher allowance is needed as a reasonable accommodation to make the program accessible to and usable by a family member with a disability. The family must request the higher allowance, and should provide the PHA with sufficient information to determine the amount of additional allowance

required. For example, if it determined that a family member had a disability that required such accommodation, the PHA would be required to approve a family’s request for an allowance for air conditioning in a locality where the majority of rental units do not have air conditioning.

**18.6 REVIEWING AND REVISING UTILITY ALLOWANCES**

A PHA must review its utility allowance schedule annually, and must revise its allowances at other times when there has been a change of 10 percent or more in the utility rates or fuel costs since the last revision of the schedule. To conduct a utility allowance review, the PHA must obtain new rate schedules or quotes from utility and fuel suppliers. These new rates should be compared with the rates previously used to calculate the last revision to the utility allowance schedule to determine whether an adjustment is needed.

**DETERMINING WHEN A REVISION TO THE UTILITY ALLOWANCE SCHEDULE IS REQUIRED**

The Anywhere Housing Authority is conducting its FY 2000 annual review of utility rates in its locality. Data on heating oil prices for the last three years are as follows:

	Average Price per Gallon	Utility Allowance Revised?
FY 1997	\$0.77	YES
FY 1998	\$0.82	NO
FY 1999	\$0.84	NO
FY 2000	\$0.85	?

Based on the increase in oil prices of more than 10 percent since FY 1997, the utility allowances for oil should be increased.

When a utility allowance adjustment is required, it should be calculated in the same way as was the original allowance. It should not be necessary to revise the consumption figures used, as there is generally very little variation in these figures over time. The new rates should be applied to the consumption figures for the locality to calculate the revised new utility allowances.

The revised allowances will be used to calculate a family’s gross rent at its next annual reexamination.

**18.7 RELATED SEMAP INDICATORS**

As part of the SEMAP assessment process, PHAs are required to certify that they maintain up-to-date utility allowance schedules, and that they use them to calculate correct utility allowances for participating families.

SEMAP Indicator 4, *Utility Allowance Schedule*, requires the PHA's certification that an annual utility allowance review has been conducted and that the utility allowance schedule has been adjusted where there was a change of 10 percent or more in the rate for a utility since the last revision. This requires that the PHA conduct an annual review and adjust the allowances as appropriate. The PHA should retain all information used in the annual review, whether or not revisions are made, and should document any revisions made.

Among other factors, SEMAP Indicator 3, *Determination of Adjusted Income*, measures the extent to which the PHA uses the appropriate utility allowances to determine gross rent for the unit leased. This requires that the PHA, in its supervisory quality control reviews, verify that the correct utility allowances were used in calculating the utility allowances for the families reviewed.