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OCHA will not approve an extension to a voucher issued to an applicant or participant family porting out of OCHA's jurisdiction. For reasonable accommodation, OCHA will consider approving extensions on a case-by-case basis. To receive or continue receiving assistance under OCHA's HCV program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of OCHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy).

## **Pre-approval Contact with the Receiving PHA**

Prior to approving a family's request to move under portability, the OCHA will contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the OCHA will determine whether it will approve or deny the move [24 CFR 982.355(c)(3)].

OCHA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher

## **Initial Notification to the Receiving PHA - OCHA**

Because the portability process is time sensitive, OCHA will notify the receiving PHA by phone, fax, mail or e-mail (if available) to expect the family [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. OCHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. OCHA will pass this information along to the family [24 CFR 982.355(c)(6)]. OCHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

## **Sending Documentation to the Receiving PHA**

OCHA as the initial PHA will send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2016-09].
- A copy of the family's voucher [Notice PIH 2016-09].
- A copy of the family's most recent form HUD-50058, Family Report, or if necessary, in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2016-09].
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09].

In addition to these documents OCHA may provide the following information, if available, to the receiving PHA:

- Social security numbers (SSNs).
- Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system.
- Documentation of legal identity.
- Documentation of citizenship or eligible immigration status.
- Documentation of participation in the earned income disallowance (EID) benefit.

- Documentation of participation in a family self-sufficiency (FSS) program.

OCHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

#### **Initial Billing Deadline [Notice PIH 2016-09]**

The deadline for submission of initial billing is 90 days following the expiration date of the voucher issued to the family by the initial PHA. In cases where suspension of the voucher delays the initial billing submission, the receiving PHA must notify the initial PHA of delayed billing before the billing deadline and document the delay is due to the suspension. In this case, the initial PHA must extend the billing deadline by 30 days.

If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must notify the receiving PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

If the initial PHA will honor the late billing, no action is required.

If OCHA has not received an initial billing notice from the receiving PHA within the billing deadline, OCHA will contact the receiving PHA to inform them that OCHA will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. OCHA will send the receiving PHA a written confirmation of its decision by mail.

OCHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

#### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2016-09]**

If the receiving PHA is administering the family's voucher, OCHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after OCHA receives Part II of form HUD-52665 from the receiving PHA. The receiving PHA will receive subsequent payments no later than the fifth business day of each month. The payments will be provided in a form and manner that the receiving PHA is able and willing to accept.

OCHA as the initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over-leasing or funding shortfalls.

#### **Annual Updates of Form HUD-50058**

If OCHA is being billed on behalf of a portable family, it should receive an updated form HUD- 50058 each year from the receiving PHA. If OCHA fails to receive an updated 50058 by the family's annual reexamination date, OCHA will contact the receiving PHA to verify the status of the family. OCHA will continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. OCHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

#### **Denial or Termination of Assistance [24 CFR 982.355(c)(17)]**

If OCHA as the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, OCHA may act on those grounds at any time. (For OCHA policies on denial and termination, see Chapters 3 and 12, respectively.)

#### **10-II.C. OCHA AS THE RECEIVING PHA**

Procedures and preferences for selection among eligible applicants for OCHA's waiting list do not apply to receiving eligible portable families from outside OCHA's jurisdiction. [24 CFR 982.355(c)(10)]. However, the family's voucher size is determined in accordance with OCHA subsidy standards [24 CFR 982.355(c)(12)], OCHA's policies on extensions of voucher term apply

[24 CFR 982.355(c)(14), and the amount of the family's housing assistance payment is determined in the same manner as for other families in OCHA's HCV program [24 CFR 982.355(e)(2)].

### **Responding to Initial PHA's Request**

OCHA will respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If OCHA informs the initial PHA that it will be absorbing the voucher, OCHA cannot reverse its decision at a later date without consent of the initial PHA [24 CFR 982.355(c)(4)].

OCHA will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

### **Initial Contact with Family**

When a family moves into OCHA's jurisdiction under portability, the family is responsible for promptly contacting OCHA and complying with OCHA's procedures for incoming portable families [24 CFR 982.355(c)(8)].

If the voucher issued to the family by the initial PHA has expired, OCHA will contact the initial PHA to determine if it will extend the voucher [24 CFR 982.355(c)(13)]. An informal hearing is not required when a voucher has expired without the family leasing a unit.

OCHA may delay/deny approval of a unit or issuance of a voucher if the portable family refuses to comply with OCHA procedures. If OCHA refuses to continue processing or provide assistance to a family under portability procedures for noncompliance with OCHA procedures, the family will be given the opportunity for an informal review or hearing [Notice PIH 2016- 09]. However, OCHA will not extend the term of the initial PHA voucher to accommodate an informal hearing.

### **Briefing**

OCHA will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family of: the portability process, the benefits of living in low poverty census tracts, OCHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. OCHA's briefing process will not unduly delay the family's search [Notice PIH 2016-09].

As a courtesy, OCHA will provide a listing of landlords known to the PHA who may be willing to lease a unit to the family.

### **Income Eligibility and Reexamination [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(11)]**

For any family moving into its jurisdiction under portability, OCHA will conduct a new reexamination of family income and composition. However, OCHA will not delay issuing the family a voucher for this reason. Nor will OCHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and OCHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, OCHA may rely upon verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and

adjusted, if necessary, when third party verification is received.

### **Voucher Issuance**

When a family moves into its jurisdiction under portability, OCHA as the receiving PHA will issue the family a voucher [24 CFR 982.355(c)(13)]. The family must submit a request for tenancy approval to OCHA during the term of OCHA's voucher [24 CFR 982.355(c)(15)].

### **Timing of Voucher Issuance**

When a family ports into its jurisdiction with an expired voucher, OCHA will contact the initial PHA to determine whether the initial PHA will extend the voucher.

### **Voucher Term**

OCHA's voucher will not expire less than 30 calendar days from the expiration date of the initial PHA's voucher. If the initial PHA extends the term of the voucher, OCHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

### **Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]**

OCHA as the receiving PHA will not extend the term of the voucher that it issues to an incoming

portable family unless OCHA will absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

OCHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2) and must obtain concurrence for the extension from the initial PHA prior to OCHA approving such a request.

### **Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]**

If the family submits a request for tenancy approval during the term of OCHA's voucher, OCHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for OCHA approval of the tenancy until the date OCHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5-II.E).

### **Notifying the Initial PHA**

OCHA as the receiving PHA will notify the initial PHA if the family has leased an eligible unit under the HCV program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the voucher [24 CFR 982.355(c)(16)]. OCHA will use Part II of form HUD-52665, Family Portability Information, for this purpose [ Notice PIH 2016-09]. If an incoming portable family ultimately decides not to lease in OCHA's jurisdiction but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, OCHA will refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by OCHA's voucher is only valid for the family's search in OCHA's jurisdiction. [Notice PIH 2016-09]

### **Administering a Portable Family's Voucher**

#### ***Initial Billing Deadline***

If a portable family's search for a unit is successful and OCHA intends to administer

the family's voucher, OCHA will submit its initial billing notice (Part II of form HUD-52665) in time that the notice will be received no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2016-09]. This deadline may be extended for 30 additional days if the delay is due to the suspension of the voucher's term (see Initial Billing Section). A copy of the HUD-50058, Family Report, will be attached to the initial billing notice. OCHA may send these documents by mail, fax, ore-mail.

### ***Ongoing Notification Responsibilities [Notice PIH 2016-09, HUD-52665]***

#### **Annual Reexamination**

OCHA will send the initial PHA a copy of the updated HUD-50058 after each annual reexamination for the duration of time OCHA is billing the initial PHA.

#### **Change in Billing Amount**

OCHA will notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- Voucher extension
- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.).
- An abatement or subsequent resumption of the HAP payments.
- Termination of the HAP contract.
- Payment of a damage/vacancy loss claim for the family.
- Termination of the family from the program.

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

#### **Late Payments [Notice PIH 2016-09]**

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, OCHA will notify the initial PHA in writing of the deficiency. The notice will identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). If the initial PHA fails to correct the problem by the second month following the notification, OCHA as the receiving PHA may request by memorandum to the director of the Office of Public Housing (OPH) with jurisdiction over OCHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter will be attached. OCHA will send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, and the initial PHA is still responsible for any outstanding payments due to OCHA.

#### **Overpayments [Notice PIH 2016-09]**

In all cases where OCHA has received billing payments for billing arrangements no longer in

effect, OCHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because OCHA failed to notify the initial PHA that the billing arrangement was terminated, OCHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over OCHA of the date and the amount of reimbursement to the initial PHA.
- At HUD's discretion, OCHA will be subject to the sanctions spelled out in Notice PIH 2016-09.

### **Denial or Termination of Assistance**

At any time, OCHA as the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(17)].

If OCHA elects to deny or terminate assistance for a portable family, OCHA will notify the initial PHA within 15 calendar days after the informal review or hearing if the denial or termination is upheld. OCHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. OCHA will furnish the initial PHA with a copy of the informal review or hearing decision.

### **Absorbing a Portable Family**

If OCHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, OCHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If OCHA decides to absorb a family after that, it will provide the initial PHA with 30 days advance notice.

## **PART III: MOBILITY**

### **10-III.A. MOBILITY**

The cities of Anaheim, Garden Grove and Santa Ana each operate their own Housing Authority and are not within the jurisdiction of Orange County Housing Authority.

To facilitate tenant moves between PHA jurisdictions and to reduce administrative burdens of the portability process, the Anaheim, Garden Grove, Santa Ana and Orange County Housing Authorities entered into a Mobility Agreement (MOA).

This provision enables eligible program participants with a Housing Choice Voucher issued by their initial PHA in Anaheim, Garden Grove, Santa Ana or Orange County, to move into another PHA operating within the County of Orange, under modified portability procedures.

Tenants requesting to move under the provisions governing Mobility are identified as Mobility tenants. Families continue to receive direct services from the initial PHA where they first received their HCV voucher; however, unit inspections and rent determinations are conducted and approved by the agency with authority to administer the HCV program in the area where the unit is located.

## **Chapter 11**

### **REEXAMINATIONS**

#### **INTRODUCTION**

OCHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations. HUD regulations and OCHA policies concerning reexaminations are presented in three parts:

#### Part I: Annual Reexaminations

This part discusses the process for conducting annual reexaminations.

#### Part II: Interim Reexaminations

This part details the requirements for families to report changes in family income and composition between annual reexaminations.

#### Part III: Recalculating Family Share and Subsidy Amount

This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

## **PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]**

### **11-I.A. OVERVIEW**

OCHA will conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent will be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

### **11-I.B. SCHEDULING ANNUAL REEXAMINATIONS**

OCHA has established a policy to ensure that the annual reexamination for each family is completed within a 12-month period and may require reexaminations more frequently [HCV GB p. 12-1].

OCHA will generally begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, OCHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

*Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial admission.

OCHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

#### **Notification of and Participation in the Annual Reexamination Process**

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or co-head, and all adult members of the family 18 years of age and older.

If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact OCHA to request a reasonable accommodation (see Chapter 2).

If participation in an in-person interview poses a hardship because the tenant is 62 years of age or older, the tenant should submit a request in writing for a phone and/or mail interview.

At its discretion, OCHA may elect to conduct phone/mail/email reexaminations for all tenants, or for elderly and/or disabled tenants. In addition to elderly and disabled participants, OCHA will transition to increase the number of mail re-examinations to include other households. This process will be phased in gradually and incrementally beginning in 2015.

OCHA will give tenants who were not provided the option to complete Form HUD-92006 the opportunity to do so at this time [Notice PIH 2009-36].

Notification of annual reexamination interviews will be sent by first-class mail or by e-mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact OCHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, OCHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without OCHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and OCHA will execute a certification attesting to the role and assistance of any such third party.

### **11-I.C. CONDUCTING ANNUAL REEXAMINATIONS**

As part of the annual reexamination process, families are required to provide updated information to OCHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include an OCHA designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as, supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 15 calendar days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally will be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or OCHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity.
- Age.
- Social security numbers.
- A person's disability status.
- Citizenship or immigration status.

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (see Chapter 8), OCHA will issue the family a new voucher, and the family must try to locate an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, OCHA will terminate the HAP contract in accordance with its terms [24 CFR 982.403].

### **11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(B)(5)]**

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student's eligibility will be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV program assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with OCHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV program assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

During the annual reexamination process, OCHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), OCHA will process a reexamination in accordance with the policies in this chapter.

### **11-I.E. EFFECTIVE DATES**

OCHA has established policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

- If less than 30 days remain before the family's anniversary date, the increase will take effect on the first of the month following the end of the 30-day notice period.
- If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.
- If OCHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by OCHA but will always allow for the 30-day notice period.
- If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual

- reexamination. The family will be responsible for any overpaid subsidy and may be offered a payment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

- If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.
- If OCHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by OCHA.
- If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by OCHA by the date specified, and this delay prevents OCHA from completing the reexamination as scheduled.

## **PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]**

### **11-II.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD regulations permit OCHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. OCHA will complete the interim reexamination within a reasonable time after the family's request.

### **11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

OCHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

#### **New Family Members Not Requiring Approval [24 CFR 982.551(h)(2)].**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require OCHA approval. However, the family must inform OCHA of the birth, adoption or court-awarded custody of a child within 15 calendar days.

#### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request OCHA approval in writing to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

Families must request OCHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 15 consecutive days, or 30 cumulative days, within a 12-month period and therefore no longer qualifies as a "visitor" or "guest." Requests must be made in writing and approved by OCHA prior to the individual moving into the unit.

Approval for adding another member to the household is not automatic and will be determined by a number of contributing factors that include: direct benefit to the head-of-household, reasonable accommodation due to a disability, health and/or safety issues that directly affect other family members, if an increase in bedroom size is needed or requested, and funding availability. The addition of another household or family member may or may not result in approval for a change in the bedroom size of the HCV.

When any new family member is added, OCHA will conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards space standards (see Chapter 8), OCHA will issue the family a new voucher, and the family must try to locate an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, OCHA will terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

If a former family member wishes to return to the assisted unit and be included in the family

composition, approval must be granted by OCHA, prior to their return. If their absence exceeds two years, approval will not be granted. If their return is within two years, the request will be considered.

OCHA will not approve the addition of a new or returning family or household member unless the individual meets OCHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

If OCHA determines that an individual meets OCHA's eligibility criteria and documentation requirements, OCHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to housing quality standard space standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If OCHA determines that an individual does not meet OCHA's eligibility criteria and documentation requirements, OCHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

If an increase in the bedroom size of the HCV is necessary for a live-in aide, OCHA will not process the increase in bedroom size until the selected aide is approved by OCHA.

OCHA will make its determination within 15 calendar days of receiving all information required to verify the individual's eligibility.

### **Departure of a Family or Household Member**

Families must promptly notify OCHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the voucher size [24 CFR 982.402], OCHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

If a household member ceases to reside in the unit, the family must inform OCHA in writing within 15 calendar days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform OCHA within 15 calendar days. If a live-in aide ceases to reside in the unit, OCHA will allow the family a maximum of 60 calendar days to find a replacement.

OCHA will reduce the voucher size and payment standard, if applicable, if the live-in aide replacement is not found within the 60-day timeframe at the next annual reexamination.

A time extension may be granted for extenuating circumstances related to securing a replacement live-in aide as reasonable accommodation.

### **11-ILC. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because OCHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

#### **OCHA Initiated Interim Reexaminations**

OCHA initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by OCHA. They are not scheduled because of changes reported by the family.

OCHA will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), OCHA will conduct an interim reexamination at the start and conclusion of the second 12-month exclusion period (50 percent phase- in period).
- If the family has reported zero income, OCHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income. The head-of household and each adult family member will be required to submit a completed OCHA form to document expenses for the prior 3-month period. The family may be required to attend an in-person interview if the family continues to report zero income for six months.
- If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), OCHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
- If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, OCHA will conduct an interim reexamination.
- OCHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

#### **Family-Initiated Interim Reexaminations**

OCHA will perform an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(c)] [24 CFR 982.516(b)(2)]

#### ***Required Reporting***

Families are required to report all changes in earned and unearned income, assets, expenses, and family circumstances within 15 calendar days of the date the change takes effect.

Families will be required to pay back overpayments of rental assistance resulting from failure to report a change in income or family composition.

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

If the family reports an increase in annual income in the amount of \$1,000 or less, OCHA will not process an interim change, and the family will be notified in writing.

## **11-II.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

The family must notify OCHA of changes in writing. If the family provides oral notice, OCHA will require the family to submit the changes in writing prior to processing the interim reexamination.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if OCHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, OCHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within

15 calendar days of receiving a request from OCHA. This time frame may be extended for good cause with OCHA approval. OCHA will accept required documentation by mail, by fax, by e-mail, or in person.

### **Effective Dates**

[24 CFR 982.516(d)] [HCV GB, p. 12-10]

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames or fails to provide all required information within the required time frames, or if the family provides incorrect or incomplete information, the increase will be applied retroactively, to the date it would have been effective had the information been correct and provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16. If the omission or misrepresentation is considered to be willful, OCHA will terminate assistance to the family.

Families will be required to pay one month of increased rent if the family reports a decrease upon notification of the increase.

If the family share of the rent is to *decrease*:

Generally, if reported before the 15<sup>th</sup> of the month, the decrease will be effective on the first day of the month following the month in which the change was reported provided that all required documentation was submitted and verified.

Reported decreases will not be processed for loss of welfare benefits due to fraud or a failure to participate in a self-sufficiency or work activity.

Reported decreases will not be processed if the change will last less than thirty (30) days.

## PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

### 11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, OCHA will recalculate the family share of the rent and the subsidy amount and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### 11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in OCHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

#### Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When OCHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If OCHA's payment standards amounts change during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
- If the payment standards have increased, the increased payment standards will be applied at the first annual reexamination following the effective date of the increase in the payment standard.
- If the payment standards have decreased, the decreased payment standards will be applied at the second annual reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

#### Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the voucher size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in OCHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's first annual reexamination following the change in family unit size.

#### Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in OCHA's utility allowance schedule [HCV GB, p. 12-5].

Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, OCHA will use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, OCHA will use OCHA's current utility allowance schedule [24 CFR 982.517(d) (2)].

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

### **11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

OCHA will notify the owner and family of any changes in the amount of the HAP [HUD-52641, HAP Contract]. The notice will include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP.
- The amount and effective date of the new family share of the rent.
- The amount and effective date of the new tenant rent to owner.

The family must be given an opportunity for an informal hearing regarding OCHA's determination of their annual or adjusted income, and the use of such income to compute the HAP [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

The notice to the family will include the previous and new family share of the rent and HAP. The notice also will state the procedures for requesting an informal hearing.

### **11-III.D. DISCREPANCIES**

During an annual or interim reexamination, OCHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, OCHA may discover errors made by OCHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapters 14 and 16.

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

#### INTRODUCTION

HUD regulations specify the reasons for which OCHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

#### Part I: Grounds for Termination of Assistance

This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by OCHA based on the family's behavior.

#### Part II: Approach to Termination of Assistance

This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that OCHA may consider in lieu of termination, the criteria OCHA will use when deciding what action to take, and the steps OCHA will take when terminating a family's assistance.

#### Part III: Termination of Tenancy by the Owner

This part presents the policies that govern the owner's right to terminate an assisted tenancy.

## **PART I: GROUNDS FOR TERMINATION OF ASSISTANCE**

### **12-I.A. OVERVIEW**

HUD requires OCHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits OCHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV program assistance at any time by notifying OCHA.

### **12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]**

As a family's income increases, the Housing Assistance Payment (HAP) made by OCHA decreases. If the HAP amount decreases to zero, and remains at zero for 180 consecutive calendar days, the family's HCV program assistance is automatically terminated.

The family will be notified of their right to remain on the program at zero HAP for six-months.

OCHA will continue to perform administrative tasks normally required, such as reexaminations and inspections, during the six-month period.

If the family wants to move to another unit during this six-month period, OCHA will not execute a new HAP contract for the new unit while at zero HAP. A new HAP Contract will only be executed in the event of resumed assistance.

If a participating family receiving zero HCV program assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify OCHA in writing of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

### **12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that OCHA terminate the family's HCV program assistance at any time.

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head.

### **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires OCHA to terminate assistance in the following circumstances.

#### **Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]**

OCHA may terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in Section 12-II.E, incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases, OCHA will determine whether the family has

committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C . In making its decision, OCHA will consider the factors as described in sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, OCHA may, on a case-by-case basis, choose not to terminate assistance. Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

#### **Failure to Provide Consent [24 CFR 982.552(b)(3)]**

OCHA will terminate assistance if any family member fails to sign and submit any consent form, they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

#### **Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]**

OCHA will terminate assistance if:

- A family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status.
- A family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family.
- A family member, as determined by OCHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. Such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

#### **Failure to Disclose and Document Social Security Documentation Numbers [24 CFR 5.218(c), Notice PIH 2018-24]**

OCHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and OCHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, OCHA may defer the family's termination and provide the opportunity for the family to comply with the requirement within a period not to exceed 90 calendar days from the date OCHA determined the family to be noncompliant if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

#### **Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]**

OCHA will terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

### **Lifetime Registered Sex Offenders [Notice PIH 2012-28]**

Should OCHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, OCHA must immediately terminate assistance for the household member.

In this situation, OCHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

### **Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, OCHA will terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but will be issued a voucher to move with continued assistance in accordance with program regulations and OCHA policies or will be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

### **Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]**

OCHA will terminate program assistance for deceased single member households in the month of the death.

## **12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

### **Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]**

#### ***Use of Illegal Drugs and Alcohol Abuse***

OCHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug (including medical marijuana) or has a pattern of illegal drug use (including medical marijuana) that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

OCHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

*Currently engaged in* is defined as any use of illegal drugs (including medical marijuana) during the previous one year.

OCHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs (including medical marijuana) or abuse of alcohol.

In making its decision to terminate assistance, OCHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, OCHA may, on a case-by-case basis, choose not to terminate assistance.

## **Drug-Related and Violent Criminal Activity [24 CFR 5.100]**

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

*Drug-related criminal activity* is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug (including medical marijuana), or the possession of a drug with intent to manufacture, sell, distribute or use the drug (including medical marijuana).

*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.

OCHA will terminate a family's assistance if any household member and/or their visitor/guest have violated the family's obligation not to engage in any drug-related (including medical marijuana) or violent criminal activity during participation in the HCV program.

OCHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related (including medical marijuana) or violent criminal activity, and any eviction or notice to evict based on drug-related (including medical marijuana) or violent criminal activity.

In making its decision to terminate assistance, OCHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D. and 12-II.E. Upon consideration of such alternatives and factors, OCHA may, on a case-by-case basis, choose not to terminate assistance.

## **Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), 24 CFR 5.2005(c), 24 CFR 984.101(d)]**

As discussed further in section 12-II.E the Violence against Women Act explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, stalking, or human trafficking as reasons for terminating the assistance of a victim of such abuse.

OCHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

OCHA **will** terminate a family's assistance if:

- The family and/or their visitor/guest have failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related OCHA policies.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation, or public housing programs.
- The family has not reimbursed the owner for verified damages to the unit or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with OCHA.
- A family member and/or their visitor/guest have engaged in or threatened violent or abusive

behavior toward OCHA personnel.

- *Abusive or violent behavior towards OCHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
- *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, OCHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D. and 12-II.E. Upon consideration of such alternatives and factors, OCHA may, on a case-by-case basis, choose not to terminate assistance.

### **Prohibition Periods for Some Offenses for Applicants and Participants**

Lifetime	Indefinitely	Five Years	Three Years cont.	One Year
Program participants and applicants subject to lifetime sex-offender registration under a state sex-offender registration program.	Currently engaging in illegal drug activities including use, production, or sales. Includes medical marijuana.	Previous violent criminal activity.	From date of eviction from any federally assisted housing for illegal drug activities for personal drug use. (including medical marijuana)  (Does not apply with evidence of rehabilitation or absent violator.)	Illegal drug use or possession for personal use (including medical marijuana) unless a family obligation was violated at the same time, then the 5-year prohibition period applies.  (One year does not apply if proof of completing rehabilitation program is provided.)
Program participants and applicants convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.	Pattern of abuse, or abuse of alcohol that interferes with the health, safety, or right to peaceful enjoyment of others.	Previous illegal drug activity that involves sales, transportation, manufacture, or possession for sale.	From date of termination of federal assistance for a violation of an important family obligation.	
	Currently engaging in violent criminal activity.	Violent or hostile behavior towards PHA personnel	From date of eviction from federally assisted housing for lease violations.	
	Actively engaging in other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by others.	Previous other criminal activity that would threaten the health or safety of the PHA, owner, employee, contractor, subcontractor, or agent of the PHA.	From date of discovery for having committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.	

<p>Actively engaging in other criminal activity that would threaten the health or safety of the PHA, owner, employee, contractor, subcontractor, or agent of the PHA.</p>	<p>Previously owed money to any PHA</p>	
<p>Owes money or rent to any PHA.</p>		
	<p>From the date of the later of the act or termination of assistance for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by others.</p>	

***Family Absence from the Unit [24 CFR 982.312]***

The family may be absent from the unit for brief periods. Absence in this context means that no member of the family is residing in the unit.

If the family is absent from the unit for more than 60 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

***Insufficient Funding [24 CFR 982.454]***

OCHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If OCHA determines there is a shortage of funding, prior to terminating any HAP contracts, OCHA will determine if any other actions can be taken to reduce program costs. For example, lower payment standards or change Occupancy standards. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, OCHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, OCHA will inform the local HUD field office. OCHA will terminate the minimum number needed in order to reduce HAP costs to a level within OCHA's annual budget authority.

OCHA will terminate HAP contracts due to insufficient funding, in accordance with the following criteria and instructions:

The following program-type priority order will first be applied:

1. Non-special purpose vouchers
2. Project-based assistance families
3. Special purpose vouchers (VASH, NED, & FUP)

For each program type, the following order will then be followed:

1. OCHA will stop selection from the waiting list (or referral list), discontinue the issuance of initial vouchers, and put previously issued initial vouchers on hold until funding is available.
2. OCHA will implement the provisions in accordance with the policies in 10.1.B of this Plan excluding elderly and disabled families.
3. OCHA will terminate families who have owed OCHA money. Within each group below, OCHA will terminate HAP contracts according to the date OCHA first notified the family of the debt, starting with the most recent. If more than one family received notice on the same day, OCHA will rank the notices for that date using a random method.
  - First, OCHA will terminate families who owe OCHA money, are under repayment agreement, but have made at least one late payment.
  - Second, OCHA will terminate families who owe OCHA money but are not yet under repayment agreement.
  - Third, OCHA will terminate families who owe OCHA money, are under repayment agreement, and have made all payments in accordance with the repayment agreement.
  - OCHA will terminate participants based on highest income (lowest housing assistance needed), excluding elderly and disabled families.

## PART II: APPROACH TO TERMINATION OF ASSISTANCE

### 12-II.A. OVERVIEW

OCHA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give OCHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions OCHA may choose to take when it has discretion and outlines the criteria OCHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

### 12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which OCHA terminates assistance depends upon individual circumstances. HUD permits OCHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract.
- Refusing to approve a request for tenancy or to enter into a new HAP contract.
- Refusing to process a request for or to provide assistance under portability procedures.

### 12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

#### Change in Household Composition

As a condition of continued assistance, OCHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)]. As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon OCHA request.

#### Repayment of Family Debts

If a family owes amounts to OCHA, as a condition of continued assistance, OCHA will require the family to repay the full amount or to enter into a repayment agreement, within 60 days of receiving notice from OCHA. See Chapter 16 for policies on repayment agreements.

### 12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

#### Evidence

For criminal activity, HUD permits OCHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

OCHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole show that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

### **Use of Criminal Conviction Records after Admission [24 CFR 5.903]**

The regulation at 24 CFR 5.903 governs OCHA's access to and use of criminal conviction records obtained from a "law enforcement agency" such as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. While the regulatory listing of permitted uses for these records includes OCHA's screening of applicants for admission to the HCV program, it specifically excludes the use of records for lease enforcement and eviction of HCV participants and excludes by omission OCHA's use of records to terminate assistance for participants. While OCHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, OCHA may not use records for this purpose. The limitations, however, do not apply to criminal conviction information searches from non-federal sources (i.e., sources other than the "law enforcement agencies" defined in 24 CFR 5.902(b)). There is no prohibition that bars OCHA from using non-federal sources to conduct criminal background checks of program participants.

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

OCHA will consider the following factors when making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it would affect other residents.
- The effects that termination of assistance may have on other members of the family who were not involved in the action or failure.
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E.) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future.
- In the case of drug (including medical marijuana) or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.
- In the case of domestic violence by a household member who is no longer engaged in such behavior, whether the culpable household has successfully completed a supervised anger management program or has otherwise been rehabilitated successfully.
- OCHA will require the participant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program, or a supervised anger management program, or evidence of otherwise having been rehabilitated successfully.
- In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

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

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, OCHA will determine whether the behavior is related to

















































## PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

### 14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. OCHA is required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. OCHA is further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file
- OCHA anticipates that the vast majority of families, owners, and OCHA employees intend to and will comply with Housing Choice Voucher (HCV) program requirements and make reasonable efforts to avoid errors.

To ensure that OCHA’s HCV program is administered effectively and according to the highest ethical and legal standards, OCHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

OCHA will discuss HCV program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

OCHA will provide each applicant and participant with the publication a copy of “Is Fraud Worth It?” (*form HUD-1141-OIG*) that explains the types of actions a family must avoid and the penalties for program abuse.

OCHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition, OCHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

OCHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key OCHA forms and form letters that request information from a family or owner.

OCHA staff will be required to review and explain the contents of all HUD-required and OCHA-required forms prior to requesting family member signatures.

OCHA will provide each OCHA employee with the necessary training on program rules and the organization’s standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse* or *fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

### 14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

#### Quality Control and Analysis of Data

In addition to the SEMAP quality control requirements, OCHA will employ a variety of methods to detect errors and program abuse.

OCHA routinely will use available sources of up-front income verification, including HUD's EIV system, to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information. OCHA will compare family-reported income and expenditures to detect possible unreported income.

Quality control checks will be performed on all new leases, change of units, rent increases or decreases, and change of ownership leasing transactions.

### **Independent Audits and HUD Monitoring**

OCHA will use the results reported in any independent audit (IPA) or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of OCHA's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

OCHA will encourage staff, program participants, and the public to report possible program abuse.

## **14-I C. STEPS OCHA WILL TAKE TO PREVENT PROGRAM ABUSE AND FRAUD**

OCHA staff will utilize various methods and practices to prevent program abuse, non-compliance, and willful violations of program rules by applicants, assisted families, and owners. The policy objective is to emphasize education as the primary means to obtain compliance by program families. OCHA will provide the following:

- Things You Should Know: This program integrity bulletin (created by HUD's Inspector General) will be furnished and explained to all applicants to promote understanding of program rules, and to clarify OCHA's expectations for cooperation and compliance.
- Program Orientation Session (Briefing): OCHA staff will conduct mandatory orientation sessions for all applicants, either prior to, or upon issuance of a voucher. At the conclusion of all program orientation sessions, the family representative will be required to sign a briefing declaration to confirm that all rules and pertinent regulations were explained to them.
- Owner/Agent Orientation: Orientation sessions will be conducted with new HCV program owners/agents prior to, or upon, execution of contract, in order to assure an understanding of owner, family, and OCHA obligations, and to prevent improper or illegal practices by owners/agents.
- Participant Counseling: OCHA staff will routinely offer tenant counseling as a part of every re-certification interview in order to clarify any confusion pertaining to HCV program rules and requirements.
- Review and Explanation of Voucher and other Supplemental Forms: Staff will explain all required forms and review the contents of all re-certification documents prior to signature.
- Use of Instructive Signs and Warnings: Instructive signs will be conspicuously posted in common areas and interview areas to reinforce compliance with HCV program rules and to warn about penalties for fraud and abuse.

OCHA staff will maintain a high level of awareness to indicators of possible abuse and fraud by assisted families and conduct the following:

File Reviews: Prior to initial eligibility, and at the completion of all subsequent re-certifications, at least 10% of the family files will be reviewed. Such reviews shall include, but are not limited to:

- Changes in reported Social Security numbers or dates of birth.
- Document authenticity.
- Ratio between reported income and expenditures.
- Review of signatures.
- Observation: OCHA staff, including inspectors, will maintain high awareness of circumstances, which may indicate program abuse or fraud. OCHA staff may review public record bulletins.
- Owner Audits: OCHA will conduct quality control checks of HCV program owners to ensure proof of ownership of the assisted unit.
- State Wage Data Record Keepers: Inquiries to the applicable Employment Commission under Public Law 100-628, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, may be made annually in order to detect unreported wages or unemployment compensation benefits.
- Credit Bureau Inquiries: Credit bureau inquiries may be made (with proper authorization by the tenant) in the following circumstances:
  - When an allegation is received by OCHA wherein unreported income sources are disclosed.
  - When a family's expenditures drastically exceed their reported income and no plausible explanation is given.

OCHA will discuss program responsibilities and prohibitions of abusing the program with staff at least annually.

- Ethics, code of conduct, and prohibitions against program abuse will be discussed with staff at initial hire and at each annual performance evaluation.
- OCHA will maintain sufficient systems for quality control, such as supervisory review of a random sample of staff determinations and staff rotation of assignments, where feasible, to assure adherence to program requirements.
- Periodically, OCHA may send written communications or conduct training for staff to reinforce the intent of HUD and OCHA to eliminate program abuse.

#### **14-I.D. INVESTIGATING ERRORS AND PROGRAM ABUSE**

##### **When OCHA Will Investigate**

OCHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. OCHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

##### **Consent to Release of Information [24 CFR 982.516]**

OCHA may investigate possible instances of error or abuse using all available OCHA records and public records. If necessary, OCHA will require HCV program families to give consent to the release of additional information.

## **Analysis and Findings**

OCHA will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation OCHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed to OCHA, and (3) what corrective measures or penalties will be assessed.

## **Consideration of Remedies**

All errors and instances of program abuse will be corrected prospectively. Whether OCHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

In the case of family-caused errors or program abuse, OCHA will take into consideration the following:

- The seriousness of the offense and the extent of participation or culpability of individual family members.
- Any special circumstances surrounding the case.
- Any mitigating circumstances related to the disability of a family member.
- The effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, OCHA will take into consideration the following:

- The seriousness of the offense.
- The length of time since the violation has occurred
- The effects of a particular remedy on family members who were not involved in the offense.

## **Notice and Appeals**

OCHA will inform the relevant party in writing of its findings and remedies within 15 calendar days of the conclusion of the investigation. The notice will include the family's right to appeal the results through the informal review or hearing process, if applicable. (see Chapter 16)

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **14-II.A. SUBSIDY UNDER OR OVERPAYMENTS**

A subsidy under or overpayment includes (1) an incorrect Housing Assistance Payment (HAP) to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, OCHA will correct the HAP, family share, and any utility reimbursement prospectively.

Increases in the family share will be implemented only after the family has received 30 days' notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

#### **Reimbursement**

Whether the family or owner is required to reimburse OCHA or OCHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows OCHA to use incorrect information provided by a third party.

#### **Family Reimbursement to OCHA [HCV GB pp. 22-12 to 22-13]**

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. OCHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, OCHA will terminate the family's assistance in accordance with the policies in Chapter 12.

#### **OCHA Reimbursement to Family [HCV GB p. 22-12]**

OCHA will not reimburse the family for any underpayment of assistance when the family clearly causes the underpayment.

#### **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to OCHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by OCHA for rent, security deposit, and additional services.
- Offering bribes or illegal gratuities to OCHA Board of Commissioners, employees, contractors, or other OCHA representatives.
- Offering payments or other incentives to the owner or a third party as an inducement for the third

- party to make false or misleading statements to OCHA on the family's behalf.
- Use of a false name or the use of falsified, forged, or altered documents.
  - Intentional misreporting of family information or circumstances (e.g. income, family composition).
  - Omitted facts that were obviously known by a family member (e.g., not reporting employment income).
  - Admission of program abuse by an adult family member.

OCHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

### **Penalties for Program Abuse**

In the case of program abuse caused by a family OCHA may, at its discretion, impose any of the following remedies.

- OCHA may require the family to repay excess subsidy amounts paid by OCHA, as described earlier in this section.
- OCHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- OCHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- OCHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

### **14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

#### **Owner Reimbursement to OCHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to OCHA any excess subsidy received. OCHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, OCHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

In cases where the owner has received excess subsidy, OCHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

#### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- Make any false statement to OCHA [Title 18 U.S.C. Section 1001].
- Violate any provision of the HAP contract.
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR982.453(a)(3)].

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by OCHA.
- Charging a security deposit other than that specified in the family's lease.
- Charging the family for services that are provided to unassisted tenants at no extra charge.
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit.
- Knowingly accepting incorrect or excess housing assistance payments.
- Offering bribes or illegal gratuities to OCHA Board of Commissioners, employees, contractors, or OCHA representatives.
- Offering payments or other incentives to an HCV program family as an inducement for the family to make false or misleading statements to OCHA.
- Residing in the unit with an assisted family.
- Committing sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2.
- Retaliating against any applicant or participant reporting/alleging sexual or other harassment, either quid pro quo or hostile work environment, based on the protected classes defined in Chapter 2.

### **Remedies and Penalties**

When OCHA determines that the owner has committed program abuse, OCHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any OCHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

### **14-ILD. OCHA CAUSED ERRORS OR PROGRAM ABUSE**

OCHA caused incorrect subsidy determinations include:

- Failing to correctly apply HCV program rules regarding family composition, income, assets, and expenses.
- Assigning the incorrect voucher size to a family.
- Errors in calculation.
- Failing to process a reported change in a timely manner.

#### **De Minimis Errors [24 CFR 5.609(c)(4)]**

OCHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where OCHA's determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

OCHA must take corrective action to credit or repay a family if the family was overcharged rent, including when OCHA makes a de minimis error in the income determination. Families

will not be required to repay OCHA in instances where OCHA miscalculated income resulting in a family being undercharged for rent.

#### OCHA Reimbursement to Family or Owner

OCHA will reimburse an owner or family for any underpayment of subsidy regardless of whether the underpayment was the result of staff-caused error, staff program abuse, or a de minimis error.

#### **Prohibited Activities**

Any of the following will be considered evidence of program abuse by OCHA staff:

- Failing to comply with any HCV program requirements for personal gain or to favor an applicant, participant, owner, vendor, contractor, or other person. This includes but is not limited to: approval of units that do not meet housing quality standards or intentional incorrect TTP or HAP calculations, incorrect eligibility determinations, and falsifying or altering documents.
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner.
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to OCHA.
- Disclosing confidential or proprietary information to outside parties.
- Gaining profit as a result of insider knowledge of OCHA activities, policies, or practices.
- Misappropriating or misusing HCV program funds.
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program.
- Committing any other corrupt or criminal act in connection with any federal housing program.

#### **14-II.E. CRIMINAL PROSECUTION**

When OCHA determines that program abuse by an owner, family, or OCHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, OCHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

When OCHA determines that program abuse by an OCHA staff member has occurred, OCHA will take whatever action is appropriate under the direction of Orange County Human Resources, which may include staff reprimand and/or termination of employment.

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

## **PART III: CONDUCTING BUSINESS WITH CORE VALUES AND ETHICAL STANDARDS**

### **14-III.A. CONFLICT OF INTEREST [24 CFR 982.161]**

Neither OCHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of OCHA (except a participant commissioner).
- Any employee of OCHA, or any contractor, subcontractor or agent of OCHA, who formulates policy or who influences decisions with respect to the programs.
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs.
- Any member of the Congress of the United States.

Any member of the classes described above must disclose their interest or prospective interest to OCHA and to HUD. The conflict-of-interest prohibition under this section may be waived by the HUD field office for good cause.

### **14-III.B. CODE OF ETHICS AND CONDUCT**

OC Community Resources/Orange County Housing Authority (OCHA) has an established department policy governing employee conduct and activities during working and non-working hours to ensure their ability to serve the county at satisfactory levels of performance and their integrity is not impaired. This policy incorporates by reference the “County of Orange Employee Code of Conduct” adopted by the Board of Supervisors and is applicable to all employees.

No employee shall accept or solicit any gift, gratuity, regard, loan, entertainment or anything of value, which might tend or appear to influence directly or indirectly actions of the employee or other employees of the department or the county, or which might tend to cast an adverse reflection on the department, county, or any employee.

No employee shall engage in outside employment or activities contributing to mental or physical fatigue, which adversely affect the job performance of county-related work or cause absenteeism.

No employee shall engage in outside employment or activities, which constitute conflicts of interest for private gain or advantage, or private gain or advantage of another. Generally, employment or activities outside the department are acceptable except for the following:

- Employment that involves a person, activity, firm or product, which contracts with or is subject to regulation, inspection or enforcement by the department.
- Employee uses county time, facilities, equipment, badge, or uniform for private gain or advantage, or private gain or advantage of another.

If any OCHA staff has knowledge of a conflict-of-interest situation or other misconduct by another OCHA staff member, this shall be immediately reported for investigation resulting in disciplinary action.

## Chapter 15

### SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M; New HCV GB, *Special Housing Types*]

#### INTRODUCTION

OCHA permits a participant family to use special housing types to receive rental assistance within OCHA's jurisdiction. Unless specifically modified by the regulations, housing quality standards apply to special housing types [Notice PIH 2023-28]. OCHA permits the following special housing types:

Part I: Single Room Occupancy

Part II: Congregate Housing (Assisted Living Facilities) Part III: Shared Housing

Part IV: Manufactured Homes (including manufactured home space rental)

Part V: Homeownership

**PART I: SINGLE ROOM OCCUPANCY [24 CFR 982.602 THROUGH 982.605; Form HUD-52641; New HCV GB, *Special Housing Types*, p.4]**

**15-I.A. OVERVIEW**

Single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of a single occupant.

The occupant may be required to share sanitary and/or food preparation facilities with SRO residents.

A separate standard lease and housing assistance payment (HAP) contract is executed for each unit receiving Housing Choice Voucher (HCV) assistance.

**15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75 percent of OCHA's 0-bedroom payment standard. A utility allowance does not apply to SRO housing types.

The amount of HAP assistance for an SRO assisted unit occupant in an SRO facility is the lower of the SRO payment standard amount minus the tenant's total portion (TTP) or the gross rent for the unit minus the TTP.

**15-I.C. SRO HOUSING QUALITY STANDARDS [24 CFR 982.605(a)]**

Housing quality standards requirements described in Chapter 8 are modified as follows for SRO housing types:

- *Access:* Entry door to the SRO unit must have a working privacy lock. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.
- Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards, the requirements discussed below apply [24 CFR 982.605].
- *Sanitary Facilities:* At least one flushing toilet that can be used in privacy, a lavatory basin, and a fully operable bathtub or shower must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four-square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the close space is less than four square feet, the habitable floor space in

the SRO unit must be increased by the amount the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

- For SRO housing, 24 CFR 5.703(d) only applies to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d). Because no children live in SRO housing, housing quality standards applicable to lead-based paint do not apply.

## **PART II: CONGREGATE HOUSING (ASSISTED LIVING FACILITIES)**

**[24 CFR 982.606 through 982.609; Form HUD-52641; New HCV GB, *Special Housing Types*, p.6]**

### **15-II.A. OVERVIEW**

Congregate housing/assisted living facility is intended for use by elderly persons or persons with disabilities. An assisted living facility contains a shared central kitchen and dining area, in addition to a private living area for the assisted resident that includes a living room, a bedroom and a bathroom. Rental assistance applies only to the bedroom space occupied by the tenant. Other costs associated with housekeeping, food service/preparation and etc. are not eligible expenses to be included in determining amount of rental assistance.

OCHA will approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by the elderly and persons with disabilities.

When providing HCV program assistance in assisted living housing, a separate and standard lease and HAP contract are executed for each assisted family.

### **15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or kitchen, if a kitchen is provided) OCHA will use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), OCHA will use the 1-bedroom payment standard.

The payment standard for an individual unit in a congregate housing/assisted living facility is: 75% of OCHA's 0-bedroom payment standard

If two persons occupy the same sleeping room, 50% of the 1-bedroom payment standard will be used to calculate the tenant's portion of rent.

A utility allowance does not apply to assisted living housing types.

### **15-II.C. HOUSING QUALITY STANDARDS**

Housing quality standards requirements as described in Chapter 8 apply to assisted living housing with the following modifications:

- Assisted living housing unit must have:
- A refrigerator of appropriate size in the private living area of each resident.
- Central kitchen and dining facilities located within the premises and accessible to the residents.
- Food service for the residents that is not provided by the residents themselves.
- Adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.
- The housing quality standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.

**PART III: SHARED HOUSING [24 CFR 982.615 through 982.618; Form HUD-52641;  
Notice PIH 2021-05; New HCV GB, *Special Housing Types*, p.11]**

**15-III.A. OVERVIEW**

HCV program individuals may utilize the assistance to occupy a bedroom in a single housing unit. The unit may be a house or an apartment. Assisted individuals must have access to common space areas that may include a living room, family room, kitchen and laundry facilities. An assisted individual may share a bedroom with another assisted/unassisted person. The owner of the single-family home may reside in the unit, but housing assistance will not be paid on the owner's behalf. The resident owner may not be related by blood or marriage to the assisted person(s). Shared housing is only available to one-bedroom voucher holders.

Shared housing may be offered in a number of ways, including for-profit co-living (such as a boarding house, single bedroom with common living room/kitchen/dining room) run by a private company [Notice PIH 2021-05].

OCHA will approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

A separate lease and a standard HAP contract are executed for each assisted person(s).

**15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard for shared housing is 75% of OCHA's 0-bedroom payment standard.

A utility allowance does not apply to shared housing types.

If more than one bedroom in the same unit will be assisted under the provisions of shared housing, the total contract rents must not exceed the pro-rated amount of the payment standard for the applicable bedroom size. The payment standard used is the lower of the payment standard for the family size or the pro-rated share of the payment standard for the bedroom size of the shared single family housing type.

The contract rent must meet the rent reasonableness test.

**15-III.C. HOUSING QUALITY STANDARDS**

OCHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under lease, meets housing quality standards.

Housing quality standards requirements described in Chapter 8 apply to shared housing except for the requirements stated below:

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

**PART IV: MANUFACTURED HOMES [24 CFR 982.620  
THROUGH 982.624; FR Notice 1/18/17; New HCV GB, *Special  
Housing Types*, p.15]**

### **15-IV.A. OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV program assisted families may occupy manufactured homes in two different ways:

- A family can choose to rent a manufactured home already installed on a space. In this instance HCV program rules are the same as when a family rents any other residential housing, except that there are special Housing quality standard requirements as provided in 15-VI.D below.
- A family can purchase a manufactured home under the Housing Choice Voucher Homeownership program.

OCHA also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV program assistance with the rent for the space.

### **15-IV.B. SPECIAL POLICIES FOR MANUFACTURED HOMEOWNERS WHO LEASE A SPACE**

#### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### **Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-A) and separate HAP Contract (Form 52642) for this special housing type.

### **15-IV.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION FOR MANUFACTURED HOMEOWNERS WHO LEASE A SPACE**

#### **Payment Standards**

OCHA's payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for OCHA's HCV program. It is based on the applicable Fair Market Rent (FMR) for the area in which the manufactured home space is located.

The payment standard for the family is the lower of the family unit size (voucher size) or the payment standard for the number of bedrooms in the manufactured home.

#### **Utility Allowance [24 CFR 982.624}**

OCHA has established one standard utility allowance that is applicable to all mobile home space rents. OCHA reviews the mobile home utility allowance annually to determine if any changes in the rate are warranted. For the first 12 months of the initial lease term only, the allowance must include a reasonable amount for a utility hook-up charge if the family actually incurred a hook-

up charge because of a move. This allowance will not be given to a family that leases in place.

Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

### **Space Rent {24 CFR 982.622}**

The space rent is the sum of the rent to the owner for the manufactured home space and any charges for maintenance and management provided by the owner to the tenant under the lease of the space. Rent to owner does not include the costs of utilities and trash collection for the manufactured home. However, the owner may charge the family a separate fee for the cost of utilities or trash collection provided by the owner.

### **Amortization Costs**

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

### **Housing Assistance Payment [24 CFR 982.6239a]**

The HAP for a manufactured home space under the HCV program is lower of the payment standard minus the TTP or the family's eligible housing expenses minus the TTP.

### **Eligible Housing Expenses [24 CFR 982.6239(b)]**

The family's eligible housing expenses are the total of:

- The rent charged by the owner for the manufactured home space.
- Charges for the maintenance and management the space owner must provide under the lease.

The monthly payments made by the family to amortize the cost of purchasing the manufactured home established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made, including any required insurance and property taxes included in the loan payment to the lender.

Any increase in debt service or term due to refinancing after purchase of the home may not be included in the amortization cost.

Debt service for installation charges incurred by a family may be included in the monthly amortization payments. Installation charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

The applicable allowances for tenant-paid utilities, as determined under 24 CFR 982.517 and 982.624.

### **Rent Reasonableness [24 CFR 982.622(b)]**

Initially, and annually thereafter, OCHA will determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. OCHA will consider the location and size of the space, and any services and maintenance to be provided by the owner in accordance with the lease (without a fee in addition to rent). By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the Manufactured Home Park or elsewhere.

If requested by OCHA, the owner must give OCHA information on rents charged by the owner for other manufactured home spaces.

#### **Distribution of HAP [24 CFR 982.623(c)]**

OCHA pays the owner of the space the lesser of the housing assistance payment or the portion of the monthly rent due to the owner. The portion of the monthly rent due to the owner is the total of:

- The actual rent charged by the owner for the manufactured home space; and
- Charges for the maintenance and management the space owner must provide under the lease.

If the housing assistance payment exceeds the portion of the monthly rent due to the owner, the PHA may pay the balance of the housing assistance payment to the family. Alternatively, the PHA may pay the balance to the lender or utility company, in an amount no greater than the amount due for the month to each, respectively, subject to the lender's or utility company's willingness to accept the PHA's payment on behalf of the family.

#### **Single HAP to Family [24 CFR 982.623(d)]**

OCHA will not exercise the option to pay a sing HAP to the family and will only pay HAP directly to the owner.

#### **15-IV.D. HOUSING QUALITY STANDARDS [24 CFR 982.621]**

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all housing quality standards performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

- *Performance Requirement:* A manufactured home must be placed on the site in a stable manner and must be free from hazards such as sliding or wind damage.
- *Acceptability Criteria:* The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

**PART V: HOMEOWNERSHIP [24 CFR 982.625 through 982.643]****15-V.A. OVERVIEW [24 CFR 982.625]**

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option will be an existing participant in the HCV program.

**15-V.B. FAMILY ELIGIBILITY [24 CFR 982.627]**

The family must meet all of the requirements listed below before the commencement of homeownership assistance:

- The family must have been admitted to the Housing Choice Voucher program.
- The family is not within the initial one-year period of a HAP contract.
- The family has no family-caused housing quality standards violations within the past year.
- The family has not committed any serious or repeated violations of their OCHA-assisted lease within the past year.
- The family does not owe money to OCHA.
- The family must qualify as a first-time homeowner.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home.
- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family. Families will be considered "continuously employed" if the break in employment does not exceed two months.
- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, OCHA will grant an exemption from the employment requirement if OCHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option.
- No family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.

- The family has entered a contract of sale in accordance with 24 CFR 982.631(c).

#### **15-V.C. SELECTION OF FAMILIES [24 CFR 982.626]**

Families will be selected according to the date and time their application for homeownership was submitted.

Preference will be given to elderly and disabled families, families who have participated in OCHA's Family Self-Sufficiency program (FSS) for a minimum of one year or longer, and FSS graduates.

All families must meet eligibility requirements as defined in Section 15-VII.B of this plan.

#### **15-V.D. ELIGIBLE UNITS [24 CFR 982.628]**

In order for a unit to be eligible, OCHA will determine that the unit satisfies all of the following requirements:

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit.
  - A unit receiving Section 8 project-based assistance.
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services.
  - A college or other school dormitory.
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a condominium project.
- The unit must have been inspected by OCHA and by an independent inspector designated by the family.
- The unit must meet housing quality standards (see Chapter 8).
- For a manufactured home, the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.

OCHA will not approve the unit if OCHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

#### **15-V.E. ADDITIONAL OCHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]**

The family will be allowed 120 days to locate a unit and submit a sales contract to OCHA for review. OCHA may grant an extension period for good cause.

The family will be allowed an additional 120 days to close escrow on the home. OCHA may grant an extension period for good cause.

Approval for each extension type will be determined on a case-by-case basis and will not exceed a total of 120 days each. The maximum amount of time a family will be given to locate

and complete the purchase of a home under the Homeownership Program is 365 days.

All requests for extensions must be submitted in writing to OCHA no more than 30 days but no less than 15 days prior to the expiration date of the period for which the extension is being requested. The family will be notified in writing within 15 calendar days of OCHA's decision to approve/disapprove a request for an extension.

The family will continue to receive HCV program rental assistance until they vacate their assisted unit and move into a purchased home. If the family is unable to purchase a home within the maximum allotted time, the family will continue to receive HCV program rental assistance.

#### **15-V.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]**

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete OCHA's pre-assistance homeownership and housing counseling program. OCHA will require completion of the following topics:

- Home maintenance (including care of the grounds).
- Budgeting and money management.
- Credit counseling.
- How to negotiate the purchase price of a home.
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing.
- How to find a home, including information about homeownership opportunities, schools, and transportation in OCHA's jurisdiction.
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas.
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies.

Families will be encouraged but not be required to participate in ongoing counseling after commencement of homeownership assistance.

#### **15-V.G. HOME INSPECTIONS, CONTRACT OF SALE, AND OCHA DISAPPROVAL OF SELLER [24 CFR 982.631]**

##### **Home Inspections**

OCHA will schedule an inspection within 15 calendar days from the date a family submits a copy of their Purchase Offer/Contract.

OCHA will conduct an in-home inspection to determine that the unit passes housing quality standards prior to the commencement of monthly homeownership assistance payments. Any failed items must be repaired prior to receiving final approval.

In addition, the family must contract with a licensed home inspector. The home inspector must prepare a written report of the results of inspecting the home's structural system including, the foundation, framing, interior and exterior walls, roofing, plumbing, electrical and heating system.

The family must submit a copy of the inspection report prepared by the licensed inspector for OCHA to review. Based upon the report, OCHA may disqualify the purchase of the home under the provisions of homeownership, if the report determines that the condition of the unit

has substantial defects requiring extensive and costly repairs. The family will receive notification of OCHA disapproval of the selected home for purchase.

Except for initial and special inspections, OCHA will not conduct annual housing quality standard inspections while the family is receiving homeownership assistance.

### **Contract of Sale**

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give OCHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser.
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser.
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser.
- Provide that the purchaser is not obligated to pay for any necessary repairs.
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.

### **Disapproval of a Seller**

In its administrative discretion, OCHA may deny approval of a seller for the same reasons OCHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

### **15-V.H. FINANCING [24 CFR 982.632]**

As a check against predatory lending, OCHA will review the financing of each purchase transaction, including estimated closing costs. OCHA will review the loans for features, such as balloon payments, adjustable-rate mortgages, and unusually high interest rates, all of which are prohibited. OCHA also may not approve “seller financing” or “owner-held” mortgages. OCHA may disapprove proposed refinancing, a second loan, or other debt, if OCHA determines that the debt is unaffordable, or if OCHA determines that the lender or loan terms do not meet OCHA qualifications.

Beyond these basic criteria, OCHA will rely on the lenders to determine that the loan will be affordable to program participants.

The mortgage the family applies for will require a minimum down payment of at least 3% of the sale price with 1% of the down payment coming from the purchaser’s personal funds.

Financing for purchase of a home under the HCV Homeownership Program must comply with generally accepted private sector underwriting standards.

### **15-V.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]**

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, OCHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to OCHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to OCHA or HUD as specified in 24 CFR 982.551(b).
- The family must further supply any information required by OCHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify OCHA before moving out of the home.
- The family must notify OCHA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).

#### **15-V.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]**

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer.
- Ten years, in all other cases.
  - The maximum term described above applies to any member of the family who:
    - Has an ownership interest in the unit during the time that homeownership payments are made; or
    - Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.
- In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

#### **15-V.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]**

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, OCHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described in elsewhere in this plan for the HCV program.

OCHA's housing assistance payment will be paid directly to the lender. If the assistance payment exceeds the amount due to the lender, OCHA will pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family.

OCHA will allow the following homeownership expenses:

- Monthly homeownership payment includes principal and interest on initial mortgage debt, taxes and insurance, and any mortgage insurance premium, if applicable.
- OCHA's utility allowance for the home, based on the current HCV program utility allowance schedule.
- OCHA's allowance for maintenance expenses; monthly maintenance allowance will be the annual maintenance, divided by twelve. The annual maintenance allowance will be set at one half of one-percent (.5 %) of the purchase price of the home.
- For a condominium unit, condominium operating charges, or maintenance fees assessed by the condominium homeowner association.
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may be incurred by the family to finance costs needed to make the home accessible for such person, if OCHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.

#### **15-V.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]**

Subject to the restrictions on portability included in HUD regulations and OCHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill OCHA as the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, is acceptable. The receiving PHA must promptly notify OCHA as the initial PHA, if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

#### **15-V.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]**

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

OCHA may deny permission to move to a new unit with continued voucher assistance as follows:

- Lack of funding to provide continued assistance.

- At any time, OCHA may deny permission to move with continued rental or homeownership assistance in accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- OCHA will deny the family permission to move within a 12-month period.

OCHA will deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family has defaulted on an FHA-insured mortgage.
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

#### **15-V.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]**

At any time, OCHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

OCHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy.

OCHA will terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

OCHA will terminate a family's homeownership assistance if the family violates any of the homeowner obligations listed in Section 1, as well as for any of the reasons listed in Section 2 of form HUD-52649, Statement of Homeowner Obligations Housing Choice Homeownership Voucher Program.

In making its decision to terminate homeownership assistance, OCHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, OCHA may, on a case-by-case basis, choose not to terminate assistance.

Termination notices will be sent in accordance with the requirements and policies set forth in Section 12-II.F.

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in nine parts as described below:

##### Part I: Administrative Fee Reserve

This part describes OCHA policies with regard to oversight of expenditures from its administrative fee reserve.

##### Part II: Setting Program Standards and Schedules

This part describes what payment standards are, and how they are updated, as well as, how utility allowances are established and revised.

##### Part III: Informal Reviews and Hearings

This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

##### Part IV: Owner or Family Debts to OCHA

This part describes policies for recovery of monies that OCHA has overpaid on behalf of families, or to owners, and describes the circumstances under which OCHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

##### Part V: Section 8 Management Assessment Program (SEMAP)

This part describes what the SEMAP scores represent, how they are established, and how those scores affect OCHA.

##### Part VI: Record-Keeping

All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies OCHA will follow.

##### Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level

This part describes OCHA responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age and are receiving HCV assistance.

##### Part VIII: Determination of Insufficient Funding

This part describes OCHA policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality

This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking; and maintaining the confidentiality of information obtained from victims.

**PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

OCHA will maintain an administrative fee reserve for the HCV program to pay program administrative expenses in excess of administrative fees paid by HUD. If funds in the administrative fee reserve are not needed to cover OCHA administrative expenses, OCHA may use these funds for other housing purposes if permitted by federal, state and local law.

OCHA will comply with federal restrictions such as the Consolidated Appropriations Act, 2008 (Public Law 110-161), which restricts unused administrative fee from 2008 funding (and 2004- 2007 funding). Such funds will be moved into a Net Unrestricted Assets account and used only for Section 8 tenant-based rental assistance, including related development activities. Such activities include modification for accessibility purposes and development of project-based voucher units.

HUD may prohibit use of funds in the administrative fee reserve and may direct OCHA to use funds in the reserve to improve administration of the HCV program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires OCHA's Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

Expenditures from the administrative fee reserve will be made in accordance with all applicable federal requirements. Expenditures will not exceed \$50,000 per occurrence without the prior approval of OCHA Board of Commissioners.

## PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

### 16-II.A. OVERVIEW

This part discusses how OCHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family, can receive (application of the payment standards is discussed in Chapter 6).
- *Utility Allowances*, which specify how a family’s payment should be adjusted to account for tenant- paid utilities (application of utility allowances is discussed in Chapter 6).

Copies of the payment standard and utility allowance schedules are available for review in OCHA’s offices during normal business hours. This information is also available on OCHA’s webpage on the County of Orange – OC Community Resources website – [www.ochousing.org](http://www.ochousing.org). Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

OCHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

### 16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7; and Notice PIH 2024-34]

OCHA will establish payment standard amounts for areas within OCHA’s jurisdiction the payment standard sets the maximum subsidy payment a family can receive from OCHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions, FMRs are set at the 40th percentile of rents in the market area.

#### **Small Area FMR (Opt-In) [Notice PIH 2018-01; Notice PIH 2023-32; Notice PIH 2024-34; and Implementing Small Area Fair Market Rents (SAFMR) Guidebook]**

OCHA is not a mandatory SAFMR PHA and OCHA will not voluntarily adopt the use of SAFMRs except to establish exception payment standards in certain areas.

#### **The Basic Range [24 CFR 982.503(c) and Notice PIH 2024-34]**

OCHA may establish a payment standard within the “basic range” established by HUD- between 90 and 110 percent of the published FMR for each unit size-without HUD approval or prior notification to HUD. For each payment standard area, OCHA must establish a payment standard amount for each unit size which may be based on the same percentage of the FMR or OCHA may set different payment standards for different unit sizes.

#### **Designated Payment Standard Areas [24 CFR 982.503(a)(3) and Notice PIH 2024-34]**

OCHA’s comprehensive payment standard schedule includes all bedroom sizes, mobile home space rent and single room occupancy/shared housing. In addition, OCHA has established multiple payment standard schedules for one, two and three-bedroom units to expand housing choices in distinctly different market areas. The highest payment standards are designated as “Restricted” and are used in 13 “high rent” cities and adjacent unincorporated areas. Another set

of payment standards will be applied for a “Central” group of cities and “basic” payment standards apply to the remaining cities.

### **Updating Payment Standards [24 CFR 982.503(c)(3) and Notice PIH 2023-24]**

OCHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the “basic range”, OCHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

- **Funding Availability:** OCHA will review the budget to determine the impact that projected subsidy adjustments will have on funding available for the program and the number of families served. OCHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.
- **Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, OCHA will consider increasing the payment standard. In evaluating rent burdens, OCHA will not include families renting a larger unit than their voucher unit size.
- **Quality of Units Selected:** OCHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.
- **Changes in Rent to Owner:** OCHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.
- **Unit Availability:** OCHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families and higher-cost cities.
- **Lease-up Time and Success Rate:** OCHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

**Changes to payment standard amounts will be effective on October 1st of every year or no later than December 1st. Exception Payment Standards [24 CFR 982.503(d), Notice PIH 2018-01, Notice PIH 2024-34, and FR Notice 9/27/21]**

There are several options available to increase payment standards above the basic range. These are known as exception payment standards, which are payment standards that exceed 110 percent of the published FMR. OCHA must request HUD approval for any payment standard established above 120 percent of the published FMR.

### **Payment Standards Greater than 110 percent up to 120 percent**

Upon notification to HUD, OCHA may establish exception payment standards between 110 percent and 120 percent of the applicable FMR if OCHA meets one of the following criteria:

Success rate: Fewer than 75 percent of families to which OCHA has issued tenant-based vouchers during the most recent 12-month period for which there is success rate data available have become participants on the program; or

Rent burden: More than 40 percent of families with tenant-based assistance pay more than 30 percent of their adjusted income as their family share.

OCHA may revert back to the basic range at any time without notification to HUD.

OCHA may combine exception payment standards based on the SAFMR and exception payment standards greater than 110 percent and up to 120 percent.

### **Other Exception Payment Standards:**

OCHA may request HUD approval to establish exception payment standards up to 120 percent of FMR when the above criteria do not apply or in order to establish exception payment standards that exceed 120 percent of the FMR. Requests may be made for an entire FMR area or a designated part of the FMR area.

### **Exception Payment Standards for VASH**

In addition, HUD allows OCHA to establish a HUD-Veterans Affairs Supportive Housing (HUD-VASH) exception payment standard. OCHA may go up to but no higher than 120 percent of the FMR or SAFMR specifically for VASH families. In the event OCHA wishes to establish a VASH exception payment standard over 120 percent, OCHA must still request a waiver from HUD (See Section 19-III.E.).

Once exception payment standards are adopted, OCHA may use the exception payment standard for all units, or for only units of a particular size. The exception payment standard may be established for a designated part of the FMR area (called an “exception area”) or for the entire FMR area. Exception areas are typically county, city, town, ZIP code, or census tract areas. However, so long as the exception area is no smaller than census tract block group, OCHA may determine the area for the exception area.

### **OCHA will not establish an exception payment standard for VASH. Reasonable Accommodation [24 CFR 982.503(d)(5), 24 CFR 982.505(d), Notice PIH 2024-34, and Notice PIH 2010-26]**

Unit-by-unit exceptions to OCHA’s payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect OCHA’s payment standard schedule.

When needed as a reasonable accommodation, OCHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size (or in the case of VASH, up to 140% of the FMR). OCHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR..

A family that requires a reasonable accommodation for a higher payment standard may request this at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, OCHA will determine that:

- There is a shortage of affordable units that would be appropriate for the family.
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income.

- The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, OCHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows OCHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, OCHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants.
- OCHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR.
- OCHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, OCHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of OCHA's jurisdiction within the FMR area.

OCHA's success rate has always exceeded the 75% threshold with its multiple payment standard schedules and has not needed or qualified for "success rate payment standards".

### **Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(e) and Notice PIH 2024-34]**

In the event of a funding shortfall, OCHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will consider rent burden on families assisted under the program. **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

OCHA's Utility Allowance Schedule is used in determining family share and OCHA subsidy. OCHA maintains a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection, sewer fees and water.

The utility allowance schedule is based upon the current utility rates charged to qualified low-income households under the power companies' CARE program, which charges rates that are 20% less than the rates charged to other residential customers who occupy housing of similar size and type in the same locality.

The utility allowance schedule includes an allowance for tenant-paid utilities and services that are necessary in the Orange County region, to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and Internet services are not included in the utility allowance schedule.

OCHA's Utility Allowance Schedule assigns a rate, per bedroom size of the assisted unit, for tenant-paid utilities for: 1) Gas: cooking, space heating, and water heating; 2) Electric: basic electric allowance for lighting, wall outlets, air conditioning, and refrigerator; electric cooking, electric space heating and electric water heating, 3) An allowance for other tenant-paid services include: water, sewer & trash collection, tenant owned refrigerator, and tenant-owned stove.

**Air Conditioning [24 CFR 982.517(b)(10)(iii)]**

OCHA has included an allowance for air-conditioning in its schedule for basic electric. Central air-conditioning or a portable air conditioner must be present in the unit before OCHA will apply this allowance to a family's rent and subsidy calculations.

**Reasonable Accommodation and Individual Relief [24 CFR 982.517(e)]**

OCHA may approve a utility allowance amount higher than shown on OCHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

**Utility Allowance Revisions [24 CFR 982.517(c)(1)]**

OCHA reviews its schedule of utility allowances annually and will revise the schedule if there has been a change of 10 percent or more in any utility rate in the previous year.

The primary power companies serving the Orange County area are Southern California Edison and Southern California Gas. Tariff Rate schedules are used as the source for performing the annual utility review. If an adjustment in OCHA's Utility Allowance Schedule is required, the difference between rates is calculated as a percentage increase/decrease and is applied to each utility allowance affected by the change.

## PART III: INFORMAL REVIEWS AND HEARINGS

### 16-III.A. OVERVIEW

When OCHA makes a decision that has a negative impact on a family, the family may be entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

### 16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554] and need not be as elaborate as the informal hearing requirements. [Federal Register 60, no. 127 (July 1995): 344690]

#### **Decisions Subject to Informal Review [24 CFR 982.544(a) and (c)]**

OCHA will give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on OCHA waiting list.
- Denying or withdrawing a voucher.
- Refusing to enter into a HAP contract or approve a lease.
- Refusing to process or provide assistance under portability procedures.

#### **Informal reviews are not required for the following reasons [24 CFR 982.554(c)]:**

- Discretionary administrative determinations by OCHA.
- General policy issues or class grievances.
- A determination of the family unit size under OCHA subsidy standards.
- OCHA determination not to approve an extension of a voucher term
- OCHA determination not to grant approval of the tenancy.
- OCHA determination that the unit is not in compliance with the housing quality standards.
- OCHA determination that the unit is not in accordance with space standards due to family size or composition.

#### **Notice to the Applicant [24 CFR 982.554(a)]**

OCHA will give an applicant prompt notice of a decision denying assistance. The notice will contain a brief statement of the reasons for OCHA’s decision and will also state that the applicant may request an informal review of the decision. The notice will describe how to obtain the informal review.

#### **Scheduling an Informal Review**

A request for an informal review must be made in writing and delivered to OCHA either in person or by first class mail, by the close of the business day, no later than 15 calendar days from the date of OCHA’s denial of assistance notice.

**Informal Review Procedures [24 CFR 982.554(b)]**

The informal review will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the initial decision of OCHA.

**Informal Review Decision [24 CFR 982.554(b)]**

In rendering a decision, OCHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the Notice.
- The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. OCHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and HUD requires the denial, OCHA will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, OCHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

A notice of Informal Review decision shall be provided in writing to the applicant within 30 calendar days of receipt of the applicant's request for an Informal Review. The written notice shall include a brief explanation of the reasons for the final decision.

**16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

OCHA will offer an informal hearing for certain OCHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to OCHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether OCHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations, and OCHA policies.

OCHA will not terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease.
- Terminating housing assistance payments under an outstanding HAP contract.
- Refusing to process or provide assistance under portability procedures.

**Decisions Subject to Informal Hearing**

- Circumstances for which OCHA will give a participant family an opportunity for an informal hearing are as follows:
  - A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
  - A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the OCHA utility allowance schedule.
  - A determination of the family unit size under OCHA's subsidy standards.

- A determination that a project-based voucher or Continuum of Care family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under OCHA's subsidy standards, or OCHA's determination to deny the family's request for exception from the standards.
- A determination to terminate assistance for a participant family because of the family's actions or failure to act.
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted OCHA policy and HUD rules.
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)].

**Circumstances for which an informal hearing is not required are as follows:**

- Discretionary administrative determinations by OCHA.
- General policy issues or class grievances.
- Establishment of OCHA schedule of utility allowances for families in the program.
- OCHA's determination not to approve an extension or suspension of a voucher term.
- OCHA's determination not to approve a unit or tenancy.
- OCHA's determination that a unit selected by the applicant is not in compliance with the housing quality standards.
- OCHA's determination that the unit is not in accordance with space standards because of family size.
- A determination by OCHA to exercise or not to exercise any right or remedy against an owner under a HAP contract.
- OCHA will only offer participants the opportunity for an informal hearing when required to by HUD regulations.

**Informal Hearing Procedures**

**Notice to the Family [24 CFR 982.555(c)]**

When OCHA makes a decision that is subject to informal hearing procedures, OCHA will inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, OCHA will notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to OCHA's subsidy standards, the notice will contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

In cases when OCHA must offer an informal hearing, the notice to the family will include all of the following:

- The reason(s) for the decision, including any regulatory reference.

- The date the proposed action will take place.
- The procedures for requesting an informal hearing if the family does not agree with the decision.
- The timeframe for requesting an informal hearing.

### **Scheduling an Informal Hearing [24 CFR 982.555(d)]**

A request for an informal hearing must be made in writing and delivered to OCHA either in person or by first class mail, by the close of the business day, 15 calendar days from the date of OCHA's written decision or notice to terminate assistance.

OCHA will schedule and send written notice of the informal hearing to the family within a reasonable amount of time.

If the hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

- Regarding the processes involved in a remote informal hearing.
- That OCHA will provide technical assistance prior to and during the informal hearing, if needed.
- That if the family or any individual witness has any technological, resource, or accessible barriers, the family may inform OCHA and OCHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict in a meeting time with another agency, a doctor, or a company, which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made in writing prior to the hearing date.

OCHA will request documentation of the "good cause" prior to rescheduling the hearing. If the family does not appear at the scheduled time or is more than 30 (thirty) minutes late and has not arranged in advance to reschedule the informal hearing, the participant will be declared "in default". OCHA may set aside the default decision and reschedule the informal hearing only upon a showing of good cause (as previously defined) for the participant's absence. In this event, the informal hearing will be rescheduled only one time.

If the head of household is incarcerated or otherwise unavailable, the family must designate another adult to appear at the informal hearing.

### **Pre-Hearing Right to Discovery [24 CFR 982.555(e)]**

The family must request discovery of OCHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date. The family will be allowed to copy any documents related to the hearing at a cost of \$.15 per page.

### **Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]**

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

A minimum of four days advance notice should be made to OCHA if the legal counsel or other representative will attend the hearing.

### **Informal Hearing Officer [24 CFR 982.555(e)(4)]**

Informal hearings will be conducted by a person or persons approved by OCHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision. OCHA utilizes impartial hearing officers procured through the County of Orange.

### **Attendance at the Informal Hearing**

Hearings may be attended by a hearing officer and the following applicable persons:

- OCHA representative(s) and any witnesses for OCHA.
- The participant and any witnesses for the participant.
- The participant's counsel or other representative.
- Any other person approved by OCHA as a reasonable accommodation for a person with a disability.

### **Conduct at Hearings**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

In accordance with the Informal Hearing Notice, all hearings will be recorded for administrative record purposes.

### **Evidence [24 CFR 982.555(e)(5)]**

OCHA and the family will be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are five categories of evidence.

- *Oral evidence*: the testimony of witnesses.
- *Documentary evidence*: a writing, which is relevant to the case, for example, a letter written to OCHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
- *Demonstrative evidence*: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- *Real evidence*: A tangible item relating directly to the case.
- *Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either OCHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

### Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing will issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

In rendering a decision, the hearing officer will consider the following matters:

- **OCHA Notice to the Family:** The hearing officer will determine if the reasons for OCHA's decision are factually stated in the Notice.
- *Discovery:* The hearing officer will determine if OCHA and the family were given the opportunity to examine any relevant documents in accordance with OCHA policy.
- *OCHA Evidence to Support OCHA Decision:* The evidence consists of the facts presented. Evidence is not conclusion, and it is not argument. The hearing officer will evaluate the facts to determine if they support OCHA's conclusion.
- *Validity of Grounds for Termination of Assistance* (when applicable): The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and OCHA policies. If the grounds for termination are not specified in the regulations or in compliance with OCHA policies, then the decision of OCHA will be overturned.

The hearing officer will issue a written decision to the family and OCHA no later than 15 calendar days after the hearing. The report will contain the following information:

- **Hearing information:**
  - Name of the participant.
  - Date, time and place of the hearing.
  - Name of the hearing officer.
  - Name of OCHA representative.
  - Name of family representative (if any).
- **Background:** A brief, impartial statement of the reason for the hearing.
- **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.
- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold OCHA's decision.
- **Order:** The hearing report will include a statement of whether OCHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct OCHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct OCHA to restore the participant's program

status.

## **Procedures for Further Hearing**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer a decision will be rendered, and another hearing will not be granted.

### ***OCHA Notice of Final Decision [24 CFR 982.555(f)]***

OCHA will mail a “Notice of Final Decision” including the hearing officer’s determination, to the participant and their representative. This Notice is sent by first-class mail, as well as, by certified mail with return receipt. The original “Notice of Final Decision” along with the return receipt will be retained in the tenant’s file.

The time within which judicial review of the final determination may be sought is governed by California Code of Civil Procedure section 1094.6.

OCHA is not bound by the decision of the hearing officer for matters in which:

- OCHA is not required to provide an opportunity for a hearing.
- Exceed the authority of the hearing officer.
- Conflict with or contradict HUD regulations, requirements.
- Are otherwise contrary to Federal, State or local laws, or OCHA’s Administrative plan.

If OCHA determines it is not bound by the hearing officer’s decision in accordance with HUD regulations, OCHA will promptly notify the family of the determination and the reason for the determination.

### **16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while OCHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or OCHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for noncitizens will advise the family:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary

verification of immigration status and to submit additional documentation or explanation in support of the appeal.

- That the family has a right to request an informal hearing with OCHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

### **USCIS Appeal Process [24 CFR 5.514(e)]**

When OCHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, OCHA will notify the family in writing of the results of the USCIS secondary verification within 15 calendar days of receiving the results.

The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The family must make a request for an appeal in writing directly to the USCIS.

The family must provide OCHA with a copy of the written request for appeal and the proof of mailing within 15 calendar days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

OCHA will send written notice to the family of its right to request an informal hearing within 15 calendar days of receiving notice of the USCIS decision regarding the family's immigration status.

### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that OCHA provide an informal hearing. The request for an informal hearing must be made either within 30 calendar days of receipt of OCHA's notice of denial, or within 30 calendar days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

#### **Informal Hearing Officer**

OCHA will provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

#### **Evidence**

The family must request a review of their file and discovery of OCHA documents no later than 12:00 p.m. on the business day prior to the informal hearing. The family will be allowed to copy any documents related to the informal hearing at a cost of \$.15 per page.

The family will be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family will also be provided the opportunity to refute evidence relied upon by OCHA, and to confront and cross-examine all witnesses on whose testimony or information OCHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing.

### ***Hearing Decision***

OCHA will provide the family with a written final decision, based solely on the facts presented at the hearing, within 15 calendar days of the date of the informal hearing. The decision will state the basis for the decision.

### **Retention of Documents [24 CFR 5.514(h)]**

OCHA will retain for 3 years all hearing-related documents and recordings in accordance with its records retention policy. OCHA will retain for 5 years the following documents that may have been submitted to OCHA by the family, or provided to OCHA as part of the USCIS appeal during the OCHA informal hearing process:

- The application for assistance.
- The form completed by the family for income reexamination.
- Photocopies of any original documents, including original USCIS documents.
- The signed verification consent form.
- The USCIS verification results.
- The request for a USCIS appeal.
- The final USCIS determination.
- The request for an informal hearing.
- The final informal hearing decision.

## **PART IV: OWNER OR FAMILY DEBTS TO OCHA**

### **16-IV.A. OVERVIEW**

This part describes OCHA's policies for recovery of monies owed to OCHA by families, or to owners.

- When an action or inaction of an owner or participant results in the overpayment of housing assistance, OCHA holds the owner or participant liable to return any overpayments to OCHA.
- When OCHA determines that the owner has retained HAP to which the owner was not entitled, OCHA will notify the owner and immediately deduct amounts due from current and future HAP payments.
- When an owner or participant refuses to repay monies owed to OCHA, OCHA will utilize other available collection alternatives including, but not limited to, the following:
  - Collection agencies.
  - Small claims court.
  - Civil law suit.
  - State income tax set-off program.

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to OCHA**

The owner must repay any amount due to OCHA within 30 days of OCHA's notification to the owner.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, OCHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the future HAP is insufficient to reclaim the amount owed after billing, OCHA will refer the debt to the County's Collection Department for action.

If the owner is not entitled to future HAP payments OCHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by OCHA.

If the owner refuses to repay the debt, OCHA will ban the owner from future participation in the program and pursue other modes of collection.

#### **Family Debts to OCHA**

Any amount owed to OCHA by an HCV program family must be repaid by the family. OCHA will offer to enter into a repayment agreement in accordance with the policies below.

If OCHA determines there was no willful intent to defraud, OCHA may enter into a Repayment Agreement for a maximum of \$9,000 following the schedule below. If the amount owed is over \$9,000, OCHA will give the family the option to pay the full amount owed in excess of \$9,000, plus the initial deposit, and enter a Repayment for the difference.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, OCHA will terminate assistance in accordance with the policies of Chapter 12 and pursue other modes of collection.

## Repayment Agreement [24 CFR 792.103]

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to OCHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

### General Repayment Agreement Guidelines for Families

#### *Down Payment Requirement*

The down payment required at the execution of the repayment agreement will follow the schedule below.

#### *Payment Thresholds*

If OCHA enters into a Repayment Agreement with an assisted family, the Repayment Agreement will be set up as follows and the family must sign and make their initial payment within 60 days of notification. OCHA has established the following thresholds for repayment of debts:

Monthly Payments:

Amount Owed	Initial Payment	Maximum Term	Maximum
\$0 - \$500	*Full Amount	Immediate	N/A
\$501 - \$1,000	*\$500 plus 20% of balance	3 Months	\$133.33
\$1,001 - \$1,500	*\$500 plus 20% of balance	6 Months	\$133.33
\$1,501 - \$3,000	*\$500 plus 20% of balance	12 Months	\$166.67
\$3,001 - \$9,000	*\$500 plus 20% of balance	24 Months	\$283.33

\*Due at the execution of the Repayment Agreement

If a family can provide evidence satisfactory to OCHA that the threshold applicable to the family's debt would impose an undue hardship, OCHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, OCHA will consider all relevant information, including the following:

- The amount owed by the family to OCHA
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family's control
- The family's current and potential income and expenses
- The family's current family share, as calculated under 24 CFR 982.515 The family's history of meeting its financial responsibilities

#### **Execution of the Agreement**

Any repayment agreement between OCHA and a family must be signed and dated by OCHA and by the head of household and spouse/co-head (if applicable).

#### *Due Dates*

All payments are due by the close of business on the 1st day of the month and are considered late if not received by the 5<sup>th</sup> of the month.

#### *Late or Missed Payments*

If a payment is not received by the end of the calendar day on the 5<sup>th</sup> day of the month, and prior approval for the missed payment has not been given by OCHA, OCHA will send the family a delinquency warning notice giving the family 15 calendar days to make the late payment. If the payment is not received by the due

date on the delinquency warning notice, it will be considered a breach of the agreement and OCHA may terminate assistance in accordance with the policies in Chapter 12.

If a family receives two (2) delinquency notices for unexcused late payments during the term of the repayment agreement, the repayment agreement will be considered in default, and OCHA will terminate assistance in accordance with the policies in Chapter 12.

### ***No Offer of Repayment Agreement***

OCHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the family had a repayment agreement in the past for failure to report income, or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

### **Repayment Agreements Involving Improper Payments**

Notice PIH 2018-18 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which OCHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to OCHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

## **PART V: MANAGEMENT ASSESSMENT (SEMAP)**

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure Public Housing Agency (PHA) performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

### **16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

OCHA will submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by board action and signed by OCHA’s executive director.

OCHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of OCHA’s SEMAP certification, HUD will rate OCHA’s performance under each SEMAP indicator in accordance with program requirements.

#### **HUD Verification Method**

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. OCHA or the Independent Auditor will select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify OCHA’s certification on the indicator due a failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

### **16-V.C. SEMAP INDICATORS [24 CFR 985.3 AND FORM HUD-52648]**

OCHA will provide current SEMAP indicators and performance scores to the public upon request.

## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

OCHA will maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, OCHA will ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. RECORD RETENTION [24 CFR 982.158, 24 CFR 908.101]**

During the term of each assisted lease, and for at least three years thereafter, OCHA will keep:

- A copy of the executed lease.
- The HAP contract.
- The application from the family.

In addition, OCHA will keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants.
- An application from each ineligible family and notice that the applicant is not eligible.
- HUD-required reports.
- Unit inspection reports.
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting OCHA budget and financial statements for the program.
- Records to document the basis for OCHA's determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract).
- Other records specified by HUD.

OCHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

OCHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period not to exceed three years from the EOP date [Notice PIH 2018-18].

Notice PIH 2014-20 requires PHA's to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule. OCHA will keep the above records, and any records related to VAWA for at least three years.

OCHA will keep confidential records of all emergency transfer requests by victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking under OCHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D. Retention of Documents.

## **16-VI.C. RECORDS MANAGEMENT**

All applicant and participant information will be kept in a secure location and access will be limited to authorized OCHA staff.

OCHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886-A]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886-A, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or OCHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

OCHA will adopt and implement EIV security procedures required by HUD.

### **Criminal Records**

OCHA may only disclose the criminal conviction records received from a law enforcement agency to officers or employees of OCHA, or to authorized representatives of OCHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

OCHA established and implemented a system of records management that ensures that any criminal record received by OCHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to OCHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

OCHA established and implemented a system of records management that ensures that any sex offender registration information received by OCHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to OCHA action without institution of a challenge or final disposition of any such litigation. However, a record of screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information or is obtained by OCHA other than under 24 CFR 5.905.

### **Medical/Disability Records**

OCHA will not inquire about a person's diagnosis or details of treatment for a disability or medical condition.

**Documentation of Domestic Violence, Dating Violence, or Stalking**

For requirements and OCHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking see section 16-IX.E.

## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-VII.A. OVERVIEW**

OCHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV program assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that OCHA is subject to.

### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e); Notice PIH 2017-13]**

OCHA will report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

### **16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

OCHA will continue to coordinate with the OC Health Care Agency (HCA), to identify children less than 6 years old with an identified environmental intervention blood lead level who reside in assisted housing units.

OCHA coordinates with HCA to compare addresses of assisted units with addresses of properties where environmental intervention blood lead level children have been identified. If a match occurs, OCHA will carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

HCV program regulations allow OCHA to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding will also impact OCHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology that OCHA will use to determine whether or not there is sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

OCHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing OCHA's annual budget authority to the annual total HAP needs.

Program management will monitor this on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, OCHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families.

If the total annual HAP needs equal or exceed the annual budget authority, or if OCHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, OCHA will be considered to have insufficient funding.

## **PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, AND CONFIDENTIALITY**

### **16-IX.A. OVERVIEW**

The Violence against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and OCHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and OCHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking”; and 12-II.F, “Termination Notice.”

### **16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]**

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
  - The term *domestic violence* includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power or control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
    - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim.
    - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner.
    - A person with whom the victim shares a child in common.

- A person who commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction. The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
  - Restrict a person's access to money, assets, credit, or financial information
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent.
- The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
  - Internet enabled devices
  - Online spaces and platforms
  - Computers
  - Mobile devices
  - Cameras and imaging programs
  - Apps
  - Location tracking devices
  - Communication technologies
  - Any other emergency technologies
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

### **16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]**

#### **Notification to Public**

OCHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

OCHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

- A summary of the rights and protections provided by VAWA to HCV program applicants and participants who are or have been victims of domestic violence, Dating Violence, Sexual Assault, or Stalking, or Human Trafficking.
- An explanation of the documentation that OCHA may require from an individual who claims

the protections provided by VAWA.

- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking , or Human Trafficking.
- A statement of OCHA’s obligation to keep confidential any information that it receives from a victim unless (a) OCHA has the victim’s written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information.
- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787- 3224 (TTY) (included in Exhibits 16-1 and 16-2).
- Contact information for local victim advocacy groups or service providers.

#### **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

PHAs are required to inform program participants of their rights under VAWA, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as participants, PHAs may elect to provide the same information to applicants.

OCHA will provide all participants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination. OCHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

The VAWA information provided to applicants and participants will consist of the notice and a copy of form HUD-5380, Certification of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.

#### **16-IX.D. DOCUMENTATION [24 CFR 5.2007]**

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. OCHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy OCHA’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1. A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
2. A federal, state, tribal, territorial, or local police report or court record, or an administrative record.
3. Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, human trafficking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the

person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

OCHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [FR Notice 11/16/16].

Any request for documentation of domestic violence, dating violence, sexual assault, or stalking, or human trafficking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline. OCHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by OCHA will be in writing.

### **Conflicting Documentation [24 CFR 5.2007(e), Notice PIH 2017-08]**

In cases where OCHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, OCHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). OCHA will honor any court orders issued to protect the victim or to address the distribution of property.

If presented with conflicting certification documents (two or more forms HUD-5382) from members of the same household, OCHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

OCHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

If OCHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, OCHA will document acceptance of the statement or evidence in the individual's file.

### **Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, OCHA will provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as OCHA may allow, OCHA may deny relief for protection under VAWA.

### **16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to OCHA regarding domestic violence, dating violence, sexual assault, stalking, or human trafficking, including the fact that an individual is a victim of such violence or stalking, will be retained in confidence. This means that OCHA (1) may not enter the information into any shared database,

(2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an

eviction proceeding, or (c) otherwise required by applicable law.

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

## Chapter 17

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

This chapter describes HUD regulations and OCHA policies relate to the project-based voucher (PBV) program in nine parts:

##### Part I: General Requirements

This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

##### Part II: PBV Owner Proposals

This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors OCHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

##### Part III: Dwelling Units

This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

##### Part IV: Rehabilitated and Newly Constructed Units

This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

##### Part V: Housing Assistance Payments Contract

This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at OCHA's discretion.

##### Part VI: Selection of PBV Program Participants

This part describes the requirements and policies governing how OCHA and the owner will select a family to receive PBV assistance.

##### Part VII: Occupancy

This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

##### Part VIII: Determining Rent to Owner

This part describes how the initial rent to owner is determined, and how rent will be re-determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner

This part describes the types of payments owners may receive under this program.

## PART I: GENERAL REQUIREMENTS

### 17-I.A. OVERVIEW [24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]

OCHA will operate a PBV program that is consistent with OCHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

OCHA's project-based voucher program may use budget authority for up to 50 percent of annual turnover units of its Housing Choice Voucher Program voucher allocations for project-based assistance not to exceed a maximum project-based voucher program size of 20 percent of OCHA's authorized units (plus an additional 10 percent for units meeting certain criteria described below in 17-I.C). OCHA may limit or discontinue issuance of project-based vouchers at its discretion.

#### Exemption for Tenant Protection Vouchers

If OCHA is awarded Tenant Protection Vouchers from HUD, OCHA may exceed the annual limitation for project-based vouchers if OCHA determines this is warranted to minimize displacement of tenants and to retain long term affordability of the impacted units.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, OCHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, OCHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether OCHA has vouchers available for project-basing [FR Notice 1/18/17].

### 17-I.B. PBV DEFINITIONS [24 CFR 983.3]

The following terms apply to the PBV program and are used throughout this chapter:

*Excepted units* are units in a project not counted toward the project cap because they exclusively serve or are made available to certain families in accordance with 24 CFR 983.54(c)(2).

*Excluded units* are units in a project not counted toward the program cap or project cap because they meet certain criteria in accordance with 24 CFR 983.59.

*Existing housing* is a project that meets the following criteria:

All the proposed contract units in the project either fully comply or substantially comply with housing quality standards on the proposal or project selection date, as determined per 24 CFR 983.103(a). (The units must fully comply with housing quality standards at the time required by 24 CFR 983.103(c). The units substantially comply with housing quality standards if:

- The units only require repairs to current components or replacement of equipment and/or materials by items of substantially the same kind to correct deficiencies; and
- The PHA determines all deficiencies can reasonably be corrected within a 30-day period, taking into consideration the totality of the deficiencies in the project.
- The PHA determines the project is not reasonably expected to require substantial improvement and the owner certifies it has no plans to undertake substantial improvement from the proposal submission date (for projects subject to competitive selection) or the

project selection date (for projects excepted from competitive selection) through the first two years of the HAP contract.

- The following units do not qualify as existing housing:
- Units for which rehabilitation or new construction began after proposal submission or the date of board resolution but prior to the effective date of an AHAP (if applicable); and
- Units that were newly constructed or rehabilitated in violation of program requirements.

An independent entity is either:

- The unit of general local government; however, if the PHA itself is the unit of general local government or an agency of such government, then only the next level of general local government (or an agency of such government) or higher may serve as the independent entity; or
- A HUD-approved entity that is autonomous and recognized under state law as a separate legal entity from the PHA. The entity must not be connected financially (except regarding compensation for services performed for PHA-owned units) or in any other manner that could result in the PHA improperly influencing the entity.

An *in-place family* is a family residing in a proposed contract unit on the proposal or project selection date.

*Newly constructed housing* is a project containing housing units that do not exist on the proposal or project selection date and are developed after the date of selection for use under the PBV program.

A *PHA-owned unit* is a dwelling unit in a project that is:

- Owned by the PHA (including having a controlling interest in the entity that owns the project);
- Owned by an entity wholly controlled by the PHA; or
- Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

A *controlling interest* is:

- Holding more than 50 percent of the stock of any corporation.
- Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a nonprofit corporation);
- Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;
- Holding more than 50 percent of all managing member interests in an LLC;
- Holding more than 50 percent of all general partner interests in a partnership; or
- Equivalent levels of control in other ownership structures.

A *project* can be a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. “Contiguous” in this definition includes “adjacent to,” as well as touching along a boundary or a point. A PHA may, in its administrative plan, establish the circumstances under which it will define a project as only one of the following: a single

building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

*A qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Income (AMI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Rehabilitated housing* is a project which is developed for use under the PBV program, in which all proposed contract units exist on the proposal or project selection date, but which does not qualify as existing housing.

*Substantial improvement* is one of the following activities undertaken at a time beginning from the proposal submission date (for projects subject to competitive selection) or from the project selection date (for projects excepted from competitive selection), or undertaken during the term of the PBV HAP contract:

- Remodeling that alters the nature or type of housing units in a project;
- Reconstruction; or
- A substantial improvement in the quality or kind of equipment and materials. The replacement of equipment and/or materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does not constitute substantial improvement.

#### **17-I.C. MAXIMUM NUMBER OF PBV UNITS (PERCENTAGE LIMITATION) [24 CFR 983.6]**

##### **Program Cap**

If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher Annual Contributions Contract (ACC). Except for certain units discussed below, a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units, as adjusted, at the time of commitment, with the ability to project-base an additional 10 percent of units that meet certain requirements. An analysis of impact must be conducted if a PHA is project-basing 50 percent or more of the PHA's authorized voucher units.

All PBV units which OCHA has selected (from the time of the proposal or project selection date) or which are under an Agreement to Enter into a HAP Contract (AHAP) or HAP contract for PBV assistance count toward the 20 percent maximum or increased cap. OCHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC. Appendix I of Notice PIH 2017-21 contains a sample PBV program cap calculation worksheet. If PBV units are already selected for project-based assistance either under an AHAP or a HAP contract, OCHA is not required to reduce the number of units if the number of authorized units is subsequently reduced.

##### **Increased Cap [24 CFR 983.6(d)]**

OCHA may project-base an additional 10 percent of its authorized voucher units above the 20 percent program limit, provided the units meet requirements outlined in 24 CFR 983.6(d)(1) or (2). The units may be distributed among one, all, or a combination of the categories described below, as long as the total number of units does not exceed the 10 percent cap. The PBV HAP contract must specify, and the owner must set aside, the number of units meeting the conditions to qualify for the increased program cap. To qualify for the increased program cap, the unit

must be occupied by the type of family specified in the applicable paragraph below.

For units under a HAP contract that was first executed on or after April 18, 2017, or added on or after that date to a current HAP contract entered into prior to April 19, 2017, units qualify under the increased program cap if the units meet one or more of the conditions below [24 CFR 983.6(d)(1)]:

- The units are specifically made available to house individuals and families that meet the definition of *homeless* under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- A family qualifies if they were homeless at the time the family first occupies the unit.
- The units are specifically made available to house families that are comprised of or include a veteran at the time the family first occupies a unit.
- A *veteran* is person who served in the active military, naval, air, or space service, and who was discharged or released therefrom.
- The units provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- A disabled or elderly member of the family must be eligible for one or more of the supportive services at the time the family first occupies the unit. The member of the family may choose not to participate in the services.

*Supportive housing* means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing.

- Such supportive services need not be provided by the owner or onsite but must be reasonably available to the families receiving PBV assistance in the project.
- The PHA's administrative plan must describe the type and availability of supportive services the PHA will consider as qualifying for the 10 percent increased cap.
- The units are located in areas where vouchers are difficult to use.
- The units replace, on a different site, units listed in [24 CFR 983.59\(b\)\(1\)](#) and [\(2\)](#) for which the PHA had authority under [24 CFR 983.59](#) to commit PBV assistance on the original site without the units counting toward the program cap or project cap.

The increased program cap also applies to units that are part of a HAP contract executed on or after December 27, 2020, or are added on or after that date to any current HAP contract, including a contract entered into prior to December 27, 2020, and meet the following requirements [24 CFR 983.6(d)(2)]:

- The units are exclusively made available to eligible youth receiving Family Unification Program (FUP) or Foster Youth to Independence (FYI) assistance; and
- If the units exclusively made available to eligible youth use FUP assistance that is normally available for eligible families and youth, the PHA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth) and amends its administrative plan to specify that FUP PBV assistance is solely for eligible youth.

## **17-I.D. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT [24 CFR 983.54]**

### **Project Cap [24 CFR 983.54(a)]**

In general, OCHA may not select a proposal for units in a project or enter into an AHAP or a HAP contract to provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted, as adjusted) in the project.

### **Higher Project Cap [24 CFR 983.54(b)]**

OCHA may provide PBV assistance to the greater of 25 units or 40 percent of the number of dwelling units (assisted and unassisted, as adjusted) in the project if the project is located in an area where vouchers are difficult to use [24 CFR 983.54(b)]. An area where a voucher is difficult to use is defined as:

- A census tract with a poverty rate of 20 percent or less, as determined by HUD;
- A ZIP code area where the rental vacancy rate is less than 4 percent, as determined by HUD;
- or
- A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area or county FMR.

### **Exceptions to the Project Cap [24 CFR 983.54(c)]**

Certain units are removed from the number of dwelling units for purposes of calculating the project cap. These are known as *excepted units*, which are defined as units in a project not counted toward the project cap because they exclusively service or are made available to certain families.

OCHA determines the number of units in the project for which OCHA will provide project-based assistance, including whether and how many units will be excepted. The PBV HAP contract must specify, and the owner must set aside, the number of excepted units made available for occupancy by families who qualify for the exception. For a unit to be considered excepted, it must be occupied by a family who qualifies for the exception.

Which units are considered excepted differs depending on when the HAP contract was executed. Contracts executed prior to April 18, 2017, follow the “old” statutory PBV requirements for excepted units. Projects where the HAP contract was executed on or after April 18, 2017, follow new requirements. In this case, PBV units are not counted toward the project cap if the units are:

- Exclusively for elderly families;
- Exclusively made available to eligible youth receiving FUP or FYI assistance; or
- For households eligible for supportive services available to all families receiving PBV assistance in the project.

A project is not limited to a single exception category but may include excepted units from any of the exception categories. OCHA may have excepted units in certain PBV projects.

### **Units that No Longer Qualify as Excepted Units or Units under the Increased Program Cap [24 CFR 983.262(b)]**

In order to qualify as either excepted units or units under the increased program cap, units must be occupied by a family that meets the exception criteria applicable to the unit. Once the family vacates the unit, OCHA will select a new family from the waiting list via an admission preference, and the unit must be made available to and occupied by a family that meets the applicable exception.

If a unit is no longer qualified due to circumstances beyond the control of the family (e.g., death

of an elderly family member or long-term permanent hospitalization or nursing care), the unit may continue to count as an excepted unit or unit on the increased program cap as long as the family resides in the unit. However, the requirements on wrong-sized units apply.

### **17-I.E. UNITS NOT SUBJECT TO THE PBV PROGRAM CAP OR PROJECT CAP [FR Notice 1/18/17 and 24 CFR 983.59]**

For HAP contracts that first became effective on or after April 18, 2017, OCHA may commit project-based assistance to units that meet the requirements below without the units counting toward the program cap (including the 10 percent exception) or project cap. These are known as *excluded units* and fall into two different categories:

- **Existing or Rehabilitation Units:** In the five years prior to the request for proposals (RFP) or the proposal or project selection date (in the case of selection without RFP), these units fall into one of the categories described below, provided that the units are removed from all categories prior to the effective date of the HAP contract. These units include units that received one of the following forms of HUD assistance:
  - Public Housing Capital or Operating Funds;
  - Project-Based Rental Assistance (Section 8), including units assisted under Section 8 Moderate Rehabilitation (Mod Rehab) and Mod Rehab Single-Room Occupancy (SRO) programs;
  - Housing for Elderly (Section 202);
  - Housing for Persons with Disabilities (Section 811);
  - Rental Assistance Program (RAP) (Section 236(f)(2) of the National Housing Act); or Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments of 1978).
- Or the units have been subject to a federally required rent restriction under one of the following programs:
  - The Low-Income Housing Tax Credit program ([26 U.S.C. 42](#));
  - Section 515 Rural Rental Housing Loans ([42 U.S.C. 1485](#)); or
  - The following HUD programs:
    - Section 236;
    - Section 221(d)(3) Below Market Interest Rate;
    - Housing For the Elderly (Section 202 of the Housing Act of 1959);
    - Housing for Persons with Disabilities (Section 811 of the Cranston-Gonzalez National Affordable Housing Act);
    - Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments Act of 1978); or
    - Any other program identified by HUD through Federal Register notice subject to public comment.
- **Replacement Units:** Newly constructed units developed under the PBV program are also considered excluded units if the primary purpose of the newly constructed units is or was to replace units that meet the criteria listed above. The newly constructed unit must be located on the same site as the unit it is replacing; however, an expansion of or

modification to the prior project's site boundaries as a result of the design of the newly constructed project is acceptable as long as a majority of the replacement units are built back on the site of the original project and any replacement units that are not located on the existing site are part of a project that shares a common border with, are across a public right of way from, or touch that site. In addition, in order for the replacement units to be excluded from the program and project caps, one of the following must be true:

- Former residents of the original project must be provided with a selection preference that provides the residents with the right of first occupancy at the PBV newly constructed project when it is ready for occupancy; or
- Prior to the demolition of the original project, the PBV newly constructed project must have been identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

#### **17-I.F. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, OCHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

#### **17-I.G. RELOCATION REQUIREMENTS [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) [42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of OCHA to ensure the owner complies with these requirements.

#### **17-I.H. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

OCHA will comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, OCHA will comply with PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

## **PART II: PBV OWNER PROPOSALS**

### **17-II.A. OVERVIEW**

OCHA will describe the procedures for owner submission of PBV proposals and for selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, OCHA will determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.52 and 983.53], complies with the cap on the number of PBV units per project [24 CFR 983.54], and meets the site selection standards [24 CFR 983.55].

### **17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]**

OCHA will select proposals that are solicited by a Notice of Funding Availability (NOFA) or were previously selected based on a NOFA competition by the OC Community Resources (OCCR) Housing Development Division (HCD) or successor unit. This may also include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

#### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(d)]**

##### OCHA Request for Proposals for Rehabilitated and Newly Constructed Units

OCHA and/or HCD will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in newspapers of general circulation (to be identified at the time of publication).

In addition, OCHA/HCD will post the RFP and proposal submission and rating and ranking procedures on its website until such time as the application period is closed.

OCHA/HCD will publish its advertisement for at least one day per week for three consecutive weeks. The advertisement will specify the number of units OCHA estimates that it will be able to assist under the available funding.

Proposals will be due in OCHA offices as specified in the publication notice. In order for the proposal to be considered, the owner must submit the proposal to OCHA or HCD as directed by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

OCHA and/or HCD will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Extent to which the project furthers OCHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided onsite or in the immediate area for occupants of the property; and
- Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons

with disabilities or families needing other services, OCHA will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

### **OCHA Requests for Proposals for Existing Housing Units**

Proposals (RFP) for existing housing will be advertised in newspapers of general circulation (to be identified at the time of publication).

In addition, OCHA and/or HCD will post the notice inviting such proposal submission and the rating and ranking procedures on its website.

OCHA/HCD will publish its advertisement for at least one day per week for three consecutive weeks. The advertisement will specify the number of units to be assisted under the funding OCHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
- Extent to which the project furthers OCHA's goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, extent to which services for special populations are provided onsite or in the immediate area for occupants of the property; and
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

### **OCHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program**

OCHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

In addition to, or in place of advertising, OCHA may also directly contact specific owners that have already been selected for federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come, first-served basis. OCHA will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers OCHA goal of deconcentrating poverty and expanding housing and economic opportunities; and
- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

### **HUD Offer of Tenant Protection or Enhanced Vouchers to OCHA for Project-Based Use**

OCHA will comply with HUD PIH notices including Notice PIH 2011-54 and Notice PIH 2013-27 if offered Tenant Protection or Enhanced Vouchers for project-based use.

## 17-II.C. PROJECT OR PROPOSAL SELECTION [24 CFR 983.51(f) and 24 CFR 983.153(c)(3)]

### **Inspections Required Prior to Project or Proposal Selection [24 CFR 983.51(e)]**

OCHA must examine the proposed site before the proposal or project selection date to determine whether the site complies with the site selection standards outlined in 24 CFR 983.55.

OCHA may execute a HAP contract for existing housing if:

- All proposed contract units in the project fully or substantially comply with housing quality standards on the proposal or project selection date, which OCHA must determine via inspection;
- The project meets the environmental review requirements at 24 CFR 983.56, if applicable; and
- The project meets the initial inspection requirements in accordance with 24 CFR 983.103(c).

### **OCHA Written Notice of Proposal or Project Selection [24 CFR 983.51(f) and (h) and 24 CFR 983.153(c)(3)]**

Within 15 business days of OCHA and/or HCD making the selection, OCHA/HCD will notify the selected owner in writing of the owner's selection for the PBV program. OCHA/HCD will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

When an environmental review is required, if the review has not been conducted prior to the proposal selection date, OCHA's written notice of proposal selection will state that the selection is subject to completion of a favorable environmental review and that the proposal may be rejected based on the results of the environmental review.

For any project to which labor standards apply, OCHA's written notice will state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

OCHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers OCHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. OCHA will also post the notice of owner selection on its website.

OCHA/HCD will make available to any interested party its rating and ranking sheets and documents that identify the basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. OCHA/HCD will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

OCHA/HCD will make these documents available for review at its offices during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

The owner must submit a written response to OCHA accepting the terms and requirements stated in the notice within 15 business days of OCHA's written notification to the owner.

## **17-II.D. HOUSING TYPE [24 CFR 983.52]**

OCHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of OCHA selection, the units substantially comply with housing quality standards. Units for which new construction or rehabilitation was started after the date of proposal submission but prior to the effective date of the AHAP do not qualify as existing housing.

## **17-II.E. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

### **Ineligible Housing Types [24 CFR 983.52]**

OCHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. Manufactured homes are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own fee title to the real property (land) on which the manufactured home is located.

In addition, OCHA may not attach or pay PBV assistance for a unit occupied by an owner and OCHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

### **Subsidized Housing [24 CFR 983.53]**

OCHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, [42 U.S.C. 1490a](#) (a Rural Housing Service Program). However, OCHA may attach assistance for a unit subsidized with Section 515 interest reduction payments ([42 U.S.C. 1485](#));
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or

OCHA in accordance with HUD requirements. For this purpose, *housing subsidy* does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

**17-II.F. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.11, 24 CFR 983.153(b), 24 CFR 4.13, Notice PIH 2013-11, and FR Notice 3/13/23]**

OCHA may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP). Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When OCHA selects a new construction or rehabilitation project, OCHA/HCD will require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 3/13/23 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in OCHA/HCD's jurisdiction performs the subsidy layering review. OCHA will request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If HUD completes the SLR and determines the PBV assistance complies with all requirements, HUD will notify OCHA/HCD in writing. If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify OCHA/HCD. OCHA/HCD may proceed to execute an AHAP at that time if the environmental approval is received.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements [24 CFR 983.11(d)].

For newly constructed or rehabilitated housing under a HAP contract, the owner must disclose to OCHA information regarding any additional related assistance from the federal government, a state, or a unit of general local government, or any agency or instrumentality thereof. Related assistance includes but is not limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance. If the additional related assistance meets certain threshold and other requirements established by HUD, a subsidy layering review may be required to determine if it would result in excess public assistance to the project. OCHA must adjust the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

## **17-II.G. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

### **25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 1/18/17, and Notice PIH 2017-21]**

In general, OCHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

### **Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]**

As of April 18, 2017, units are not counted against the 25 percent per project cap if:

- If the units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
  - If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17]

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA (HAP contracts executed prior to April 18, 2017) may continue to use the former exceptions and may renew their HAP contracts under the old requirements, unless OCHA/HCD and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

### **Supportive Services**

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. As of April 18, 2017, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible, OCHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

### **Promoting Partially Assisted Buildings**

OCHA may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building.

## **17-II.H. SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and Site and Neighborhood Standards [24 CFR 983.55(b)]**

OCHA/HCD may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless OCHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with OCHA's Annual Plan under 24 CFR 903 and OCHA's administrative plan.

In addition, prior to selecting a proposal, OCHA will determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the housing quality standards site and neighborhood standards at 24 CFR 5.703.

It is OCHA's goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal, OCHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

#### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.55(d)]**

OCHA will not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

#### **New Construction Site and Neighborhood Standards [24 CFR 983.55(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless OCHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area;
- The site must promote a greater choice of housing opportunities and avoid undue

concentration of assisted persons in areas containing a high proportion of low-income persons;

- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **17-III. ENVIRONMENTAL REVIEW [24 CFR 983.56]**

OCHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). OCHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

For projects or proposals that were selected in accordance with the site selection standards at [24 CFR 983.55](#) in effect on or after June 6, 2024, no environmental review is required to be undertaken before entering into a HAP contract for existing housing, except to the extent a Federal environmental review is required by law or regulation relating to funding other than PBV.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

OCHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and OCHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

The responsible entity has determined that the activities to be undertaken are exempt under 24 CFR 85.34(a) or categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b);

The responsible entity has completed the environmental review procedures required by 24 CFR Part 58, and HUD has approved OCHA's Request for Release of Funds and Certification (form HUD-7015.15)

HUD approves the Request for Release of Funds and Certification by issuing a Letter to Proceed or form HUD-7015.16, thereby authorizing OCHA to execute an AHAP or HAP contract, as applicable; or

HUD has performed an environmental review under 24 CFR Part 50 and has notified OCHA in writing of environmental clearance

OCHA will supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. OCHA will require the owner to carry

out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

## PART III: DWELLING UNITS

### 17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### 17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

The housing quality standards for the tenant-based program, including those for special housing types, generally apply to the PBV program.

The owner is required to maintain and operate the contract units and premises in accordance with housing quality standards, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

### Lead-based Paint [24 CFR 983.101(c)]

The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

### 17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [24 CFR 983.102]

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. OCHA will ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

### 17-III.D. INSPECTING UNITS

#### Pre-selection Inspection [24 CFR 983.103]

OCHA HCD, and/or another qualified person or entity will examine the proposed site before the proposal selection date. If the units to be assisted already exist, OCHA will inspect all the units before the proposal selection date and must determine whether the units substantially comply with housing quality standards. To qualify as existing housing, units must substantially comply with housing quality standards on the proposal selection date. However, OCHA will not execute the HAP contract until the units fully comply with housing quality standards.

#### Pre-selection Inspection [24 CFR 983.103(a)]

If the units to be assisted already exist, the OCHA must inspect all the units before the proposal selection date and must determine if the project meets the definition of *existing housing*. If the

project is existing housing, OCHA may not execute the HAP contract until the units meet the initial inspection requirements in accordance with 24 CFR 983.103(c).

**Pre-HAP Contract Inspections [24 CFR 983.103(b), 24 CFR 983.155, 24 CFR 983.103(c)]**

OCHA must inspect each contract unit before execution of the HAP contract. OCHA will not provide assistance on behalf of the family until the unit fully complies with housing quality standards.

**Turnover Inspections [24 CFR 983.103(d)]**

Before providing assistance to a new family in a contract unit, OCHA or another qualified person or entity will inspect the unit. OCHA will not provide assistance on behalf of the family until the unit fully complies with housing quality standards.

**Annual/Biennial Inspections [24 CFR 983.103(e); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, OCHA or another qualified person or entity will inspect a random sample, consisting of at least 20 percent of the contract units in each building, or may inspect 100% to determine if the contract units and the premises are maintained in accordance with housing quality standards.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, OCHA or another qualified person or entity will reinspect 100 percent of the contract units in the building.

**Other Inspections [24 CFR 983.103(f)]**

OCHA or another qualified person or entity will inspect contract units whenever needed to determine that the contract units comply with housing quality standards and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. OCHA will take into account complaints and any other information coming to its attention in scheduling inspections.

OCHA or another qualified person or entity will conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected a housing quality standard violation and will conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of housing quality standards.

In conducting PHA supervisory quality control housing quality standard inspections, OCHA will include a representative sample of both tenant-based and project-based units.

## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

### **17-IV.A. OVERVIEW [24 CFR 983.151 and 983.152]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

### **17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT (AHAP) [24 CFR 983.154]**

In order to offer PBV assistance in rehabilitated or newly constructed units, OCHA will enter into an agreement to enter into HAP contract (Agreement) with the owner of the property.

The Agreement will be in the form required by HUD [24 CFR 983.154(e)]. OCHA may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.154(d)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with housing quality standards, and OCHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, OCHA will enter into a HAP contract with the owner for the contract units.

#### **Content of the Agreement [24 CFR 983.154(e)]**

At a minimum, the Agreement will describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements will be included in the description of work to be performed under the Agreement;
- A description of any required work item if the requirement to install broadband infrastructure applies;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description will include the rehabilitation work write up and, where determined necessary by OCHA and/or HCD, specifications and plans. For new construction units, the description will include the working drawings and specifications; and
- Any additional requirements for quality, architecture, or design over and above housing quality standards.

## **Execution of the Agreement [FR Notice 11/24/08]**

The Agreement will be executed promptly after notice of proposal selection to the selected owner. OCHA will not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, OCHA will not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, OCHA will not enter into the Agreement until the environmental review is completed and OCHA has received environmental approval.

However, OCHA does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if the applicable state or local agency has conducted such a review.

Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

OCHA will enter into the Agreement with the owner within 30 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

### **17-IV.C. LIMITED PHA DISCRETION TO EXECUTE AHAP AFTER COMMENCEMENT OF DEVELOPMENT ACTIVITY [24 CFR 983.154(f)]**

Consistent with HUD's PBV regulations, OCHA may, in limited and exceptional circumstances, execute an Agreement to Enter into a HAP Contract (AHAP) after construction or rehabilitation has commenced, provided all requirements of 24 CFR part 983 are met. This discretionary flexibility is intended to advance deconcentration of poverty and access to opportunities for families, and it does not create any entitlement for owners or developers.

OCHA will only use this flexibility when the owner or developer can document compliance with all applicable development requirements in 24 CFR 983.153 from the date of proposal submission. Prior to executing any AHAP, OCHA must confirm such compliance and must meet the notice requirement at 24 CFR 983.153(c)(3) for projects subject to labor standards.

Regardless of timing of construction commencement, no assistance will be attached to a project and no AHAP will be executed until any required subsidy layering review (SLR) is completed in accordance with HUD requirements and environmental review requirements are satisfied

#### **OCHA Threshold Criteria**

OCHA will consider executing an AHAP after commencement of development only if all of the following are met:

1. Master Planned Community Context: The project is within a master planned community, and the developer does not have full control over the entire property/site or the overall development timeline of the master planned community.
2. Scarcity of Nearby Development: There is no other project with OCHA PBV assistance attached within a three-mile radius of the project.
3. Deconcentration and Opportunity: The project advances deconcentration of poverty and access to opportunity consistent with PBV site selection standards. The project site is amenity-rich, with access to public transportation, employment centers, shopping, healthcare, education, parks, and municipal services.
4. Lower-Poverty Area: The project is located in a census tract with a poverty rate lower than OCHA's principal operating area benchmark.

5. Population Need: The project demonstrably serves a population of need in that specific community.

### **Mandatory Compliance Items**

Environmental Review Requirements, Subsidy Layering Review, Labor Standards (Davis-Bacon), Equal Opportunity and Accessibility, Broadband Infrastructure, and Owner Disclosures must be met as per HUD regulations, 24 CFR 983.153.

### **Documentation and Timing**

The owner's request for AHAP-after-commencement consideration must document compliance with Section 983.153 from the relevant date and provide a sitting and amenities narrative and data demonstrating the thresholds mentioned above. OCHA will confirm compliance prior to executing any AHAP and will not execute if required SLR and environmental review are incomplete.

### **Sole Discretion; No Right or Expectation**

OCHA retains the sole right to approve or deny any request to use this flexibility for any reason, including developer's performance track record, financial viability, budget availability, market feasibility, zoning uncertainty, environmental or civil rights risks, compliance history, lack of supportive services, risk of undue concentration, misalignment with Affirmatively Furthering Fair Housing goals, and any other reason deemed in the best interest of program integrity and families served.

### **Consistency with OCHA Plan and HUD Regulations**

This subsection operates within the scope of OCHA's Administrative Plan and HUD's PBV regulations. Nothing herein waives any statutory or regulatory requirement, and where there is any conflict, HUD regulations control.

## **17-IV.D. CONDUCT OF DEVELOPMENT WORK**

### **Labor Standards [24 CFR 983.153(c)]**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors will pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. OCHA/HCD will monitor compliance with labor standards.

Further, these Davis-Bacon requirements apply to existing PBV units when the nature of any work to be performed either before the execution of the HAP contract or within 18-months after execution constitutes project development. Any development initiated on existing units within 18-months after the effective date of the HAP contract on projects with nine or more contract units triggers Davis-Bacon requirements.

The AHAP will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The addendum to the HAP contract, Form HUD-5679, also includes the required labor standards clauses.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. OCHA/HCD must monitor compliance with labor standards.

For any project to which labor standards apply, OCHA/HCD's written notice to the party that submitted the selected proposal or board resolution approving project-basing assistance at the specific project must state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable

prevailing wage determination.

Development activity is also subject to the federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964-1965 Comp., p. 339), 11625 (3 CFR, 1971-1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

#### **Accessibility [24 CFR 983.153(e)]**

As applicable, the design and construction requirement of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131-12134) and implementing regulations at 28 CFR Part 35, including 24 CFR 35.150 and 35.151, apply to development activity.

A description of any required work item resulting from these requirements must be included in the AHAP (if applicable) or HAP contract (if applicable).

#### **Broadband Infrastructure [24 CFR 983.153(f)]**

Any development activity that constitutes substantial rehabilitation (as defined by 24 CFR 5.100) of a building with more than four rental units and where the proposal or project selection date or the start of the development activity while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;
- The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or
- The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

#### **A description of any required work item resulting from this requirement must be included in the AHAP (if applicable) or HAP contract (if applicable). Owner Disclosure [24 CFR 983.153(g)]**

The Agreement and HAP contract will include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

#### **17-IV.E. COMPLETION OF HOUSING [24 CFR 983.155]**

The Agreement will specify the deadlines for completion of the housing, and the owner will develop and complete the housing in accordance with these deadlines. The Agreement will also specify the deadline for submission by the owner of the required evidence of completion.

#### **Evidence of Completion [24 CFR 983.155]**

At a minimum, the owner will submit the following evidence of completion in the form and manner required by OCHA/HCD:

- Owner certification that the work has been completed in accordance with housing quality standards and all requirements of the Agreement; and

- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.
- OCHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project.
- OCHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

**OCHA Acceptance of Completed Units [24 CFR 983.156(a) and (b)]**

Upon notice from the owner that the housing is completed, OCHA or another qualified person or entity will inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with housing quality standards and any additional requirements imposed under the Agreement. OCHA will also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, OCHA will not enter into the HAP contract.

If OCHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, OCHA will submit the HAP contract for execution by the owner and will then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW [24 CFR 983.202(a)]**

OCHA will enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract will be in the form required by HUD [24 CFR 983.202(a)].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR 983.203]**

The HAP contract will specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building.
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set-aside for occupancy by qualifying families; and
- The initial rent to owner for the first 12 months of the HAP contract term.

#### **Execution of the HAP Contract [24 CFR 983.204]**

OCHA will not enter into a HAP contract until each contract unit has been inspected and OCHA has determined that the unit complies with the housing quality standards. For existing housing, the HAP contract will be executed promptly after OCHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract will be executed after OCHA or another qualified person or entity has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

For existing housing, the HAP contract will be executed within 30 business days of OCHA determining that all units pass housing quality standards.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 30 business days of OCHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet housing quality standards, and the owner has submitted all required evidence of completion.

**Effective Date of the HAP Contract [24 CFR 983.204(d)]**

The effective date of the HAP contract must be on or after the date the HAP contract is executed. The HAP contract must be effective before the effective date of the first lease covering a contract unit occupied by an assisted family, and OCHA may not pay any housing assistance payment to the owner until the HAP contract is effective.

**Term of HAP Contract [24 CFR 982.205, FR Notice 1/18/17, and Notice PIH 2017-21]**

OCHA will enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years. The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At any time before expiration of the HAP contract, OCHA may extend the term of the contract for an additional term of up to 20 years if OCHA determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Subsequent extensions are subject to the same limitations. All extensions will be on the form and subject to the conditions prescribed by HUD at the time of the extension.

When determining whether or not to extend an expiring PBV contract, OCHA will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority;

- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

**Termination by OCHA [24 CFR 983.205(c)]**

The HAP contract will provide that the term of OCHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by OCHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, OCHA may terminate the HAP contract by notice to the owner. The termination will be implemented in accordance with HUD instructions.

If OCHA determines that the owner has breached the HAP contract, OCHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination. The provisions of 24 CFR 983.208 apply for HAP contract breaches involving failure to comply with housing quality standards. For any other contract termination due to breach, 24 CFR 983.206(b) on provision of tenant-based assistance applies.

**Termination by Owner [24 CFR 983.205(d)]**

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term,

the owner may terminate the HAP contract by giving notice to OCHA no fewer than 90 calendar days prior to the planned terminations, and families living in the contract units will be offered tenant-based assistance.

#### **Non-extension by Owner – Notice Requirements [24 CFR 983.206(a)]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify OCHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. The term *termination* for applicability of this notice requirement means the expiration of the HAP contract, termination of the HAP contract by agreement of OCHA and owner, or an owner's refusal to renew the HAP contract.

If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner and OCHA may agree to renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

#### **Termination or Expiration without Extensions – Required Provision of Tenant-Based Assistance [24 CFR 983.206(b)]**

Unless a termination or expiration without extension occurs due to a determination of insufficient funding or other extraordinary circumstances determined by HUD, upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher no fewer than 60 calendar days prior to the planned termination or expiration of the PBV HAP contract. However, OCHA is not required to issue the family a voucher if OCHA has offered the family an alternative housing option (e.g., an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher.

Tenant-based assistance would not begin until the owner's required notice period ends. OCHA must provide the family with a voucher and the family must also be given the option by OCHA and owner to remain in their unit with HCV tenant-based assistance subject to the following:

- The unit must comply with housing quality standards;
- OCHA must determine or have determined that the rent for the unit is reasonable;
- The family must pay its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard (the limitation at 24 CFR 982.508 regarding maximum family share at initial occupancy does not apply); and
- The owner may not refuse to initially lease a unit in the project to a family that elects to use their tenant-based assistance to remain in the same project, except where the owner will use the unit for a purpose other than a residential rental unit. The owner may not later terminate the tenancy of such a family, except for the following grounds:
  - The grounds in [24 CFR 982.310](#), except paragraphs [24 CFR 982.310\(d\)\(1\)\(iii\)](#) and [\(iv\)](#);
  - The owner's desire to use the unit for a purpose other than a residential rental unit; and
  - The owner's desire to renovate the unit, subject to the following:
    - The owner must consider whether a reasonable alternative to terminating the

lease exists. If a reasonable alternative exists, the owner must not terminate the lease. The owner must consider the following alternatives:

- Completing renovations without the family vacating the unit, if the renovations can be completed in a manner that does not result in life-threatening conditions, does not result in deficiencies under housing quality standards that are not corrected within 30 days, and is mutually agreeable to the owner and the family; and
- Temporarily relocating the family to complete the renovations, if the relocation and renovations can be completed within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month) and the family can be relocated to a location and in a manner mutually agreeable to the owner and the family;
- If the owner terminates the lease for renovation, the owner must make every reasonable effort to make available and lease the family another unit within the project that meets the tenant-based voucher program requirements; and
- If no other unit within the project is available for the family to lease during the renovation period or the family chooses to move from the project during the renovation period, the owner must make every reasonable effort to make available and lease the family a unit within the project upon completion of renovations.

The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

The voucher issued to the family is the voucher attached to its unit under the expiring or terminating PBV contract. Consequently, if the family vacates the contract unit following the issuance of the tenant-based voucher and prior to the contract termination or expiration date, the PHA must remove the unit from the PBV HAP contract at the time the family vacates the unit. The PBV HAP contract must provide that, if the units continue to be used for rental housing upon termination or expiration without extension of a PBV HAP contract, each assisted family may elect to use its tenant-based assistance to remain in the same project.

Remedies for Housing Quality Standards Violations [24 CFR 983.208]

***The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:***

OCHA will abate and terminate PBV HAP contracts for non-compliance with housing quality standards in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

***The following is applicable to HAP contracts executed or renewed June 6, 2024, or later.***

**Enforcement of Housing Quality Standards [24 CFR 983.208(b)]**

OCHA must vigorously enforce the owner's obligation to maintain contract units in accordance with housing quality standards. If the owner fails to maintain the dwelling unit in accordance

with housing quality standards, OCHA must take enforcement action. The unit is in noncompliance with housing quality standards if:

- OCHA or other inspector authorized by the state or local government determines the unit has housing quality standards deficiencies based upon an inspection;
- The agency or inspector notifies the owner in writing of the unit housing quality standards deficiencies; and
- The deficiencies are not remedied within the following timeframes:
  - For life-threatening deficiencies, the owner must correct the deficiency within 24 hours of notification;
  - For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable OCHA-approved extension).

In the case of a housing quality standards deficiency that OCHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, OCHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, OCHA may terminate assistance to a family because of housing quality standards breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.

OCHA will waive the owner's responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, to the extent the tenant can be held responsible for ensuring that the deficiencies are corrected: the tenant must take all necessary steps permissible under the lease and state and local law to remedy the deficiency. This may include paying the owner for the cost of the necessary repairs in accordance with the lease.

In the case of a housing quality standards deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, OCHA may permit the owner to undertake substantial improvement in accordance with 24 CFR 983.212. However, so long as the contract unit with deficiencies is occupied, OCHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

In the case of a project that is undergoing development activity after HAP contract execution, the remedies of 24 CFR 983.208(d) do not apply to units designated as unavailable for occupancy during the period of development activity in accordance with the rider. However, in the case of any contract unit with deficiencies that is occupied, OCHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

### **Family Obligation [24 CFR 983.208(c)]**

The family may be held responsible for a breach of housing quality standards caused by any of the following:

- Tenant-paid utilities not in service;
- Failure to provide or maintain appliances owned by the family; and

- Damage to the dwelling unit or premises caused by a household member or guest beyond ordinary wear and tear.

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

If OCHA has waived the owner's responsibility to remedy the violation, the following applies:

- If the housing quality standards breach caused by the family is life-threatening, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 24 hours of notification.
- For other family-caused deficiencies, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any PHA-approved extension).

If the family has caused a breach of the housing quality standards, OCHA must take prompt and vigorous action to enforce the family obligations. OCHA may terminate assistance for the family in accordance with 24 CFR 982.552.

### **PHA Remedies [24 CFR 983.208(d)]**

The remedies listed below apply when housing quality standards deficiencies are identified as the result of an inspection other than a pre-selection, initial, or turnover inspection. OCHA must identify in its administrative plan the conditions under which it will withhold HAP and the conditions under which it will abate HAP or terminate the HAP contract for units other than the unit with housing quality standards deficiencies.

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies housing quality standards failures, OCHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

OCHA will not withhold assistance payments upon notification to the owner of the deficiencies.

When life-threatening conditions are identified, OCHA will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of OCHA's notice.

When failures that are not life-threatening are identified, OCHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction.

If the owner is responsible for correcting the deficiency, the notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any OCHA-approved extension), the owner's HAP will be abated.

Likewise, if the family is responsible for correcting the deficiency, the notice will inform the family that if corrections are not made within the specified time frame (or any OCHA-approved extension, if applicable) the family's assistance will be terminated in accordance with OCHA policy (see Chapter 12).

### **HAP Withholding [24 CFR 983.208(d)(1)]**

OCHA will not withhold assistance payments upon notification to the owner of housing quality

standards deficiencies.

### **HAP Abatement [24 CFR 983.208(d)(2)]**

OCHA must abate the HAP, if the owner fails to make the repairs within the applicable cure period. OCHA may choose to abate payments for all units covered by the HAP contract due to a contract unit's noncompliance with the housing quality standards, even if some of the contract units continue to meet housing quality standards. In this case, OCHA must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days (or a reasonable longer period established by OCHA), OCHA will either terminate the HAP contract or remove the unit with deficiencies from the HAP contract, and any family residing in a unit that does not comply with housing quality standards will have to move if the family wishes to receive continued assistance.

The owner may not terminate the tenancy of any family due to the withholding or abatement of assistance.

OCHA will make all HAP abatements effective the first of the month following the expiration of the OCHA-specified correction period (including any extension).

OCHA will abate payments only for those contract units that do not meet housing quality standards.

OCHA will inspect abated units within five business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent.

### **Failure to Make Repairs**

If an owner fails to make required repairs within 60 days (or a reasonable longer period established by OCHA) of the notice of abatement, OCHA will either remove the unit from the HAP contract or terminate the HAP contract in its entirety. OCHA will issue the family whose unit will be removed or all families residing in contract units, if OCHA is terminating the HAP contract, a tenant-based voucher to move at least 30 days prior to the removal of the unit from the HAP contract or termination of the HAP contract. A family may elect to remain in the project if the project contains a unit that meets the requirements of that section, with priority given to families who will remain in the same unit if there are insufficient units available to accommodate all families that wish to remain. OCHA must give any family residing in a unit that is either removed from the HAP contract or for which the HAP contract is terminated due to a failure to correct housing quality standards deficiencies at least 90 days or a longer period as OCHA determines is reasonably necessary following the termination of the HAP contract or removal of the unit from the HAP contract to lease a unit with tenant-based assistance.

OCHA will issue a family whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame a voucher no later than 30 days prior to the termination of the HAP contract. The initial term of the voucher will be 120 calendar days. No briefing is required for these families.

In order to receive tenant-based assistance under the HCV program, the family must submit a Request for Tenancy Approval and proposed lease within the 120-day period, unless OCHA grants an extension. OCHA will follow the policies set forth in Chapter 5 on voucher extension and expiration.

## **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

### **Substitution of Contract Units [24 CFR 983.207]**

At OCHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, OCHA or another qualified person or entity will inspect the proposed unit, determine the reasonable rent for the unit and verify that the units existed at the time of HAP contract execution.

OCHA will add units to the contract on a case-by-case basis to ensure availability of affordable housing as long as the addition of units does not exceed allowable caps.

### **Addition of Contract Units [24 CFR 983.207(b)]**

At OCHA's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of OCHA's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

OCHA will consider adding contract units to the HAP contract when OCHA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.

### **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b)(2) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

### **17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with housing quality standards;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by OCHA, and the lease is in accordance with the HAP contract and HUD

requirements;

- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

## **17-V.F. ADDITIONAL HAP REQUIREMENTS**

### **Housing Quality and Design Requirements**

The owner is required to maintain and operate the contract units and premises in accordance with housing quality standards, including performance of ordinary and extraordinary maintenance. The owner will provide all the services, maintenance, equipment, and utilities specified in the HAP contract with OCHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration will be in accordance with the standard practice for the building as established by the owner.

OCHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. OCHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17-VI.A. OVERVIEW**

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

### **17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

OCHA may select families for the PBV program from those who are participants in OCHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined at the commencement of PBV assistance. For all others, eligibility for admission will be determined at the commencement of PBV assistance.

OCHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

#### **In-Place Families [24 CFR 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by OCHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family will be placed on OCHA's waiting list. Once the family's continued eligibility is determined (OCHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family be given an absolute selection preference and OCHA will refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

### **17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

OCHA may establish a separate waiting list for PBV units, or it may use the same waiting list for both tenant-based and PBV assistance. OCHA may also merge the PBV waiting list with a waiting list for other assisted housing programs. If OCHA chooses to offer a separate waiting list for PBV assistance, OCHA will offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

For Permanent Supportive Housing projects, OCHA may issue project-based vouchers based on referrals from the Orange County Coordinated Entry System (CES). If OCHA chooses to accept referrals from CES, OCHA will connect applicants who are listed on the tenant-based waiting list to the appropriate party for placement on the CES list.

OCHA will not establish separate site-based waiting lists nor owner-maintained waiting lists.

## **17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

### **Income Targeting [24 CFR 983.251(c)(9)]**

At least 75 percent of the families admitted to OCHA's tenant-based and project-based voucher programs during the fiscal year from the waiting list will be extremely low income families. The income targeting requirement applies to the total of admissions to both programs.

### **Units with Accessibility Features [24 CFR 983.251(c)(9)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, OCHA will first refer families who require such features to the owner.

### **Preferences [24 CFR 983.251(c)(3)]**

OCHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. OCHA will provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B above.

Although OCHA is prohibited from granting preferences to persons with a specific disability, OCHA may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project will be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If OCHA has projects with more than 25 percent of the units receiving project-based assistance because those projects include "excepted units" (units specifically made available for elderly or disabled families, or families receiving supportive services), OCHA will give preference to such families when referring families to these units.

## **17-VI.E. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 CFR 983.251(e)]**

If a family refuses OCHA's offer of PBV assistance or the owner rejects a family for admission to the owner's units, such refusal or rejection will not affect the family's position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 CFR 983.252(a) and (b)]**

#### ***Family Briefing***

When a family accepts an offer for PBV assistance and is selected as a tenant, OCHA will give the family an oral briefing. The briefing will include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, OCHA will provide a

briefing packet that explains how OCHA determines the total tenant payment for a family, the family obligations under the program, OCHA's subsidy standards, the family's right to move, and applicable fair housing information.

### ***Persons with Disabilities***

If an applicant family's head or spouse is disabled, OCHA will assure effective communication, in accordance with 24 CFR 8.6 and 28 CFR Part 35, subpart E, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, OCHA will have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

### ***Persons with Limited English Proficiency [24 CFR 983.252(d)]***

OCHA will take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964, HUD's implementing regulation at 24 CFR Part 1, Executive Order 13166 (see Chapter 2), and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732) or successor authority,

## **17-VI.F. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner will promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)]. The owner must provide a copy of the rejection notice to OCHA.

### **Leasing [24 CFR 983.252]**

During the term of the HAP contract, the owner will lease contract units to eligible families that are selected and referred from OCHA's waiting list. The contract unit leased to the family will be the appropriate size unit for the size of the family, based on OCHA's subsidy standards.

### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must notify OCHA in writing by email within 5 business days of learning about any vacancy or expected vacancy.

OCHA will make every reasonable effort to refer families to the owner within 15 business days of receiving such notice from the owner.

### **Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]**

If any contract units have been vacant for 120 days, OCHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. OCHA will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of OCHA's notice.

## **17-VI.G. TENANT SCREENING [24 CFR 983.255]**

### **OCHA Responsibility**

OCHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

OCHA will provide the owner with an applicant family's current and prior address (as shown in OCHA records) and the name and address (if known by OCHA) of the family's current landlord and any prior landlords.

OCHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the turnover housing quality standards inspection or before. OCHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors, except when prohibited by state or local law:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

## **PART VII: OCCUPANCY**

### **17-VII.A. OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by OCHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **17-VII.B. LEASE [24 CFR 983.256]**

The tenant will have legal capacity to enter a lease under state and local law. Legal capacity means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

#### **Form of Lease [24 CFR 983.256(b)]**

The tenant and the owner will enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease will be used for assisted tenants, except that the lease will include a HUD-required tenancy addendum. The tenancy addendum will include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a standard model lease.

OCHA may review the owner's lease form to determine if the lease complies with state and local law.

#### **Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit will specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

#### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease will state:

- The program tenancy requirements;
- The composition of the household as approved by OCHA (the names of family members and any OCHA-approved live-in-aide);
- All provisions in the HUD-required tenancy addendum will be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

**Initial Term and Lease Renewal [24 CFR 983.256(f)]**

The initial lease term will be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, OCHA will provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

**Changes in the Lease [24 CFR 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change will be in writing, and the owner will immediately give OCHA a copy of all changes.

The owner must notify OCHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by OCHA and in accordance with the terms of the lease relating to its amendment. OCHA will re-determine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The re-determined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

**Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by OCHA policy. See Chapter 3-1.L. of this plan for OCHA policy on tenant absence.

**Continuation of Housing Assistance Payments [24 CFR 982.258]**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family’s other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by OCHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify OCHA of the change and request an interim reexamination before the expiration of the 180-day period.

**Security Deposits [24 CFR 983.259]**

OCHA will allow the owner to collect a security deposit amount the owner determines is appropriate per California Law.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and

the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. OCHA has no liability or responsibility for payment of any amount owed by the family to the owner.

### **17-VII.C. MOVES**

#### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]**

OCHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 15 business days of OCHA's determination. OCHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance.

If OCHA offers the family a tenant-based voucher, OCHA will terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by OCHA).

When OCHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given the end of the month following the month in which notice was given to accept the offer and move out of the PBV unit. If the family does not move out within this time frame, OCHA will terminate the housing assistance payments at the expiration of this period. OCHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

#### **Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to OCHA. If the family wishes to move with continued tenant-based assistance, the family must contact OCHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, OCHA will offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, OCHA will give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

#### **Emergency Transfers under VAWA [Notice PIH 2017-08 and 24 CFR 983.261(f) and (g)]**

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, OCHA will provide several options for continued assistance, including relocation or issuance of a tenant-based voucher, if available.

If a victim wishes to move after a year of occupancy in the unit, they will be issued a tenant-based HCV

## **PART VIII: DETERMINING RENT TO OWNER**

### **17-VIII.A. OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is re-determined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **17-VIII.B. RENT LIMITS [24 CFR 983.301]**

Except for certain tax credit units (discussed below), the rent to owner will not exceed the lowest of the following amounts:

- An amount determined by OCHA and/or another qualified person or entity, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

#### **Certain Tax Credit Units [24 CFR 983.301(c)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds a OCHA-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

For contract units that meet all of these criteria, the rent to owner will not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

However, OCHA is permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements will continue to be met.

### ***Definitions***

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

### **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, OCHA and/or another qualified person or entity will use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, OCHA will use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, OCHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

### **Redetermination of Rent [24 CFR 983.302]**

OCHA and/or another qualified person or entity will re-determine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

### **Rent Increase**

OCHA will only consider requests for rent increases annually at the anniversary date of the HAP Contract.

An owner's request for a rent increase must be submitted to OCHA 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

OCHA will not approve, and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with housing quality standards. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Late requests for rent increases will be denied.

### **Rent Decrease**

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner will be decreased regardless of whether the owner requested a rent adjustment. However, OCHA may stipulate in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

### **Notice of Rent Change**

OCHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### **17-VIII.C. REASONABLE RENT [24 CFR 983.301(d) and 24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the

rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by OCHA.

### **When Rent Reasonable Determinations are Required**

OCHA will re-determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- OCHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building; or
- There is any other change that may substantially affect the reasonable rent.

### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance will be determined by comparison to rent for other comparable unassisted units. When making this determination, OCHA and/or another qualified person or entity will consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner. The reasonable rent determination must be based on the condition of the assisted unit at the time of the determination and not on anticipated future unit conditions.

#### ***Comparability Analysis***

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis will show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and will be retained by OCHA. The comparability analysis may be performed by OCHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

### **Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, OCHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

#### **Other Subsidy [24 CFR 983.304]**

At its discretion, OCHA may reduce the initial rent to owner because of other governmental

subsidies, including grants and other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

### **Combining Subsidy**

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

### **Rent Control [24 CFR 983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, and federal law.

## **PART IX: PAYMENTS TO OWNER**

### **17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

During the term of the HAP contract, OCHA will make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments will be made for each month that a contract unit complies with housing quality standards and is leased to and occupied by an eligible family. The housing assistance payment will be paid to the owner on or about the first day of the month for which payment is due, unless the owner and OCHA agree on a later date.

Per HUD regulations, OCHA cannot make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by OCHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### **17-IX.B. VACANCY PAYMENTS**

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if OCHA determines the vacancy is the owner's fault.

If OCHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, OCHA will notify the owner of the amount of the housing assistance payments that must be repaid. OCHA will require the owner to repay the amount owed in accordance with the policies in 16-IV.B.

HUD regulations allow vacancy payments to be made at the discretion of the PHA. OCHA will not enter into any new HAP contracts that include payments to the owner for vacancy losses.

### **17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by OCHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in OCHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by OCHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by OCHA. The owner will immediately return any excess payment to the tenant.

#### **Tenant and OCHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for

nonpayment by OCHA.

Likewise, OCHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. OCHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. OCHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, OCHA will pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner will be zero.

### **17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]**

#### **Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent.

However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

#### **Other Charges by Owner**

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

### **17-IX.E. PROJECT RECORD RETENTION [24 CFR 983.12]**

The regulation at 24 CFR 982.158 applies to both OCHA's tenant-based and project-based programs. In addition, for each PBV project, OCHA must maintain the following records throughout the HAP contract term and for three years thereafter:

## Chapter 18

### FAMILY SELF-SUFFICIENCY PROGRAM

#### INTRODUCTION

Family self-sufficiency (FSS) is a HUD program to help HCV program families obtain employment that will lead to economic independence and self-sufficiency. Public housing agencies work with welfare agencies, schools, businesses, and other local partners to develop a comprehensive program that gives participating FSS family members the skills and experience to enable them to obtain employment that pays a living wage.

This chapter describes HUD regulations and OCHA policies related to FSS in one part:

#### Part I: Administration of FSS Program Requirements

This part details the program's requirements.

## **PART I: ADMINISTRATION OF FSS**

### **18-I.A. OVERVIEW**

Except for the provisions of the FSS program included in this chapter, OCHA policy and procedures contained in the chapters of this Administrative Plan apply to FSS.

### **18-I.B. ELIGIBILITY AND SELECTION**

Participation in FSS is voluntary and is open to current participants in the HCV program. The selection process is “first-come, first-served”, based upon date and time interest is expressed, until all mandatory slots have been filled.

### **18-I.C. DENIAL OF PARTICIPATION**

A request for participation in the FSS program may be denied under the following circumstances:

- The family previously participated in the FSS program and graduated.
- The family previously participated in the FSS program and did not meet their FSS obligations/goals and/or they were terminated from the FSS program.
- The family owes OCHA or another PHA money in connection with the HCV program.

### **18-I.D. OUTREACH AND MARKETING ACTIVITIES**

In partnership with other outside agencies, including the housing authorities from the cities of Anaheim, Garden Grove and Santa Ana, OCHA established and maintains a Program Coordinating Committee (PCC), whose function is to assist in securing commitments of public and private resources for the operation of the FSS program.

In addition, OCHA conducts marketing activities to HCV program participants that include:

- Distribution of FSS program brochures and interest cards.
- Conducting FSS program presentations during HCV program briefings for new participants.
- Participation in community sponsored events and activities.
- Presenting FSS program briefings for HCV program households who have requested additional information prior to becoming a new FSS participant.
- Displaying FSS program posters throughout the agency to market the program.
- Featuring FSS program information on OCHA’s website.
- Staffing a kiosk located in OCHA’s lobby to answer questions and encourage program participation.

### **18-I.E. CONTRACT OF PARTICIPATION**

To participate in FSS, the head of household must enter into a 5-Year Contract of Participation (COP) with OCHA. The COP must be executed within 120 days of the last annual/interim reexamination. If more than 120 days have elapsed, a new reexamination review will be performed, prior to, or commensurate with the effective date of the COP

The COP requires that:

- The household comply with HCV program regulations and with the provisions of their lease.
- All members of the assisted unit be independent of public assistance at the time of graduation from FSS.
- The head of household seek and maintain suitable employment during the term of the COP and any extension thereof.
  - HUD defines “seeking employment” as engaging in activities such as, looking for a job, applying for work, going on job interviews and otherwise, and following up on employment opportunities.
  - Suitable employment is defined as employment in more than minimum wage jobs, unless there is potential for advancement.

### **18-I.F. INDIVIDUAL TRAINING AND SERVICES PLAN**

The head of household must complete and sign an *Individual Training and Services Plan* (ITSP). The role of OCHA staff is to help guide and assist the FSS participant in developing their ITSP through the following processes:

- Evaluating current job skills, training, experience, and educational level.
- Selecting goals that are relevant and build upon and enhance current skills and/or educational achievements that a client can commit to accomplishing within the 5-year term of the Contract of Participation (COP).
- Identifying the available services and resources needed in order to achieve their established goals.

#### **Mandatory Goals**

The ITSP must include the following goals:

- Interim – All household members must be independent of welfare assistance at the time of graduation from FSS.
- Final – Head of household must seek and maintain suitable employment.

The objective of the final goal is employment in more than minimum wage jobs, unless there is significant potential for advancement.

#### **Revising Goals**

During the first three years of the COP, established goals may be revised up to three times at OCHA’s discretion, providing that:

- The revised goals are comparable to those, which were initially established.
- The revised goals can be accomplished within the remaining term of the COP.

### **18-I.G. ENHANCEMENT/SUPPORT SERVICES PROGRAM**

When available, OCHA may provide funding for an Enhancement Program that offers reimbursement for eligible expenditures such as, tuition, childcare, transportation, etc., paid participants who have demonstrated progress towards meeting the goals of their ITSP. An annual maximum reimbursable amount is allocated for each verified expense or allowable incentive.

Eligibility for reimbursements and/or incentives begins on the effective date of the COP,

therefore, expenses incurred and/or goals achieved prior to the effective date of the COP are not eligible for reimbursement. At OCHA's discretion, reimbursements for educational expenses may be allowed up to 90 days after expense was incurred.

Denial of a request for reimbursement is not subject to the Informal Review and/or Informal Hearing processes.

### **18-I.H. ANNUAL ASSESSMENT OF PROGRESS**

OCHA will perform a mandatory annual FSS case management review to assess the progress and accomplishments that a participant has made towards meeting the goals of their ITSP. Documentation must be submitted by the participant to verify:

- Employment
- Training
- Education
- Supportive services received

### **18-I.I. COMPLETING THE COP PRIOR TO OR UPON EXPIRATION**

An FSS participant is eligible to graduate from the program under the following circumstances:

The head of household has met their COP obligations – prior to, or upon the expiration date and all members of the household have been independent of public assistance at the time of graduation from FSS.

Whenever 30% of the family's monthly-adjusted income equals or exceeds the existing fair market rent for the bedroom size unit for which the family qualifies, and no member of the household is receiving public assistance.

The household must be in good standing in order for the head of household to graduate from the FSS program.

### **18-I.J. ESCROW ACCOUNT**

OCHA will establish an interest-bearing FSS escrow account for each participant household. The account will be credited as a result of increases in a household's earned income. The amount of credit will be determined using a HUD-mandated formula referenced in HUD Form 52652.

OCHA will maintain a single depository account for all FSS families. These funds will be invested in one or more HUD approved investments. The total of the combined FSS account funds will be supported in OCHA accounting records by a subsidiary ledger showing the escrow balance applicable to each FSS family.

Investment interest shall be credited quarterly to each participating family's individual FSS account, based on the balance in each escrow account at the end of the period for which the investment interest is prorated.

If there is unreported income, OCHA will not credit the family's escrow account with any portion of the retroactive escrow credit that would have been earned had the income been reported timely.

### **Eligibility to Receive Escrow Funds**

An FSS family is eligible to receive escrow account funds when:

- The head of household has met their COP obligations on or before the expiration date of

their COP and all members of the household have been independent of public assistance at the time of graduation from FSS.

- 30% of the family's monthly-adjusted income equals or exceeds the existing fair market rent for the bedroom size unit for which the family qualifies and no member of the household is receiving public assistance.
- The household must be in good standing in order for the head of household to receive escrow account funds from the FSS program.

### **Forfeiture of Escrow**

An FSS family will forfeit their escrow if:

- The FSS family completes the COP, but any household member(s) is receiving public assistance.
- The FSS head of household never found employment during the 5-year term of their COP.
- The FSS family is terminated from the HCV program for program violations.
- The FSS family exits the program without completing their COP.
- The FSS head of household dies and the remaining family members elect not to continue participation in the program.

### **18-I.K. EXTENSIONS**

Upon receipt of a request for an extension, OCHA will conduct a review of the case and make a determination to approve or deny the request. Approval of an extension will be contingent upon verification that the circumstances preventing the participant from completing their COP within the established time frame were beyond their control. If approved, the length of the extension is at OCHA's discretion, but in no instance will exceed two years.

### **18-I.L. TERMINATION OF COP**

If after an annual case management review, it is determined that the head-of-household has made only a minimal or no effort in pursuing the goals established in their ITSP, OCHA has the option of terminating their COP and forfeiting any escrow, upon appropriate written notification to the family. Voluntary termination of participation in the FSS program will not jeopardize participation in the HCV program.

Prior to completing a COP and ITSP, if an FSS member is terminated from the HCV program for a noncompliance with HCV program regulations, their COP will terminate concurrently, and any accrued escrow will be forfeited.

If upon completion of the COP and ITSP, it is determined that the FSS household is in violation of HCV program regulations, graduation from the program will be denied and any accrued escrow will be forfeited.

### **18-I.M. PORTABILITY**

#### **FSS Participation Outside OCHA Jurisdiction**

When an FSS participant moves outside of OCHA's jurisdiction, OCHA, as the initial issuing Housing Authority (IHA), will take one of the following actions:

Transfer FSS escrow account funds to the Receiving Housing Authority (RHA), upon receiving written notification that OCHA's FSS household has been absorbed, received a new HCV, and entered into a new COP/ITSP with the RHA for the remaining term of their

original COP.

Terminate the COP and forfeit any escrow funds, if the FSS household is unable to complete their COP and ITSP with OCHA, and continuing participation with the RHA FSS program is not an option or is declined.

### **FSS Participation into OCHA Jurisdiction**

When a household moves into OCHA's jurisdiction and the head of household wishes to participate in FSS, OCHA may absorb the household in compliance with HUD portability procedures.

If the head of household has an existing COP with the IHA, they may elect to transfer participation to OCHA or initiate a new COP to participate with OCHA.

## Chapter 19

### **FAMILY UNIFICATION PROGRAM [Fact Sheet, Housing Choice Voucher Program Family Unification Program (FUP)] AND FOSTER YOUTH TO INDEPENDENCE INITIATIVE [Notice PIH 2020-28; Notice PIH 2023-04; FR Notice 1/24/22]**

#### **INTRODUCTION**

Congress enacted the Family Unification Program (FUP) in 1990 to provide Section 8 rental assistance to families whose lack of adequate housing is a primary cause of the separation, or imminent separation, of a child or children from their families. FUP responded to growing concerns about the impact of housing problems on family stability and built upon efforts already in place in several states, including California. FUP provides rental assistance through the Housing Choice Voucher Program (HCV) to families who meet the eligibility criteria and are certified and referred by the public child welfare agency.

The Foster Youth to Independence (FYI) initiative was announced in 2019. The FYI initiative allows OCHA to request targeted HCVs to serve eligible youth with a history of child welfare involvement that are homeless or at risk of being homeless. Rental assistance and supportive services are provided to qualified youth for a period of between 36 and 60 months. OCHA must have an existing ACC with HUD for HCVs.

Funding is available either competitively through an FYI NOFA or noncompetitively on a rolling basis in accordance with the application requirements outlined in Notice PIH 2020-28, Notice PIH 2021-26, or Notice PIH 2023-04, as applicable. Under the noncompetitive process, OCHA is limited to 25 vouchers in a fiscal year with the ability to request additional vouchers. OCHA may request FYI vouchers with 90 percent or greater utilization of its FUP and/or FYI vouchers. OCHA may be eligible for an exception to the utilization criteria with the submission to HUD of a narrative that explains why the PHA does not meet the utilization criteria and requires the award of FYI vouchers.

This chapter describes HUD regulations and OCHA policies related to FUP and FYI in two parts:

**Part I: Administration of FUP**

This part details the program's requirements.

**Part II: Administration of FYI**

This part details the program's requirements.

## **PART I: ADMINISTRATION OF FUP**

### **19-I.A. OVERVIEW**

#### **Coordination Between OCHA and Orange County Social Services Agency (SSA) to Identify and Assist Eligible Families**

Since January 1, 1991, OCHA and SSA have successfully collaborated in implementing other programs such as the OCHA Operation Bootstrap Program and the Family Self-Sufficiency Program. A Memorandum of Procedure (MOP) between SSA and OCHA provided the necessary framework for successful coordination of services to program participants. The MOP describes the coordination responsibilities between OCHA and SSA to implement the Family Unification Program (FUP).

Simultaneously with OCHA, SSA coordinates FUP with the Anaheim Housing Authority and the Santa Ana Housing Authority. Therefore, all three Public Housing Authorities (PHAs) have cooperated with SSA to develop a consistent approach in implementing and operating FUP in Orange County, California.

#### **FUP Program Funding**

The number of families and/or youths who may receive assistance under FUP is determined by the number of FUP Housing Choice Vouchers (HCVs) that have been awarded to OCHA through a competitive application process determined by HUD.

Implementation of FUP follows the provisions contained in the chapters of this Administrative Plan except for those areas defined as exceptions in the following sections.

### **19-I.B. ELIGIBILITY**

Program eligibility requirements and definitions contained in Chapter 3 of this Administrative Plan apply except as follows:

#### **Orange County Social Services Agency (SSA)**

SSA, Child Welfare Division, determines eligibility for participation in FUP. SSA identifies families and youths who meet the eligibility criteria of:

- Families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families.
- Youths 18 to 24 years old who left foster care at age 16 or older or will leave foster care within 180 days and lack adequate housing.

SSA certifies eligibility of selected families and youths and refers them to OCHA for processing. OCHA conducts an initial assessment of referred FUP candidates to determine eligibility under the provisions of the HCV program. FUP candidates who meet HCV program requirements are processed to receive rental assistance under FUP regulations.

OCHA will not apply a residency preference for FUP applicants (Notice PIH 2025-08).

Assistance to FUP youths is limited to 36 months unless the youth meets the

requirements of Family Stable Housing Opportunities to receive an extension for a total of 60 months of assistance. The number of months is calculated based on the number of months, including partial months, that HAP subsidy is paid on behalf of the youth, not the number of months that the youth is in the FUP program.

### **Criminal Background Checks**

A background check will be performed for all adults at the time of initial eligibility, and upon addition of a member(s) to a household. Admission of individuals who have a history of drug-

related and/or violent criminal activity will be at OCHA's discretion. Under no circumstances will OCHA admit a registered sex offender into the Family Unification Program.

### **19-I.C. TARGETED FUNDING**

OCHA policy and procedures regarding application, waiting list, and tenant selection contained in Chapter 4 of this Administrative Plan do not apply to the FUP except as provided below:

- Referred FUP candidates selected by SSA, are admitted to the HCV program under the provisions of Targeted Funding, which provides tenant-based voucher assistance, utilizing funds specifically allocated to FUP.

### **19-I.D. BRIEFINGS AND VOUCHER ISSUANCE [Notice PIH 2025-08]**

OCHA policy and requirements regarding briefings, and voucher issuance contained in Chapter 5 of this Administrative Plan apply to FUP, except for the following:

**Briefings:** Eligible families and youths referred to the FUP will receive an individual program briefing and receive a briefing packet at the time a HCV is issued in accordance with OCHA policies in Part I of Chapter 5 of this Administrative Plan. During the briefing, OCHA must inform FUP youth of:

- The extension of assistance provisions and requirements;
- The availability of the FSS program and offer them an FSS slot if available; and
- Supportive services available to them, the existence of any other program or services, and their eligibility for such programs and services. However, participation in supportive services cannot be required as a condition of receiving FUP youth assistance.

**Voucher Issuance and Extensions:** Vouchers will be issued in accordance with OCHA policies in Chapter 5 Part II except for the following:

- Upon verification of minor children who will be returned to the FUP household provided by the referring SSA, the bedroom size voucher to be issued to the FUP household will be based upon the number of family members, including the minor children who are to be returned.
- The initial search term must be at least 120 days. The initial 120-day search term also applies when the FUP household chooses to move to a new unit with continued assistance inside or outside OCHA's jurisdiction.
- OCHA will approve the first voucher extension request whether submitted in writing or verbally. All subsequent voucher extension requests must be

submitted in accordance with OCHA policies in Chapter 5 of this Administrative Plan.

- All voucher extensions will be for a minimum of 90 days.
- OCHA will notify the FUP household at least once after voucher issuance and prior to the initial term expiration of the term expiration date, the process for requesting an extension, and to inquire if the household is in need of assistance with their housing search.

#### **19-I.E. VERIFICATION**

OCHA policy and requirements regarding verification of family composition and household income as contained in Chapter 7 of this Administrative Plan apply to FUP, except for the following:

- The annual re-certification of FUP households will include third-party verification with schools attended by minor household members to confirm (a) registration and (b) current address.

#### **19-I.F. TERMINATION OF ASSISTANCE AND TENANCY**

OCHA policy and procedures regarding the termination of assistance and tenancy contained in Chapter 12 of this Administrative Plan apply to FUP and, in addition, may include the following grounds for termination:

- The case plan has been changed, and re-unification of the family may not occur within a reasonable time period, as per verification received from the assigned SSA social worker.
- The Juvenile Court has ordered termination of re-unification services and an alternate permanent plan has been made for the child(ren).
- The child(ren) is/are removed from the assisted unit for an undefined period of time and/or custody is awarded to other relatives or another individual.
- FUP maximum rental assistance has been provided.

#### **19-I.G. PROJECT-BASING FUP VOUCHERS [Notice PIH 2017-21; FR Notice 5/7/24; 24 CFR 983.6(d)(2); 983.54(c); 983.262(c) and (e); and FR Notice 1/24/22]**

The PHA may project-base FUP vouchers without HUD approval in accordance with all statutory and regulatory requirements for the PBV program. See Chapter 17 for OCHA policies related to project-based vouchers.

#### **19-I.G. PROGRAM ADMINISTRATION**

OCHA policy and procedures contained in the remaining chapters of this Administrative Plan that have not been included in this chapter, will apply to FUP.

## **PART II: ADMINISTRATION OF FYI**

### **19-II.A. OVERVIEW**

#### **Coordination Between OCHA, Orange County Social Services Agency (SSA), and Continuum of Care (CoC) to Identify and Assist Eligible Families**

Since January 1, 1991, OCHA and SSA have successfully collaborated in implementing other programs such as the OCHA Operation Bootstrap Program and the Family Self-Sufficiency Program. Similarly, OCHA and the Orange County CoC have a long history of partnering to address housing needs and end homelessness in Orange County. A Memorandum of Understanding (MOU) between SSA, the CoC, and OCHA provided the necessary framework for successful coordination of services to program participants as outlined in Notice PIH 2023-04. The MOU describes the coordination responsibilities between OCHA, SSA, and the CoC to implement the FYI program.

SSA is responsible for:

- Identifying FYI-eligible youth;
- Developing a system of prioritization based on the level of need of the youth and the appropriateness of intervention;
- Providing written certification to OCHA that the youth is eligible; and
- Providing or securing a commitment for the provision of supportive services that are required to be offered. Participation in supportive services is optional, but strongly encouraged.

CoC is responsible for:

- Identifying FYI-eligible youth that are no longer part of the child welfare system;
- Referring FYI-eligible youth to SSA based on prioritization of need and appropriateness of the intervention.

### **19-II.B. ELIGIBILITY [Notice PIH 2023-04; FYI Q&As; FYI FAQs]**

Program eligibility requirements and definitions contained in Chapter 3 of this Administrative Plan apply except as follows as determined by SSA, eligible youth:

- Are at least 18 years of age and not more than 24 years of age (have not yet reached their 25th birthday);
- Youth must be no more than 24 years of age at the time SSA certifies them as eligible and at the time of HAP contract execution.
- Have left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act; and
- Placements can include, but are not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes in accordance with 24 CFR 5.576;

- Are homeless or at risk of becoming homeless at age 16 and older.;

*At risk of being homeless* is fully defined at 24 CFR 576.2.

This includes a person that is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution). Therefore, youth being discharged from an institution may be eligible for an FYI voucher [FYI FAQs].

Eligibility is not limited to single persons. For example, pregnant and/or parenting youth are eligible to receive assistance assuming they otherwise meet eligibility requirements. OCHA may not exclude pregnant or parenting youth.

OCHA will not apply a residency preference for FYI applicants (Notice PIH 2025-08).

Any applicant that does not meet eligibility criteria for the HCV program listed in Chapter 3 or any eligibility criteria listed in this section will be notified by OCHA in writing following policies in Section 3-III.F, including stating the reasons the applicant was found ineligible and providing an opportunity for an informal review.

Assistance to FYI youths is limited to 36 months unless the youth meets the requirements of Family Stable Housing Opportunities to receive an extension for a total of 60 months of assistance. The number of months, including partial months, is calculated based on the number of months that HAP subsidy is paid on behalf of the youth, not the number of months that the youth is in the FYI program.

Participants do not “age out” of the program. A participant may continue with the program until they have received the period of assistance for which they are eligible. Age limits are only applied for entry into the program.

### **Criminal Background Checks**

A background check will be performed for all adults at the time of initial eligibility, and upon addition of a member(s) to a household. Admission of individuals who have a history of drug- related and/or violent criminal activity will be at OCHA’s discretion. Under no circumstances will OCHA admit a registered sex offender into the FYI program.

### **19-II.C. TARGETED FUNDING**

OCHA policy and procedures regarding application, waiting list, and tenant selection contained in Chapter 4 of this Administrative Plan do not apply to the FYI except as provided below:

Referred FYI candidates selected by SSA, are admitted to the HCV program under the provisions of Targeted Funding, which provides tenant-based voucher assistance, utilizing funds specifically allocated to FYI.

### **19-II.D. BRIEFINGS AND VOUCHER ISSUANCE [FR Notice 1/24/22; Notice PIH 2023-04; Notice PIH 2025-08]**

OCHA policy and requirements regarding briefings, and voucher issuance contained in Chapter 5 of this Administrative Plan apply to FYI, except for the following:

#### **Briefings:**

Eligible youths referred to the FYI will receive a program briefing and receive a briefing packet at the time a HCV is issued in accordance with OCHA policies in Part I of Chapter 5 of this Administrative Plan.

During the briefing, OCHA must inform FYI youth of:

- The extension of assistance provisions and requirements;
- The availability of the FSS program and offer them an FSS slot if available; and
- Supportive services available to them, the existence of any other program or services, and their eligibility for such programs and services. However, participation in supportive services cannot be required as a condition of receiving FYI assistance.

#### **Voucher Issuance and Extensions:**

Vouchers will be issued in accordance with OCHA policies in Chapter 5 Part II except for the following:

The initial search term must be at least 120 days. The initial 120-day search term also applies when the FYI household chooses to move to a new unit with continued assistance inside or outside OCHA's jurisdiction.

OCHA will approve the first voucher extension request whether submitted in writing or verbally. All subsequent voucher extension requests must be submitted in accordance with OCHA policies in Chapter 5 of this Administrative Plan.

All voucher extensions will be for a minimum of 90 days.

OCHA will notify the FYI household at least once after voucher issuance and prior to the initial term expiration of the term expiration date, the process for requesting an extension, and to inquire if the household is in need of assistance with their housing search.

Once the youth locate a unit, OCHA conducts all other processing relating to voucher issuance and administration per HCV program regulations and OCHA policy in Chapter 9.

Should a youth fail to use the voucher, OCHA may issue the voucher to another eligible youth if one has been identified [Notice PIH 2023-04]. If another youth is not available, OCHA must notify HUD before the end of the calendar year, and HUD will reduce OCHA's HCV assistance to account for the removal of the FYI assistance from OCHA's HCV baseline.

#### **19-II.E. TERMINATION OF ASSISTANCE AND TENANCY [FYI FAQs]**

OCHA policy and procedures regarding the termination of assistance and tenancy contained in Chapter 12 of this Administrative Plan apply to FYI and, in addition, may include the following grounds for termination:

FYI maximum rental assistance has been provided.

OCHA cannot terminate FYI assistance for noncompliance with supportive services or declining supportive services.

OCHA may not transfer the assistance of FYI voucher holders to regular HCV assistance upon expiration of the limit on assistance unless the FYI voucher holder was selected from the HCV waiting list in accordance with OCHA policies.

#### **19-II.F. PROJECT-BASING FYI VOUCHERS [FYI FAQs; FR Notice 1/24/22; Notice PIH 2024-03]**

The PHA may project-base FYI vouchers without HUD approval in accordance with all statutory and regulatory requirements for the PBV program. See Chapter 17 for OCHA policies related to project-based vouchers.

## **19-II.G. PROGRAM ADMINISTRATION**

OCHA policy and procedures contained in the remaining chapters of this Administrative Plan that have not been included in this chapter, will apply to FUP.

## Chapter 20

### HCV ASSISTANCE FOR NON-ELDERLY DISABLED PERSONS (NED)

#### CATEGORY 2

#### INTRODUCTION

The Department of Housing & Urban Development (HUD) and the Department of Health & Human Services (HHS) have partnered to provide HCV rental assistance and supportive services for Medicaid participants who are non-elderly and disabled to transition from nursing homes and other healthcare institutions, to affordable housing located within the community.

The State of California Health and Human Services (HHS) Agency administering the Medicare/Medicaid program, is responsible for the implementation of the Federal demonstration program, Money Follows the Person (MFP). Through this program, NED Medicaid participants moving from a nursing home or other healthcare institution, to affordable assisted housing located in the community, may continue to receive needed supportive services funded through Medicaid that will assist them to live independently.

OCHA has partnered with the Dayle McIntosh Center (DMC), who has been appointed by HHS as the Lead Organization Provider in Orange County. DMC is working with other California Community Transitions (CCT) to select and refer eligible Medicaid NED persons to OCHA and provide NED participants the supportive services and case management needed to enable them to make a successful transition back into the community and maintain independent living in a safe environment.

#### Part I: Administration of NED

This part details the program's requirements.

## **PART I: ADMINISTRATION OF NED**

### **20-I.A. OVERVIEW [Notice PIH 2013-19]**

This section describes program policy and procedures unique to providing HCV assistance to non-elderly disabled (NED) persons who have requested relocation from a nursing home or other healthcare institution to housing located within the community. Implementation of NED follows the provisions contained in the Chapters of this Administrative Plan, except for those areas defined as exceptions in the following sections:

### **20-I.B. ELIGIBILITY [Notice PIH 2013-19; NED Category 2 FAQs]**

#### **Definition of Family and Household Members:**

The definition of family and household members contained in Chapter 3 of this Administrative Plan do not apply to NED:

As the supportive services providers, the Dayle McIntosh Center (DMC), and other CCT agencies are responsible for selecting and identifying eligible program applicants who are:

- Between the ages of 18 to 61.
- Living in an institution (hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases for a minimum of 90 days.
- Receiving Medicaid reimbursement for inpatient services.
- Requires Home and Community Based Services (HCBS) to successfully live in the community.
- The head of household, spouse, or sole member must be a disabled person. A household whose sole disabled member is a minor does not qualify as a NED household.

### **20-I.C. APPLICATIONS, WAITING LIST, AND TENANT SELECTION [Notice PIH 2013-19; NED Category 2 FAQs]**

Chapter 4 of this Administrative Plan regarding applications, waiting list, and tenant selection do not apply to NED.

#### **Applications:**

The partnering resource agencies are OCHA's primary sources of eligible applicant referrals. These agencies are responsible for identifying and referring eligible NED persons, and providing care/case management, as well as linking individuals to necessary health and social services that will enable applicants to live independently.

#### **Waiting List and Tenant Selection:**

HUD funding for the NED program targets a designated population who have special needs. Eligible applicants must meet specifically defined program requirements and must also be income eligible for the HCV program. Eligible referred applicants will first be identified and selected from OCHA's wait list, regardless of their current placement. If there are an insufficient number of qualifying applicants on the wait list, OCHA will open the wait list to only those families who are referred by DMC, and other CCT agencies. Eligible applicants will be selected for HCV eligibility processing as funding becomes available.

**20-I.D. BRIEFING AND VOUCHER ISSUANCE [Notice PIH 2013-19]**

The policy and procedures contained in Chapter 5 of this Administrative Plan, regarding Briefings, do not apply to NED.

**Briefings:**

When referred applicants are processed for HCV eligibility, during the initial eligibility interview, the applicant will receive a one-on-one briefing, which will contain the same information as distributed during a scheduled HCV briefing.

**Extension:**

OCHA may approve more than one extension for a NED voucher recipient depending on the circumstances and or recommendation by the case manager. If approved, the length of each extension is at OCHA's discretion, and will not exceed 60 days.

**20-I.E. MOVING WITH CONTINUED ASSISTANCE/PORTABILITY**

As a reasonable accommodation for a person with disabilities, OCHA may allow non-resident applicants to port their voucher to another PHA locality within the first year of receiving the voucher, if the supportive services a person needs in order to live in the community might only be available in an area outside OCHA's jurisdiction.

**20-I.F. INCOME CALCULATING**

At the initial examination, OCHA will base the income and TTP calculations on the amount of SSI the transitioning person currently has documentation to show that they receive (the smaller amount), and when the documentation with the new payment amount is available, the OCHA will perform an interim reexamination to recalculate the family's TTP. If the documentation with the new payment amount is available at the time OCHA initially calculates the family's income and TTP, OCHA would use the amount the family is anticipated to receive.

**20-I.G. RENT REASONABLENESS AND PAYMENT STANDARDS**

As a reasonable accommodation, OCHA may consider approving a higher contract rent to an owner, up to 110% of the current FMR for the bedroom size of the assisted unit.

**20-I.H. SPECIAL HOUSING TYPES [Notice PIH 2013-19; NED Category 2 FAQs]**

OCHA policy regarding eligible housing types contained in Chapter 15 of this Administrative Plan will apply to the NED Program.

**20-I.J. PROJECT-BASED VOUCHERS**

The policy and procedures contained in Chapter 17 of this Administrative Plan do not apply to the NED program.

## Chapter 21

### VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM

#### INTRODUCTION

The Veterans Affairs Supportive Housing (VASH) program provides voucher assistance for homeless veterans receiving case management, health and other supportive services through the Veterans Affairs Medical Center (VAMC) located in Long Beach, California. OCHA has partnered with VAMC to administer HUD-VASH voucher assistance for eligible homeless veterans who have been selected by VAMC and referred to OCHA for HCV eligibility processing.

#### Part I: Administration of VASH

This part details the program's requirements.

## **PART I: ADMINISTRATION OF VASH**

### **21-I.A. PROGRAM OVERVIEW**

This section describes program policy and procedures unique to providing HCV assistance to homeless veterans who are referred to OCHA by the Veterans Affairs Medical Center in Long Beach. Implementation of VASH follows the provisions contained in the Chapters of this Administrative Plan, except for those areas defined as exceptions in the following sections:

#### **21-I.B. ELIGIBILITY [FR Notice 8/13/24]**

The provisions contained in Chapter 3 of this Administrative Plan apply to VASH, except in the following areas:

##### **Eligible Family Household:**

The Veterans Affairs Medical Center (VAMC), located in Long Beach is responsible for determining a veteran's homeless status and referring the homeless veteran to OCHA.

OCHA will only determine income eligibility, verify citizenship, and screen for lifetime sex-offender registrants.

##### **Mandatory Denial of Assistance [FR Notice 8/13/24]**

OCHA will perform a background check for the head of household and all adult family members and will deny admission only if the head of household or any other adult family member is subject to a lifetime requirement under a state sex offender registration program. Unless the family member that is subject to lifetime registration under a state sex offender law is the homeless veteran, the remaining family member may be served if the family agrees to remove the sex offender from its family composition.

##### **Social Security Numbers**

When verifying Social Security Numbers (SSNs) for veterans and their family members, OCHA must use available flexibilities in accordance with 24 CFR 5.216(g)(1)(iii) to accept self-certification of SSNs and at least one third-party document, such as a bank statement, utility or cell phone bill, or benefit letter that contains the name of the individual in the absence of other documentation.

OCHA must accept the Certificate of Release or Discharge from Active Duty (DD-214) or the VA-verified Application for Health Benefits (10-10EZ) as verification of SSN if these forms are available and cannot require the veteran to provide a Social Security card. A VA-issued identification card may also be used to verify the SSN of a veteran.

##### **Proof of Age**

The DD-214 or 10-10EZ must be accepted as proof of age in lieu of birth certificates or other required documentation as outlined in Section 7-II.C. of this policy. A VA-issued identification card may also be used to verify the age of a veteran.

##### **Photo Identification**

A VA-issued identification card must be accepted in lieu of another type of government-issued photo identification. These cards also serve as verification of SSNs and date of birth.

##### **Income Eligibility [FR Notice 8/13/24]**

With some exceptions, OCHA must determine income eligibility for VASH families in accordance with 24 CFR 982.201 and policies in Section 3-II.A. Low-income families (80

percent of AMI) are eligible for assistance under VASH, and OCHA may not condition eligibility based on additional eligibility criteria specified in its administrative plan. If the family is over-income based on the most recently published income limits for the family size, the family will be ineligible for assistance.

The following alternative requirements related to income apply to VASH families:

- OCHA must determine the applicant's annual income for purposes of income eligibility by excluding all VA service-connected benefits received by the applicant. This special income exclusion only applies to the definition of annual income for purposes of determining income eligibility. If the HUD-VASH applicant qualifies as a low-income family under the alternative requirement, the VA service-connected benefits (with the exception of the normally excluded deferred VA disability payments under 24 CFR 5.609(b)(16) and the payments related to aid and attendance under 24 CFR 5.609(b)(17)) must still be included as annual income when calculating the family's adjusted income. In other words, the VA service-connected disability benefits are excluded for purposes of determining income eligibility but included for purposes of calculating the family's total tenant payment (TTP), housing assistance payment (HAP), and family share.
- When a veteran family reports that they have zero income, the OCHA must accept a self-certification of zero income from the family at admission and at reexamination without taking any additional steps to verify the family is indeed zero income. The self-certification does not need to be notarized. OCHA must verify families' income in the Enterprise Income Verification (EIV) system within 120 days after admission. OCHA may not deny zero income families.
- In determining compliance with the asset limitation at admission, for the VASH program, OCHA must accept a self-certification by the family that the family's total assets are equal to or less than the HUD-published asset limitation amount (adjusted annually) and that the family does not have any present ownership interest in real property, without taking additional steps to verify the accuracy of the declaration.
- OCHA must not enforce the asset limitation for VASH families at reexamination.
- In addition, because there needs to be a monthly housing assistance payment (HAP) in order to enter into a HAP contract on behalf of a tenant-based voucher family, the utilization of tenant-based VASH assistance by families determined income-eligible is limited to those areas where the family's (TTP) is less than the applicable payment standard or exception payment standard. The family must select a unit with a gross rent that is above the family's TTP in order to lease a unit with the tenant-based VASH voucher.

## **21-I.C. CHANGES IN FAMILY COMPOSITION**

### **Adding Family Members [FR Notice 8/13/24]**

When adding a family member after the family has been admitted to the program, OCHA policies in Section 3-II.B. apply. Other than the birth, adoption, or court-awarded custody of a child, OCHA must approve additional family members and will apply its regular screening criteria in doing so.

### **Remaining Family Members [HUD-VASH Qs and As]**

If the homeless veteran dies while the family is being assisted, the voucher would remain with the remaining members of the tenant family. OCHA may use one of its own regular vouchers, if available, to continue assisting this family and free up a VASH voucher for another VASH-eligible family. If a regular voucher is not available, the family would continue utilizing the

VASH voucher. Once the VASH voucher turns over, however, it must go to a homeless veteran family.

### **Family Break Up [HUD-VASH Qs and As]**

In the case of divorce or separation, since the set-aside of VASH vouchers is for veterans, the voucher must remain with the veteran. This overrides OCHA's policies in Section 3-I.C. on how to determine who remains in the program if a family breaks up.

### **21-I.D. APPLICATIONS, WAITING LIST, AND TENANT SELECTION**

Chapter 4 of this Administrative Plan regarding applications, waiting list, and tenant selection do not apply to VASH.

#### **Applicants:**

The VAMC is responsible for the selection and referral of eligible homeless veterans and their families to OCHA for eligibility processing to receive HCV assistance. Applicants must be income eligible for the HCV program and meet other specific program requirements as described within this section.

### **21-I.E. BRIEFING AND VOUCHER ISSUANCE [FR Notice 8/13/24]**

The policy and procedures contained in Chapter 5 of this Administrative Plan, regarding Briefings, do not apply to VASH.

#### **Briefings:**

After referred applicants are processed for eligibility the applicant will complete a briefing which will contain the same information as distributed during a HCV briefing.

VASH participation in OCHA's FSS program will be encouraged.

#### **Voucher Issuances and Extensions:**

- All VASH vouchers will have an initial term of 120 days.
- OCHA policies on extensions as outlines in Section 5-II.E. will apply.
- OCHA may approve more than one extension for a VASH voucher recipient depending on the circumstances recommended by the VAMC. If approved, the length of the extension is at OCHA's discretion, and will not exceed 60 days.

### **Special Housing Types [FR Notice 8/13/24]**

OCHA must permit VASH voucher holders to use the following special housing types for tenant-based VASH assistance:

- Single room occupancy (SRO)
- Congregate housing
- Group home
- Shared housing
- Cooperative housing

#### **Initial Lease Term**

VASH voucher holders may enter into an initial lease that is less than 12 months.

### **21-I.F. MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY [Notice PIH 2011-53; FR Notice 8/13/24]**

Eligibility to move under the provisions of portability, as contained in Chapter 10 of this

Administrative Plan applies to VASH participants under the following condition:

VASH participants may move outside OCHA jurisdiction under the provisions of portability upon the approval of VAMC, who must determine if they are able to provide case management services in the selected jurisdiction or if services are still needed by that VASH participant, the receiving PHA may administer or absorb the family.

VASH families may move under portability even if the family did not have legal residency in OCHA's jurisdiction when they applied.

A family that moves under portability procedures must not be subject to rescreening by the receiving PHA.

If the VASH family no longer requires case management, there are no portability restrictions and normal portability rules apply.

### **Portability under VAWA**

Veterans who request to port beyond the catchment area of the VAMC or DSP where they are receiving case management to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who reasonably believes they are threatened with imminent harm from further violence by remaining in the unit may port prior to receiving approval from the receiving VAMC or DSP. The initial PHA must follow its emergency transfer plan (see Exhibit 16-3). OCHA may require verbal self-certification or a written request from a participant seeking a move beyond the catchment area of the VAMC or DSP.

The verbal self-certification or written request must include either a statement expressing why the participant reasonably believes that there is a threat of imminent harm from further violence if they were to remain in the same unit or a statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the participants request for the move.

The participant must still port to a PHA that has a VASH program. If the receiving PHA does not have a VASH voucher available to lease, they may bill the initial PHA until a VASH voucher is available, at which point the porting veteran must be absorbed into the receiving PHA's program.

### **21-I.G. TERMINATION OF ASSISTANCE AND TENANCY [FR Notice 8/13/24]**

The provision contained in Chapter 12 of this Administrative Plan applies to VASH, except in the following areas:

- OCHA will work closely with the VAMC to help VASH clients to determine if there are extenuating circumstances that should be considered to avoid the termination.
- VASH participant families may not be terminated after admission for a circumstance or activities that occurred prior to admission and were known to OCHA but could not be considered at the time of admission due to VASH program requirements. OCHA may terminate the family's assistance only for program violations that occur after the family's admission to the program.

There are two alternative requirements for termination of assistance for VASH participants.

### **Cessation of Case Management**

As a condition of receiving HCV rental assistance, a HUD-VASH-eligible family must receive

case management services from the VAMC or DSP. A VASH participant family's assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC or DSP. However, OCHA may offer the family continued assistance through one of its regular vouchers or a PBV unit not exclusively made available for HUD-VASH.

However, a VAMC or DSP determination that the participant family no longer requires case management is not grounds for termination of voucher or PBV assistance. In such a case, at its option, OCHA may offer the family continued assistance through one of its regular vouchers. The decision to transfer assistance to a regular voucher must consider veteran preference and must be communicated to the VA prior to occurring. If OCHA has no voucher to offer, the family will retain its VASH voucher, or PBV unit, until such time as OCHA has an available voucher (or PBV unit not exclusively made available for VASH) for the family. If OCHA has no voucher to offer, the family will retain its VASH voucher or PBV unit until such time as OCHA has an available voucher for the family.

### **Serious Violation of the Lease**

The regulation at 24 CFR 982.552(b)(2) states OCHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease. HUD waived this provision, and establishing the alternative requirement that OCHA may terminate program assistance in this case. Prior to terminating VASH participants for serious violation of the lease, OCHA will exercise discretion under 24 CFR 982.552(c)(2) and consider all relevant circumstances of the specific case, as well as including the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination, prior to determining whether to terminate assistance.

### **VAWA [FR Notice 8/13/24]**

When a veteran's family member is receiving protection under VAWA because the veteran is the perpetrator of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the victim must continue to be assisted. Upon termination of the perpetrator's VASH assistance, the victim must be given a regular HCV if one is available, and the perpetrator's VASH voucher must be used to serve another eligible veteran family. If a regular HCV is not available, the perpetrator must be terminated from assistance and the victim will continue to use the VASH voucher.

## **21-I.G. PROJECT-BASED VOUCHERS [Notice PIH 2017-21; FR Notice 8/13/24]**

### **General Requirements [Notice PIH 2017-21; FR Notice 8/13/24]**

OCHA is authorized to project-base tenant-based VASH vouchers without additional HUD review or approval in accordance with Notice PIH 2017-21 and all PBV program requirements provided that the VAMC will continue to make supportive services available. In addition, since 2010, HUD has awarded VASH vouchers specifically for project-based assistance in the form of PBV HUD-VASH set-aside vouchers. While these vouchers are excluded from the PBV program cap as long as they remain under PBV HAP contract at the designated project, all other VASH vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A. Note that VASH supportive services only need to be provided to VASH families receiving PBV assistance in the project, not all families receiving PBV assistance in the project. If a VASH family does not require or no longer requires case management, the unit continues to count as an excepted PBV unit as long as the family resides in the unit. In the description of units in Exhibit A of the HAP contract, OCHA must indicate the number of units that will be exclusively made available to VASH families. OCHA must refer only VASH families to PBV

units exclusively made available to VASH families and to PBV units funded through a VASH PBV set-aside award.

If OCHA project-bases VASH vouchers, OCHA must consult with the partnering VAMC or DSP to ensure approval of the project or projects. OCHA may project-base VASH vouchers in projects alongside other PBV units and may execute a single HAP contract covering both the VASH PBVs and the other PBVs. OCHA must refer only VASH families to PBV units exclusively made available to VASH families and to PBV units funded through a HUD set-aside award.

If a VASH family is referred to OCHA and there is an available PBV unit that is not exclusively made available to VASH families, OCHA may offer to refer the family to the owner if allowable under the selection policy for that project, and the owner and OCHA may amend the HAP contract to designate the PBV unit as a VASH PBV unit.

OCHA and owner may agree to amend a PBV HAP contract to redesignate a regular PBV unit as a unit specifically designated for VASH families so long as OCHA first consults with the VAMC or DSP. Additionally, OCHA and owner may agree to amend a PBV HAP contract to redesignate a unit specifically designated for VASH families as a regular PBV unit, so long as the unit is not funded through a VASH PBV set-aside award and is eligible for regular PBV (i.e., the unit is not on the grounds of a medical facility and the unit is eligible under the OCHA's program and project caps).

Policies for VASH PBV units will generally follow OCHA policies for the standard PBV program as listed in Chapter 17, with the exception of the policies listed below.

### **Termination of Assistance**

A VASH family's PBV assistance must be terminated for failure to participate in case management when required by the VA. However, OCHA may allow the veteran family to receive a regular (non-VASH) tenant-based voucher or PBV unit instead of the family's assistance being terminated. In this case, the PHA may:

Substitute the family's unit on the PBV HAP contract for another unit (OCHA may, in conjunction with such substitution, add the original unit to the PBV HAP contract with a non-VASH voucher if it is possible to do so;

Remove the unit from the PBV HAP contract so the family may remain with tenant-based assistance, if the family and the owner agree to use the tenant-based voucher in the unit; or

Change the unit's status in the PBV HAP contract from a unit exclusively made available for VASH to a regular PBV unit, if doing so is allowable under program rules.

If OCHA will not allow the veteran to receive a regular (non-VASH) tenant-based voucher or PBV unit instead of the family's assistance being terminated, then upon notification by the VA of the family's failure to participate in VA-required case management, OCHA must provide the family a reasonable period of time (as established by OCHA) to vacate the unit.

### **PHA Policy**

If the family fails to participate in case management when required by the VA, OCHA will terminate the family's assistance. The family will have 120 days to vacate the unit. OCHA will terminate assistance to the family at the earlier of (1) the time the family vacates or (2) the expiration of the 120-day period. If the family fails to vacate the unit within the established time, the owner may evict the family. If the owner does not evict the family, OCHA will remove the unit from the HAP contract or amend the HAP contract to substitute a different unit in the project if the project is partially assisted. OCHA may add the removed unit back onto the

HAP contract after the ineligible family vacates the property.

### **Wrong-Sized or Accessible Units**

If OCHA determines that a VASH family is occupying a wrong-size PBV unit or a PBV unit with accessibility features that the family does not require and the PBV unit is needed by a family that requires the accessibility features, OCHA must notify the family and the owner within 30 days of the OCHA's determination. OCHA's offer of continued housing assistance (that must be made within 60 days of OCHA's determination) must be in the form of either a VASH tenant-based voucher or another VASH PBV unit. If no VASH assistance is available for OCHA to offer within 60 days of the OCHA's determination, OCHA must remove the wrong-sized or accessible unit from the HAP contract to make VASH voucher assistance available to the family.

### **Contract Terminations**

The regulation at 24 CFR 983.206(b), which covers the required provision of tenant-based assistance and requires that the family may elect to use its tenant-based assistance to remain in the same project when a PBV HAP contract terminates or expires, does not apply to families issued a HUD-VASH tenant-based voucher under this circumstance. OCHA may use another voucher to add the unit removed under this alternative requirement to the HAP contract after the family vacates the property, in accordance with 24 CFR 983.207(b).

### **Rents**

Contract rents may not be different based on whether the unit is a VASH PBV unit or a non-VASH PBV unit. In determining the rent to owner for the PBV project, if the cap on the amount of rent to owner under 24 CFR 983.301(b)(1) is lower for non-HUD-VASH units than it is for the HUD-VASH units (e.g., the OCHA has established a HUD-VASH exception payment standard and there is either no exception payment standard or a lower exception payment standard for the regular HCV program for the area in question), that lower cap is applicable when setting the rent to owner for the PBV units in the project, including the HUD-VASH units.

### **Removing Units from the HAP Contract for Ineligible Families**

OCHA and owner may also agree to temporarily remove a unit from the HAP contract in cases where a HUD-VASH eligible veteran has been identified by the VA as appropriate for a VASH PBV unit, but the veteran is not income eligible to receive voucher assistance or may not be selected for the PBV unit because the family's TTP exceeds the gross rent of the unit. Although the family would not be a program participant in the housing portion of the VASH program in such a case, the family would still benefit from the VASH supportive services onsite at the project, while the VASH voucher would be available to assist another VASH family. OCHA and owner may agree to add a VASH voucher back onto the PBV HAP contract if the family's income subsequently decreased to the point that there would be a HAP or when the family vacates the unit.

### **Zero HAP Families**

Under normal PBV requirements, OCHA may select an occupied unit to be included under a PBV HAP contract only if the unit's occupants are eligible for assistance under 24 CFR 982.201, and the TTP for the family is less than the gross rent for the unit. Furthermore, in selecting a family for an available PBV unit, typically the OCHA must determine the TTP for the family is less than the gross rent, meaning that the unit will be eligible for a monthly HAP. However, if the PBV project has HUD-VASH supportive services provided onsite at the

project, OCHA may opt to select a unit occupied by a zero HAP VASH eligible family or admit a zero HAP VASH family to a unit if such unit is made exclusively available to VASH families. Until such time that the VASH family's TTP falls below the gross rent, the family is responsible for paying the entire rent to owner in addition to being responsible for paying all tenant-supplied utilities. During any period that the family's TTP falls below the gross rent, normal PBV requirements apply.

Further, under normally applicable rules, units occupied by families whose incomes have increased during their tenancy resulting in their TTP equaling the gross rent (zero HAP) must be removed from the HAP contract 180 days following the last housing assistance payment to the owner on the family's behalf. These regulations do not apply to zero HAP families admitted to the PBV project under this waiver and alternative requirement because there is no last housing assistance payment that would trigger the unit removal date of 180 days. As an alternative requirement, OCHA has the option of removing the unit in which the zero HAP family resides from the HAP contract, but no earlier than 180 days from the start of the family PBV tenancy. If OCHA exercises this option, the family may not be required to move from the unit as a consequence and continues to receive the VASH supportive services. If the project is fully assisted, OCHA may reinstate the unit removed to the HAP contract after the family either vacates the unit or their income decreases to the point that there would be a HAP. If the project is partially assisted, OCHA may substitute a different unit for the unit removed from the HAP contract when the first eligible substitute unit becomes available. Alternatively, OCHA may choose to simply leave the unit on the HAP contract while the zero HAP family continues to reside there.

### **Proposal/Project Selection**

PBV proposal and/or project selection for VASH must follow all regular proposal and/or project selection regulations, with one exception. HUD permits noncompetitive selection of one or more PBV projects with units made exclusively available to VASH families on the site of a VA facility. Note that the method of project selection must comply with all other requirements under 24 CFR 983.51, including that the OCHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan and to ensure any project selection is consistent with the PHA administrative plan.

### **Failure to Participate in Case Management [FR Notice 8/13/24][FR Notice 9/27/21]**

Upon notification by the VAMC or DSP that a VASH PBV family has failed to participate in case management without good cause, OCHA will provide written notice of termination of assistance to the family and the owner within 10 business days. The family will be given 60 days from the date of the notice to move out of the unit.

The PHA may make exceptions to this 60-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

If the family fails to vacate the unit within the established time, the owner may evict the family. If the owner does not evict the family, OCHA must remove the unit from the HAP contract or amend the HAP contract to substitute a different unit in the project if the project is partially assisted. OCHA may add the removed unit to the HAP contract after the ineligible family vacates the property.

### **Moves [HUD-VASH Qs and As, FR Notice 8/13/24]FR Notice 9/27/21]**

When a VASH PBV family is eligible to move from its PBV unit in accordance with Section 17-VIII.C. of this policy, but there is no other comparable tenant-based rental assistance, the following procedures must be implemented:

- If a VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the OCHA may require a family who still requires case management to wait for a VASH tenant-based voucher for a period not to exceed 180 days;
- If a VASH tenant-based voucher is still not available after that period, the family must be allowed to move with its VASH voucher. Alternatively, OCHA may allow the family to move with its VASH voucher without having to meet this 180-day period. In either case, the PHA is required to replace the assistance in the PBV unit with one of its regular vouchers, unless OCHA and owner agree to temporarily remove the unit from the HAP contract; and
- If a VASH veteran is determined to no longer require case management, OCHA must allow the family to move with the first available tenant-based voucher if no VASH voucher is immediately available and cannot require the family to wait for a VASH voucher to become available.

## **21-I.I. PROGRAM ADMINISTRATION**

### **Management Assessment (SEMAP):**

Requirements of SEMAP reporting do not apply to HUD-VASH vouchers.

## Chapter 22

### MAINSTREAM VOUCHER PROGRAM

#### INTRODUCTION

The Omnibus Appropriations Acts of 2017 and 2018 made funding available for new Section 811 Housing Choice Vouchers, known hereafter as the Mainstream Voucher Program, to provide non-elderly persons with disabilities rental assistance (particularly those transitioning out of institutions or at serious risk of institutionalization) in the form of either project-based or tenant-based voucher assistance. On April 18, 2018, HUD published a NOFA for the Mainstream Voucher Program. The NOFA encouraged PHAs to formalize partnerships and leverage resources from State Medicaid Agencies and various health and human services partner agencies and organizations.

In response to the 2018 NOFA, OCHA and the Orange County Health Care Agency (HCA) submitted an application proposing to provide Mainstream Voucher Program rental assistance to eligible participants receiving services via HCA's Whole Person Care (WPC) program.

On September 4, 2018 OCHA received funding to implement and administer the Mainstream Voucher Program. On January 01, 2019, OCHA and HCA entered into a Memorandum of Understanding (MOU) to affirm the commitments made in OCHA's application for Mainstream Voucher Program funding and to provide the framework under which the program will be implemented and administered.

In 2020, OCHA received additional Mainstream Voucher Program funding and entered into a MOU with the Orange County Continuum of Care (CoC) to document the framework under which the expanded program will be implemented and administered.

Funding and reporting for Mainstream vouchers is separate from the HCV program. Funds for Mainstream vouchers may be recaptured and reallocated if OCHA does not comply with all program requirements or fails to maintain a utilization rate of 80 percent for OCHA's Mainstream vouchers.

The Consolidated Appropriations Act, 2024 (Public Law 118-42) authorized HUD to establish waivers and alternative requirements for Mainstream Vouchers related to the administration of waiting lists, local preferences, and the initial term and extensions of tenant-based vouchers. HUD is not permitted to waive requirements related to tenant rights and protections, rent setting, fair housing, nondiscrimination, labor standards, and the environment. Prior to this, Mainstream vouchers followed the same program requirements as standard vouchers.

The Mainstream Voucher Program will be administered in accordance with the regulations found at [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/mainstream](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/mainstream) and in Notice PIH 2020-01 and Notice PIH 2024-30, found at <https://www.hud.gov/hudclips/notices/pih>.

#### Part I: Administration of Mainstream

This part details the program's requirements.

## **PART I: ADMINISTRATION OF THE MAINSTREAM VOUCHER PROGRAM**

### **22-I.A. OVERVIEW**

This section describes program policy and procedures unique to the Mainstream Voucher Program. Implementation of the Mainstream Voucher Program follows the provisions contained in the Chapters of this Administrative Plan, except for those areas defined as exceptions in the following sections:

### **22-I.B. ELIGIBILITY [Notice PIH 2020-01; Notice PIH 2020-22]**

#### **Definition of Family and Household Members:**

The definition of family and household members contained in Chapter 3 of this Administrative Plan do not apply to the Mainstream Voucher Program.

Through the MOU, HCA is responsible for selecting and identifying eligible program applicants who are:

- Between the ages of 18 and 61 as of the effective date of the HAP contract
- Has a disability, as defined in 42 U.S.C. 423;
- Is determined, pursuant to US Department of Housing and Urban Development regulations, to have a physical, mental, or emotional impairment that:
  - Is expected to be of long-continued and indefinite duration;
  - Substantially impedes his or her ability to live independently, and
  - Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
  - Has a developmental disability as defined in 42 U.S.C. 6001

OCHA may target additional populations to address unmet needs in OCHA's jurisdiction if identified in future Notice of Funding Availability applications for the Mainstream Voucher program.

Existing families receiving Mainstream vouchers, where the eligible family member is now age 62 or older, will not "age out" of the program as long as the family was eligible on the day it was first assisted under a HAP contract.

The PHA may not implement eligibility screening criteria for Mainstream vouchers that is different from that of the regular HCV program.

### **22-I.C. APPLICATIONS, WAITING LIST, AND TENANT SELECTION [ Notice PIH 2024-30]**

Chapter 4 of this Administrative Plan regarding applications, waiting list, and tenant selection do not apply to the Mainstream Voucher program.

#### **Applications:**

HCA and the CoC are OCHA's primary source of eligible applicant referrals. HCA and the CoC will identify persons who would meet the requirements for the Mainstream Voucher Program. HCA and the CoC will complete the Mainstream Voucher Referral letter and submit it to OCHA for a review of eligibility. HCA and OCHA will cooperate with the Orange County Coordinated Entry System (CES) in an effort to connect those experiencing homelessness who qualify for the Mainstream Voucher Program to stable housing.

### **Waiting List and Tenant Selection:**

HUD funding for the Mainstream Voucher program targets a designated population. Eligible applicants must meet specifically defined program requirements and must also be income eligible for the HCV program. Eligible referred applicants will first be identified and selected from OCHA's wait list, regardless of their current placement. If there are an insufficient number of qualifying applicants on the wait list, OCHA will open the wait list to only those families who are referred by HCA or the CoC. Eligible applicants will be selected for HCV eligibility processing as funding becomes available.

### **Preferences**

OCHA may not apply a residency preference to Mainstream voucher applicants.

### **22-I.D. BRIEFING AND VOUCHER ISSUANCE [Notice PIH 2024-30]**

The policy and procedures contained in Chapter 5 of this Administrative Plan, regarding Briefings, do not apply to the Mainstream Voucher program.

#### **Briefings:**

When referred applicants are processed for HCV eligibility, during the initial eligibility interview, the applicant will receive a one-on-one briefing, which will contain the same information as distributed during a scheduled HCV briefing.

### **Voucher Issuance**

The initial voucher term for all Mainstream vouchers, including those issued when a family wishes to exercise portability, will be 120 days.

When issuing a Mainstream voucher, OCHA will provide a current listing of available accessible units known to OCHA and, if necessary, otherwise assist the family in identifying an accessible unit.

### **Extension:**

At least 30 days prior to the expiration of the initial term of the voucher, OCHA will contact the family to remind them of the expiration date of their voucher, the process for requesting an extension, and to inquire if the family needs assistance with their housing search. Depending on the family's preferred method of communication, OCHA will contact the family in writing and may contact the family via telephone, text message, email, or other accessible communication method. OCHA will ensure effective communication with persons with disabilities, including those with vision, hearing, speech, intellectual or other developmental disabilities, or any other communication-related disabilities.

Families may request an initial extension, either orally or in writing, at any time prior to the expiration of the family's voucher. All initial requests for extensions will automatically be granted without the requirement for the family to provide documentation. The initial extension period will be for 90 days.

If the family requires additional extensions beyond 90 days, the family may request additional extensions. All subsequent voucher extension requests must be submitted in accordance with OCHA policies in Chapter 5 of this Administrative Plan.

### **22-I-E. PORTABILITY [NOTICE PIH 202-01; Mainstream Voucher Basics Webinar, 10/15/20]**

Mainstream voucher participants are eligible for portability under standard portability rules and all OCHA policies regarding portability in Chapter 10, Part II apply to Mainstream families.

The following special considerations for Mainstream vouchers apply under portability:

- If the receiving PHA has a Mainstream voucher available, the participant may remain a Mainstream participant.
  - If the receiving PHA chooses to bill the initial PHA, then the voucher will remain a Mainstream voucher.
  - If the receiving PHA chooses to absorb the voucher, the voucher will be considered a regular voucher, or a Mainstream voucher if the receiving PHA has a Mainstream voucher available, and the Mainstream voucher at OCHA will be freed up to lease to another Mainstream-eligible family.
- If the receiving PHA does not have a Mainstream voucher available, the participant may receive a regular voucher.

## Chapter 23

### EMERGENCY HOUSING VOUCHERS (EHVs)

#### INTRODUCTION

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2). Section 3202 of the ARP appropriated \$5 billion for the creation, administration, and renewal of new incremental emergency housing vouchers (EHVs) and other eligible expenses related to COVID-19.

On May 5, 2021, HUD issued Notice PIH 2021-15, which described HUD's process for allocating approximately 70,000 EHVs to eligible PHAs and set forth the operating requirements for PHAs who administer them. Based on criteria outlined in the notice, HUD notified eligible PHAs of the number of EHVs allocated to their agency, and PHAs were able to accept or decline the invitation to participate in the program.

PHAs may not project-base EHVs; EHVs are exclusively tenant-based assistance.

All applicable nondiscrimination and equal opportunity requirements apply to the EHV program, including requirements that the PHA grant reasonable accommodations to persons with disabilities, effectively communicate with persons with disabilities, and ensure meaningful access for persons with limited English proficiency (LEP).

This chapter describes HUD regulations and PHA policies for administering EHVs. The policies outlined in this chapter are organized into seven sections, as follows:

Part I: Funding

Part II: Partnering Agencies

Part III: Waiting List Management

Part IV: Family Eligibility

Part V: Housing Search and Leasing

Part VI: Use of Funds, Reporting, and Financial Records

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to EHVs.

## **PART I: FUNDING**

### **23-I.A. FUNDING OVERVIEW**

The American Rescue Plan Act of 2021 (ARP) provides administrative fees and funding for the costs of administering emergency housing vouchers (EHVs) and other eligible expenses defined in Notice PIH 2021-15. These fees may only be used for EHV administration and other eligible expenses and must not be used for or applied to other PHA programs or vouchers. The PHA must maintain separate financial records from its regular HCV funding for all EHV funding.

#### **Housing Assistance Payments (HAP) Funding**

ARP funding obligated to the PHA as housing assistance payments (HAP) funding may only be used for eligible EHV HAP expenses (i.e., rental assistance payments). EHV HAP funding may not be used for EHV administrative expenses or for the eligible uses under the EHV services fee.

The initial funding term will expire December 31, 2022. HUD will provide renewal funding to the PHA for the EHVs on a calendar year (CY) basis commencing with CY 2023. The renewal funding allocation will be based on the PHA's actual EHV HAP costs in leasing, similar to the renewal process for the regular HCV program. EHV renewal funding is not part of the annual HCV renewal funding formula; EHVs are renewed separately from the regular HCV program. All renewal funding for the duration of the EHV program has been appropriated as part of the ARP funding.

#### **Administrative Fee and Funding**

The following four types of fees and funding are allocated as part of the EHV program:

- Preliminary fees support immediate start-up costs that the PHA will incur in implementing alternative requirements under EHV, such as outreach and coordination with partnering agencies:
- \$400 per EHV allocated to the PHA, once the consolidated annual contributions contract (CACC) is amended.
  - This fee may be used for any eligible administrative expenses related to EHVs.
  - The fee may also be used to pay for any eligible activities under EHV service fees (23-I.B).
- Placement fees/expedited issuance reporting fees will support initial lease-up costs and the added cost and effort required to expedite leasing of EHVs:
  - \$100 for each EHV initially leased, if the PHA reports the voucher issuance date in Public Housing Information Center–Next Generation (PIC–NG) system within 14 days of voucher issuance or the date the system becomes available for reporting.

#### **Placement fees:**

- \$500 for each EHV family placed under a HAP contract effective within four months of the effective date of the ACC funding increment; or

- \$250 for each EHV family placed under a HAP contract effective after four months but less than six months after the effective date of the ACC funding increment.
- HUD will determine placement fees in the event of multiple EHV allocations and funding increment effective dates.

Placement/expedited issuance fees only apply to the initial leasing of the voucher; they are not paid for family moves or to turnover vouchers.

**Ongoing administrative fees**, which are calculated in the same way as the standard HCV program:

- PHAs are allocated administrative fees using the full column A administrative fee amount for each EHV under contract as of the first day of each month.
- Ongoing EHV administrative fees may be subject to proration in future years, based on available EHV funding.

**Services fees**, which are a one-time fee to support PHAs' efforts to implement and operate an effective EHV services program in its jurisdiction (TPS-I.B):

- The fee is allocated once the PHA's CACC is amended to reflect EHV funding.
- The amount allocated is \$3,500 for each EHV allocated.

### **23-I.B. SERVICE FEES**

Services fee funding must be initially used for defined eligible uses and not for other administrative expenses of operating the EHV program. Service fees fall into four categories:

- Housing search assistance
- Security deposit/utility deposit/rental application/holding fee uses
- Owner-related uses

Other eligible uses such as moving expenses or tenant-readiness services

OCHA entered into an MOU on July 16, 2021 between the Orange County Continuum of Care and Orange County Health Care Agency identifying the Health Care Agency, Office of Care Coordination as the contracting agency on behalf of OCHA for the provision of housing search assistance and housing stabilization services for the EHV's.

The Office of Care Coordination contracted service providers are committed to providing, at minimum, the HUD required Housing Search Assistance activities defined in Notice PIH 2021-15.

Any services fee assistance that is returned to OCHA after its initial or subsequent use may only be applied to the eligible services fee uses defined in Notice PIH 2021-15 (or subsequent notice) or other EHV administrative costs. Any amounts not expended for these eligible uses when OCHA's EHV program ends must be remitted to HUD.

## **PART II: PARTNERING AGENCIES**

### **23-II.A. CONTINUUM OF CARE (CoC)**

PHAs that accept an allocation of EHV's are required to enter into a Memorandum of Understanding (MOU) with the Continuum of Care (CoC) to establish a partnership for the administration of EHV's.

OCHA entered into an MOU on July 16, 2021 between the Orange County Continuum of Care and Orange County Health Care Agency as required by Notice PIH 2021-15.

### **23-II.B. REFERRALS**

#### CoC and Partnering Agency Referrals

The CoC, through the Coordinated Entry System (CES), will make direct referrals of qualifying individuals and families to OCHA. The CoC will determine whether the individual or family qualifies under one of the four eligibility categories for EHV's and provide verification and supporting documentation to OCHA certifying that determination.

As part of the MOU, OCHA and the CoC have identified lead EHV liaisons who are responsible for the transmission and acceptance of referrals. Both OCHA and the CoC have committed to provide sufficient staff and resources to ensure eligible individuals and families are identified and determined eligible in a timely manner.

OCHA will request referrals through the Homeless Management Information System (HMIS) and the CES will supply the requested number of referrals via email referencing the unique HMIS identifier and the housing search provider associated with the referred individual or family. OCHA staff will access HMIS and accept the referral by securely downloading the EHV application, release form(s), and the written certification.

A mutually convenient meeting schedule will be established between the OCHA, the CES, the Office of Care Coordination, and the housing search providers in order to provide updates on referred matches, application status, lease-up status, and vouchers available.

#### Offers of Assistance with CoC Referral

OCHA may make an EHV available without a referral from the CoC or other partnering organization in order to facilitate an emergency transfer under VAWA in accordance with the PHA's Emergency Transfer Plan (ETP) in Chapter 16.

OCHA must also take direct referrals from outside the CoC if:

- The CoC does not have a sufficient number of eligible families to refer to the PHA; or
- The CoC does not identify families that may be eligible for EHV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking.

If at any time OCHA is not receiving enough referrals or is not receiving referrals in a timely manner from the CoC or other partner referral agencies (or OCHA and CoC cannot identify any such alternative referral partner agencies), HUD may permit OCHA on a temporary or permanent basis to take EHV applications directly from applicants and admit eligible families to the EHV program in lieu of or in addition to direct referrals in those circumstances.

## **PART III: WAITING LIST MANAGEMENT**

### **23-III. A. HCV WAITING LIST**

The regulation that requires OCHA to admit applicants as waiting list admissions or special admissions in accordance with admission policies in Chapter 4 does not apply to PHAs operating the EHV program. Direct referrals are not added to OCHA's HCV waiting list.

OCHA must inform families on the HCV waiting list of the availability of EHV's by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notice PIH 2021-15.

OCHA will post information about the EHV program for families on OCHA's HCV waiting list on their website. The notice will:

- Describe the eligible populations to which EHV's are limited.
- Clearly state that the availability of these EHV's is managed through a direct referral process.

Advise the family to contact the CoC (or any other PHA referral partner, if applicable) if the family believes they may be eligible for EHV assistance.

OCHA will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. OCHA will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

### **23-III.B. EHV WAITING LIST**

The HCV regulations requiring the PHA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the EHV program. HUD requires that when the number of applicants referred by the CoC or partnering agency exceeds the EHV's available, a PHA must maintain a separate waiting list for EHV referrals, both at initial leasing and for any turnover vouchers that may be issued prior to September 30, 2023. OCHA will not request more referrals from CES than EHV's available.

### **23-III.C. PREFERENCES**

#### **HCV Waiting List Preferences**

OCHA does not offer a preference for individuals experiencing homelessness or for VAWA for the HCV waiting list.

#### **EHV Waiting List Preferences**

No local preferences have been established for the EHV waiting list.

## **PART IV: FAMILY ELIGIBILITY**

### **23-IV.A. OVERVIEW**

The CoC or referring agency determines whether the individual or family meets any one of the four eligibility criteria described in Notice PIH 2021-15 and then refers the family to OCHA. OCHA determines that the family meets other eligibility criteria for the HCV program, as modified for the EHV program and outlined below.

### **23-IV.B. REFERRING AGENCY DETERMINATION OF ELIGIBILITY**

In order to be eligible for an EHV, an individual or family must meet one of four eligibility criteria:

- Homeless as defined in 24 CFR 578.3;
- At risk of homelessness as defined in 24 CFR 578.3;
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking (as defined in Notice PIH 2021-15), or human trafficking (as defined in the 22 U.S.C. Section 7102); or
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability as determined by the CoC or its designee in accordance with the definition in Notice PIH 2021-15.

As applicable, the CoC or referring agency must provide documentation to OCHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance. OCHA must retain this documentation as part of the family's file.

### **23-IV.C. PHA SCREENING**

#### Overview

HUD waived 24 CFR 982.552 and 982.553 in part for the EHV applicants and established alternative requirement for mandatory and permissive prohibitions of admissions. Except where applicable, OCHA policies regarding denials in Chapter 3 of this policy do not apply to screening individuals and families for eligibility for an EHV. Instead, the EHV alternative requirement listed in this section will apply to all EHV applicants.

The mandatory and permissive prohibitions listed in Notice PIH 2021-15 and in this chapter, however, apply only when screening the individual or family for eligibility for an EHV. When adding a family member after the family has been placed under a HAP contract with EHV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

#### **Mandatory Denials**

Under alternative requirements for the EHV program, mandatory denials for EHV applicants include:

- 24 CFR 982.553(a)(1)(ii)(C), which prohibits admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- 24 CFR 982.553(a)(2)(i), which prohibits admission to the program if any member of

the household is subject to a lifetime registration requirement under a state sex offender registration program.

OCHA must deny admission to the program if any member of the family fails to sign and submit consent forms for obtaining information as required by 24 CFR 982.552(b)(3) but should notify the family of the limited EHV grounds for denial of admission first.

While the PHA will deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, OCHA will first notify the family of the limited EHV grounds for denial of admission as part of the notice of denial that will be mailed to the family.

### **Permissive Denial**

Notice PIH 2021-15 lists permissive prohibitions for which OCHA may, but is not required to, deny admission to EHV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for EHV families.

If OCHA intends to establish permissive prohibition policies for EHV applicants, OCHA must first consult with its CoC partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration.

In consultation with the CoC, OCHA will not apply permissive prohibitions to the screening of EHV applicants.

OCHA will deny assistance to household members already receiving assistance from another program in accordance with Section 9.h. of Notice PIH 2021-15.

In compliance with PIH 2021-15, the PHA will not deny an EHV applicant admission regardless of whether:

- Any member of the family has been evicted from federally assisted housing in the last five years;
- A PHA has ever terminated assistance under the program for any member of the family;
- The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act;
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;
- The family breached an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA;
- The family would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with 24 CFR 982.553(a)(3)
- The PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

## **23-IV.D. INCOME VERIFICATION AT ADMISSION**

### **Self-Certification at Admission**

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the EHV program applicants at admission, and alternatively, PHAs

may consider self-certification the highest form of income verification at admission. As such, OCHA policies related to the verification of income in Section 7-I.B. do not apply to EHV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination.

Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of the OCHA's request.

Any documents used for verification must be the original (not photocopies) and dated within the 60-day period prior to admission. The documents must not be damaged, altered, or in any way illegible.

Printouts from webpages are considered original documents.

Any family self-certifications must be made in a format acceptable to OCHA and must be signed by the family member whose information or status is being verified.

OCHA will incorporate additional procedures to remind families of the obligation to provide true and complete information in accordance with Chapter 14. OCHA will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. OCHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, OCHA will terminate the family's assistance in accordance with the policies in Chapter 12.

### **Recently Conducted Income Determinations**

PHAs may accept income calculations and verifications from third-party providers or from an examination that the PHA conducted on behalf of the family for another subsidized housing program in lieu of conducting an initial examination of income as long as:

- The income was calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and
- The family certifies there has been no change in income or family composition in the interim.

OCHA will accept income calculations and verifications from third-party providers provided they meet the criteria outlined above.

The family certification must be made in a format acceptable to OCHA and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination OCHA must conduct the annual reexamination of income as outlined at 24 CFR 982.516 and PHA policies in Chapter 11.

### **EIV Income Validation**

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, OCHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC submission date;
- Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If OCHA later determines that an ineligible family received assistance, OCHA must take steps to terminate that family from the program in accordance with Chapter 12

### **23-IV.E. SOCIAL SECURITY NUMBER AND CITIZENSHIP STATUS VERIFICATION**

For the EHV program, the PHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the EHV program. Instead, PHAs may adopt policies to admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless the PHA provides an extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

OCHA will admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. These individuals must provide the required documentation in accordance with policies in Chapter 7 within 180 days of admission. The PHA may provide an additional 60-day extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If OCHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

### **23-IV.F. AGE AND DISABILITY VERIFICATION**

PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, the PHA must obtain a higher level of verification within 90 days of admission or verify the information in EIV.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

OCHA will accept self-certification of date of birth and disability status if a higher form of verification is not immediately available. The certification must be made in a format acceptable to OCHA and must be signed by the family member whose information or status is being verified. If self-certification is accepted, within 90 days of admission, OCHA will verify the information in EIV or through other third-party verification if the information is not available in EIV. OCHA will note the family's file that self-certification was used as initial verification and include an EIV printout or other third-party verification confirming the applicant's date of birth and/or disability status.

If OCHA determines that an ineligible family received assistance, OCHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

**23-IV.G. INCOME TARGETING**

OCHA must determine income eligibility for EHV families in accordance with 24 CFR 982.201 and OCHA policy in Chapter 3; however, income targeting requirements do not apply for EHV families. OCHA may still choose to include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

## **PART V: HOUSING SEARCH AND LEASING**

### **23-V.A. INITIAL VOUCHER TERM**

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, EHV vouchers must have an initial search term of at least 120 days. OCHA policies on extensions as outlined in Section 5-II.E. will apply.

All EHV's will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless OCHA grants an extension.

### **23-V.B. HOUSING SEARCH ASSISTANCE**

The PHA must ensure housing search assistance is made available to EHV families during their initial housing search. The housing search assistance may be provided directly by the PHA or through the CoC or another partnering agency or entity.

At a minimum, housing search assistance must:

- Help individual families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods;
- Provide transportation assistance and directions to potential units;
- Conduct owner outreach;
- Assist with the completion of rental applications and PHA forms; and
- Help expedite the EHV leasing process for the family

As identified in the MOU between OCHA and the CoC, the Office of Care Coordination will work with the OCHA to identify and contract with service providers to provide housing search assistance, including financial assistance and housing stabilization services using available EHV service fee funds and other funding resources through contracted services providers.

The services provided are to include:

1. Help households identify potentially available units during their housing search.
2. Provide transportation assistance and directions to potential units.
3. Conduct owner/landlord outreach and engagement.
4. Assist with the completion of rental application and OCHA forms.
5. Help to expedite the leasing process for the household.
6. Educate applicants on compliance with rental lease requirements.

### **23-V.C. HOUSING QUALITY STANDARD PRE-INSPECTIONS**

To expedite the leasing process, PHAs may pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units.

To expedite the leasing process, OCHA may pre-inspect available units that EHV families may be interested in leasing to maintain a pool of eligible units. If an EHV family selects a unit that passed a housing quality standard pre-inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305.

The family will be free to select his or her unit.

When a pre-inspected unit is not selected, OCHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for any required reinspection.

### **23-V.D. INITIAL LEASE TERM**

Unlike in the standard the HCV program, EHV voucher holders may enter into an initial lease that is for less than 12 months, regardless of OCHA policy in Section 9-I.E., Term of Assisted Tenancy.

### **23-V.E. PORTABILITY**

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to EHV. Exceptions are addressed below.

#### **Nonresident Applicants**

Under EHV, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied, regardless of OCHA policy in Section 10-II.B.

#### **Billing and Absorption**

A receiving PHA cannot refuse to assist an incoming EHV family, regardless of whether the PHA administers EHV under its own ACC.

- If the EHV family moves under portability to another PHA that administers EHV under its own ACC:
  - The receiving PHA may only absorb the incoming EHV family with an EHV (assuming it has an EHV voucher available to do so).
  - If the PHA does not have an EHV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with EHV assistance and may not absorb the family with a regular HCV when the family leases the unit.
  - Regardless of whether the receiving PHA absorbs or bills the initial PHA for the family's EHV assistance, the EHV administration of the voucher is in accordance with the receiving PHA's EHV policies.
- If the EHV family moves under portability to another PHA that does not administer EHV under its own ACC, the receiving PHA may absorb the family into its regular HCV program or may bill the initial PHA.

#### **Family Briefing**

In addition to the applicable family briefing requirements at 24 CFR 982.301(a)(2) as to how portability works and how portability may affect the family's assistance, the initial PHA must inform the family how portability may impact the special EHV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

In addition to following OCHA policy on briefings in Chapter 5, as part of the briefing packet for EHV families, OCHA will include a written notice that OCHA will assist the family with moves under portability.

### **Coordination of Services**

If the portability move is in connection with the EHV family's initial lease-up, the receiving PHA and the initial PHA must consult and coordinate on the EHV services and assistance that will be made available to the family.

For EHV families who are exercising portability, when OCHA contacts the receiving PHA in accordance with Section 10-II.B. Preapproval Contact with Receiving PHA, OCHA will consult and coordinate with the receiving PHA to ensure there is no duplication of EHV services and assistance, and ensure the receiving PHA is aware of the maximum amount of services fee funding that the initial PHA may provide to the receiving PHA on behalf of the family.

### **Services Fee**

Standard portability billing arrangements apply for HAP and ongoing administrative fees for EHV families.

For service fees funding, the amount of the service fee provided by the initial PHA may not exceed the lesser of the actual cost of the services and assistance provided to the family by the receiving PHA or \$1,750, unless the initial PHA and receiving PHA mutually agree to change the \$1,750 cap. Service fees are paid as follows:

- If the receiving PHA, in consultation and coordination with the initial PHA, will provide eligible services or assistance to the incoming EHV family, the receiving PHA may be compensated for those costs by the initial PHA, regardless of whether the receiving PHA bills or absorbs.
- If the receiving PHA administers EHV, the receiving PHA may use its own services fee and may be reimbursed by the initial PHA, or the initial PHA may provide the services funding upfront to the receiving PHA for those fees and assistance.
- If the receiving PHA does not administer EHV, the initial PHA must provide the services funding upfront to the receiving PHA. Any amounts provided to the receiving PHA that are not used for services or assistance on behalf of the EHV family must promptly be returned by the receiving PHA to the initial PHA.

### **Placement Fee/Issuance Reporting Fee**

If the portability lease-up qualifies for the placement fee/issuance reporting fee, the receiving PHA receives the full amount of the placement component of the placement fee/issuance reporting fee. The receiving PHA is eligible for the placement fee regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program at initial lease-up. The initial PHA qualifies for the issuance reporting component of the placement fee/issuance reporting fee, as applicable.

## 23-V.F. PAYMENT STANDARDS

### Payment Standard Schedule

For the EHV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, OCHA may, but is not required to, establish separate higher payment standards for EHV. Lower EHV payment standards are not permitted. If OCHA is increasing the regular HCV payment standard, OCHA must also increase the EHV payment standard if it would be otherwise lower than the new regular HCV payment standard. The separate EHV payment standard must comply with all other HCV requirements with the exception of the alternative requirements discussed below.

Further, if OCHA chooses to establish higher payments standards for EHV, HUD has provided other regulatory waivers:

- Defining the “basic range” for payment standards as between 90 and 120 percent of the published Fair Market Rent (FMR) for the unit size (rather than 90 to 110 percent).
- Allowing a PHA that is not in a designated Small Area FMR (SAFMR) area or has not opted to voluntarily implement SAFMRs to establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published SAFMRs. The PHA may establish an exception payment standard up to 120 percent (as opposed to 110 percent) of the HUD published Small Area FMR for that ZIP code area. The exception payment standard must apply to the entire ZIP code area.
- The PHA must notify HUD if it establishes an EHV exception payment standard based on the SAFMR.
- OCHA may establish a higher payment standard amount for EHV. The need for a higher payment standard amount for EHV will be evaluated annually.
- Rent Reasonableness
- All rent reasonableness requirements apply to EHV units, regardless of whether OCHA has established an alternative or exception EHV payment standard.

### Increases in Payment Standards

The requirement that OCHA apply increased payment standards at the family’s first regular recertification on or after the effective date of the increase does not apply to EHV. OCHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, provided the increased payment standard is used to calculate the HAP no later than the effective date of the family’s first regular reexamination following the change.

OCHA will not establish an alternative policy for increases in the payment standard. OCHA policy in Section 11-III.B. governing increases in payment standards will apply to EHV.

## 23-V.G. TERMINATION OF VOUCHERS

After September 30, 2023, OCHA may not reissue EHV when assistance for an EHV- assisted family ends. This means that when an EHV participant (a family that is receiving rental assistance under a HAP contract) leaves the program for any reason, OCHA may not reissue that EHV to another family unless it does so no later than September 30, 2023.

If an applicant family that was issued the EHV is unsuccessful in finding a unit and the EHV expires after September 30, 2023, the EHV may not be reissued to another family.

All EHV's under lease on or after October 1, 2023, may not under any circumstances be reissued to another family when the participant leaves the program for any reason.

An EHV that has never been issued to a family may be initially issued and leased after September 30, 2023, since this prohibition only applies to EHV's that are being reissued upon turnover after assistance to a family has ended. However, HUD may direct PHAs administering EHV's to cease leasing any unleased EHV's if such action is determined necessary by HUD to ensure there will be sufficient funding available to continue to cover the HAP needs of currently assisted EHV families.

## **PART VI: USE OF FUNDS, REPORTING, AND FINANCIAL RECORDS**

EHV funds allocated to the PHA for HAP (both funding for the initial allocation and HAP renewal funding) may only be used for eligible EHV HAP purposes. EHV HAP funding obligated to the PHA may not be used for EHV administrative expenses or the other EHV eligible expenses under this notice. Likewise, EHV administrative fees and funding obligated to the PHA are to be used for those purposes and must not be used for HAP.

The appropriated funds for EHV are separate from the regular HCV program and may not be used for the regular HCV program but may only be expended for EHV eligible purposes.

EHV HAP funds may not roll into the regular HCV restricted net position (RNP) and must be tracked and accounted for separately as EHV RNP. EHV administrative fees and funding for other eligible expenses permitted by Notice PIH 2021-15 may only be used in support of the EHV and cannot be used for regular HCVs. EHV funding may not be used for the repayment of debts, or any amounts owed to HUD by HUD program participants including, but not limited to, those resulting from Office of Inspector General (OIG), Quality Assurance Division (QAD), or other monitoring review findings.

The PHA must comply with EHV reporting requirements in the Voucher Management System (VMS) and Financial Data Schedule (FDS) as outlined in Notice PIH 2021-15.

The PHA must maintain complete and accurate accounts and other records for the program and provide HUD and the Comptroller General of the United States full and free access to all accounts and records that are pertinent the administration of the EHV in accordance with the HCV program requirements at 24 CFR 982.158.

## Glossary

### ACRONYMS USED IN SUBSIDIZED HOUSING

<b>AAF</b>	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
<b>ACC</b>	Annual contributions contract
<b>ADA</b>	Americans with Disabilities Act of 1990
<b>BR</b>	Bedroom
<b>CDBG</b>	Community Development Block Grant (Program)
<b>CFR</b>	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
<b>CPI</b>	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FHA</b>	Federal Housing Administration
<b>FICA</b>	Federal Insurance Contributions Act (established Social Security taxes)
<b>FMR</b>	Fair market rent
<b>FR</b>	Federal Register
<b>FSS</b>	Family Self-Sufficiency (Program)
<b>FY</b>	Fiscal year
<b>FYE</b>	Fiscal year end
<b>GAO</b>	Government Accountability Office
<b>GR</b>	Gross rent
<b>HAP</b>	Housing assistance payment
<b>HCV</b>	Housing choice voucher
<b>HQS</b>	Housing quality standards.
<b>HUD</b>	Department of Housing and Urban Development
<b>HUDCLIPS</b>	HUD Client Information and Policy System
<b>IG</b>	(HUD Office of) Inspector General
<b>IPA</b>	Independent public accountant
<b>IRA</b>	Individual Retirement Account
<b>IRS</b>	Internal Revenue Service
<b>JTPA</b>	Job Training Partnership Act
<b>LBP</b>	Lead-based paint

<b>MSA</b>	Metropolitan statistical area (established by the U.S. Census Bureau)
<b>MTCS</b>	Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)
<b>NOFA</b>	Notice of funding availability
<b>OMB</b>	Office of Management and Budget
<b>PASS</b>	Plan for Achieving Self-Support
<b>PHA</b>	Public housing agency
<b>PHRA</b>	Public Housing Reform Act of 1998 (also known as the Quality Housing and Work Responsibility Act)
<b>PIC</b>	PIH Information Center
<b>PIH</b>	(HUD Office of) Public and Indian Housing
<b>PS</b>	Payment standard
<b>QC</b>	Quality control
<b>QHWRA</b>	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)
<b>REAC</b>	(HUD) Real Estate Assessment Center
<b>RFP</b>	Request for proposals
<b>RTA</b>	Request for tenancy approval
<b>RIGI</b>	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
<b>SEMAP</b>	Section 8 Management Assessment Program
<b>SRO</b>	Single room occupancy
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental security income
<b>TANF</b>	Temporary assistance for needy families
<b>TR</b>	Tenant rent
<b>TTP</b>	Total tenantpayment
<b>UA</b>	Utility allowance
<b>URP</b>	Utility reimbursement payment
<b>VAWA</b>	Violence Against Women Reauthorization Act

## GLOSSARY OF SUBSIDIZED HOUSING TERMS

### ***Abatement***

Stopping HAP payments to an owner with no potential for retroactive payment.

### ***Absorption***

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

### ***Accessible***

The facility or portion of the facility can be approached, entered, and used by individuals with physical handicaps.

### ***Adjusted Income***

Annual income, less allowable HUD deductions

### ***Adjusted Annual Income***

Same as Adjusted Income.

### ***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 fee reserves from FY 2004 and 2005 funding are further restricted to activities related to the provision of tenant-based rental assistance authorized under Section 8.

### ***Administrative plan***

The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA’s board and included as a supporting document to the PHA Plan. See §982.54.

### ***Admission***

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

### ***Affiliated individual***

With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual.

### ***Amortization payment***

In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

### ***Annual contributions contract (ACC)***

The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the

program.

***Annual Income***

Prior to implementation of HOTMA 102/104, the anticipated total income of an eligible family from all sources for the 12- month period following the date of determination of income, computed in accordance with the regulations. Upon implementation of HOTMA 102/104, all amounts not specifically excluded in 24 CFR 5.609(b), received from all sources by each member of the family who is 18 years of age or older or is the head of household, spouse or cohead, plus unearned income by or on behalf of each dependent who is under 18 years of age.

***Applicant (applicant family)***

A family that has applied for admission to a program but is not yet a participant in the program.

***Area Exception Rent***

An amount that exceeds the published FMR. See §982.504(b).

***“As-paid” States***

States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

***Assets***

(See Net Family Assets.)

***Authorized voucher units***

The number of units for which a PHA is authorized to make assistance payments to owners under its annual contributions contract.

***Auxiliary aids***

Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance.

***Bifurcate***

With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

***Budget authority***

An amount authorized and appropriated by the Congress for payment to HAs 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.

***Building***

A structure with a roof and walls that contains one or more dwelling units.

***Child***

A member of the family other than the family head or spouse who is under 18 years of age.

***Childcare 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 childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

***Citizen***

A citizen or national of the United States.

***Co-head***

An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

***Common space***

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

***Computer match***

The automated comparison of data bases containing records about individuals.

***Confirmatory review***

An on-site review performed by HUD to verify the management performance of a PHA.

***Consent form***

Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

***Congregate housing***

Housing for elderly persons or persons with disabilities that meets the housing quality standard for congregate housing. A special housing type: see §982.606 to §982.609.

***Contiguous MSA***

In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

***Continuously assisted***

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

***Contract***

(See Housing Assistance Payments Contract.)

***Contract authority***

The maximum annual payment by HUD to a PHA for a funding increment.

***Cooperative (term includes mutual housing***

Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: see §982.619.

***Covered families***

Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

***Dating violence***

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

***Day Laborer***

An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.

***De minimis error***

An error that results in a difference in the determination of a family's adjusted income of \$30 or less per month.

***Dependent***

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

***Dependent child***

In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of dependent as specified above.

***Disability assistance expenses***

Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

***Disabled family***

A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

***Disabled person***

See Person with Disabilities.

***Disallowance***

Exclusion from annual income.

***Displaced family***

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

***Domestic violence***

Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

***Domicile***

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

***Drug-related criminal activity***

As defined in 42 U.S.C. 1437f(f)(5).

***Drug-trafficking***

The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

***Earned income***

Upon implementation of HOTMA 102/104, income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

***Economic abuse***

Behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:

- Restrict a person's access to money, assets, credit, or financial information
- Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
- Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty

***Economic Self-Sufficiency Program***

Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare,

financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see §5.603(c).

***Elderly family***

A family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

***Elderly Person***

An individual who is at least 62 years of age.

***Eligible Family (Family)***

A family that is income eligible and meets the other requirements of the Act and Part 5 of 24 CFR.

***Employer Identification Number (EIN)***

The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

***Evidence of citizenship or eligible status***

The documents which must be submitted to evidence citizenship or eligible immigration status. (See §5.508(b).)

***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. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. (CFR 5.603)

***Facility***

All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

***Fair Housing Act***

means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

***Fair market rent (FMR)***

The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. In the HCV program, the FMR may be established at the ZIP code level (see definition of Small Area Fair Market Rents), metropolitan area level, or nonmetropolitan county level.

***Family***

Includes but is not limited to the following, and can be further defined in PHA policy.

Family includes a single person who may be:

- An elderly person, displaced person, disabled person, near-elderly person, or any other single person
- Upon PHA implementation of HOTMA 102/104, an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

Family also includes a group of persons residing together, and such group includes, but is not limited to:

- A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
- An elderly family;
- A near-elderly family;
- A disabled family;
- A displaced family; and
- The remaining member of a tenant family.

***Family rent to owner***

In the voucher program, the portion of rent to owner paid by the family.

***Family self-sufficiency program (FSS program)***

The program established by a PHA 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.

***Federal agency***

A department of the executive branch of the Federal Government.

***Foster adult***

A member of the household who is 18 years of age or older and meets the definition of a foster adult under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

***Foster child***

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

***Foster Childcare Payment***

Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

***Full-time Student***

A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (CFR 5.603)

***Funding increment***

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

***Gender identity***

Actual or perceived gender-related characteristics.

***Gross rent***

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

***Group home***

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

***Handicap***

Any condition or characteristic that renders a person an individual with handicaps. See 24CFR 8.3.

***Handicap Assistance Expense***

See “Disability Assistance Expense.”

***HAP contract***

Housing assistance payments contract. (Contract). A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

***Head of household***

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

***Health and medical care expenses***

Any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

***Household***

A household includes additional people other than the family who, with the PHA’s permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

***Housing assistance payment***

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

total assistance payment exceeds the rent to owner.

***Housing agency (HA)***

A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (“PHA” and “HA” mean the same thing.)

***Housing Quality Standards***

The HUD minimum quality standards for housing assisted under the voucher program.

***HUD***

The Department of Housing and Urban Development.

***Human trafficking***

A crime involving the exploitation of a person for labor, services, or commercial sex. The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations recognize and define two primary forms of human trafficking:

- Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. See 22 U.S.C. § 7102(11)(A).
- Forced labor is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See 22 U.S.C. § 7102(11)(B).

***Immediate family member***

A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or any other person living in the household of that person and related to that person by blood and marriage.

***Imputed Asset***

Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

***Imputed Income***

HUD passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed \$5,000.

***Imputed welfare income***

An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction but is included in the family’s annual income and therefore reflected in the family’s rental contribution.

***Income***

Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

***Income for Eligibility***

Annual Income.

***Independent contractor***

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

***Independent entity***

The unit of general local government; however, if the PHA itself is the unit of general local government or an agency of such government, then only the next level of general local government (or an agency of such government) or higher may serve as the independent entity; or a HUD-approved entity that is autonomous and recognized under state law as a separate legal entity from the PHA. The entity must not be connected financially (except regarding compensation for services performed for PHA-owned units) or in any other manner that could result in the PHA improperly influencing the entity.

***Individual with handicaps***

Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

***Inflationary index***

An index based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) used to make annual adjustments to the deduction for elderly disabled families, the cap for imputing returns on assets, the restriction on net family assets, the amount of net assets the PHA may determine based on self-certification by the family, and the dependent deduction.

***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.

***Initial rent to owner***

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

***Inside***

Under NSPIRE, the inside of HUD housing (or “inside areas”) refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of “inside” common areas may include, basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.

***Institution of higher education***

An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

***Jurisdiction***

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

***Landlord***

Either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

***Lease***

A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

***Life-threatening deficiency***

Under NSPIRE, the life-threatening category includes deficiencies that, if evident in the home or on the property, present a high risk of death or severe illness or injury to a resident.

***Live-in aide***

A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

***Local Preference***

A preference used by the PHA to select among applicant families.

***Low deficiency***

Under NSPIRE, deficiencies critical to habitability but not presenting a substantive health or safety risk to resident.

***Low Income Family***

A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% for areas with unusually high or low incomes.

***Manufactured home***

A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence and meets the housing quality standard. 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.

***Medical expenses***

Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.

Merger Date. October 1, 1999.

***Minor***

A member of the family household other than the family head or spouse, who is under 18 years of age.

***Mixed family***

A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

***Moderate deficiency***

Under NSPIRE, this includes deficiencies that, if evident in the home or on the property, present a moderate risk of an adverse medical event requiring a healthcare visit; cause temporary harm; or if left untreated, cause or worsen a chronic condition that may have long-lasting adverse health effects; or that the physical security or safety of a resident or their property could be compromised.

***Monthly adjusted income***

One twelfth of adjusted income.

***Monthly income***

One twelfth of annual income.

***Mutual housing***

Included in the definition of “cooperative.”

***National***

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

***National Standards for the Physical Inspection of Real Estate (NSPIRE)***

HUD’s housing inspection approach. NSPIRE is a single inspection standard for all units under the Public Housing, HCV, Multifamily, and Community Planning and Development (CPD) programs. NSPIRE’s focus is on the areas that impact residents the most, such as the dwelling unit.

***Near-elderly family***

A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

***Net family assets***

(1) Prior to implementation of HOTMA 102/104, net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property

such as furniture and automobiles shall be excluded.

- In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.
- In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received, therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- Upon implementation of HOTMA 102/104, the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment. In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

### ***Noncitizen***

A person who is neither a citizen nor national of the United States.

### ***Notice of Funding Availability (NOFA)***

For budget authority that HUD distributes by competitive process, the Federal Register document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

### ***Office of General Counsel (OGC)***

The General Counsel of HUD.

### ***Outside***

Under NSPIRE, outside of HUD housing (or “outside areas”) refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of “outside” components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, car ports, fire

escapes, foundations, lighting, roofs, walls, and windows.

***Overcrowded***

A unit that does not have at least one bedroom or living/sleeping room for each two persons.

***Owner***

Any person or entity with the legal right to lease or sublease a unit to a participant. PHA Plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

***PHA Plan***

The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

***PHA's quality control sample***

An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

***Participant (participant family)***

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

***Payment standard***

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

***Persons with Disabilities***

A person who has a disability as defined in 42 U.S.C. 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and "individual with handicaps" as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See "Individual with handicaps"

***Portability***

Renting a dwelling unit with Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

***Premises***

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

***Private space***

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

***Processing entity***

The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the Section 8 program, the “processing entity” is the “responsible entity.”

***Project owner***

The person or entity that owns the housing project containing the assisted dwelling unit.

***Public Assistance***

Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, state, or local governments.

***Public Housing Agency (PHA)***

Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

***Qualified census tract***

With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent, and where the census tract is designated as a qualified census tract by HUD.

***Real property***

Real property has the same meaning as that provided under the law of the state in which the property is located.

***Reasonable rent***

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

***Reasonable accommodation***

A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA’s programs or services.

***Receiving PHA***

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

***Recertification***

Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

***Remaining Member of Tenant Family***

Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

***Rent to Owner***

The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance and

utilities that the owner is required to provide and pay for.

***Request for Tenancy Approval (RTA)***

A form (Form HUD-52517) submitted by or on behalf of a family to a PHA once the family has identified a unit that it wishes to rent using tenant-based voucher assistance.

***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.

***Responsible entity***

For the public housing and the Section 8 tenant-based assistance, project-based certificate assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

***Secretary***

The Secretary of Housing and Urban Development. Section

***Section 8***

Section 8 of the United States Housing Act of 1937.

***Section 8 covered programs***

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

***Section 8 Management Assessment Program (SEMAP)***

A system used by HUD to measure PHA performance in key Section 8 program areas. See 24 CFR Part 985.

***Section 214***

Section 214 of the Housing and Community Development Act of 1980, as amended

***Section 214 covered programs***

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

***Security Deposit***

A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

***Seasonal worker***

An individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry.

***Set-up charges***

In a manufactured home space rental: Charges payable by the family for assembling, skirting

and anchoring the manufactured home.

***Severe deficiency***

Under NSPIRE, the severe category includes deficiencies that, if evident in the home or on the property, present a high risk of permanent disability, or serious injury or illness, to a resident; or the physical security or safety of a resident or their property would be seriously compromised.

***Sexual assault***

Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

***Sexual orientation***

Homosexuality, heterosexuality or bisexuality.

***Shared housing***

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

***Single Person***

A person living alone or intending to live alone.

***Single room occupancy housing (SRO)***

A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

***Small Area Fair Market Rents (SAFMRs)***

FMRs established for ZIP code areas.

***Social Security Number (SSN)***

The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

***Special admission***

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

***Special housing types***

See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

***Specified Welfare Benefit Reduction***

Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

***Spouse***

The marriage partner of the head of household.

***Stalking***

To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

***State Wage Information Collection Agency (SWICA)***

The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

***Subsidy standards***

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

***Suspension***

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. This practice is also called “tolling”.

***Tax credit rent***

With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

***Technological abuse***

An act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:

- Internet enabled devices
- Online spaces and platforms
- Computers
- Mobile devices
- Cameras and imaging programs
- Apps
- Location tracking devices
- Communication technologies
- Any other emergency technologies

***Tenancy addendum***

For the Housing Choice Voucher Program, the lease language required by HUD in the lease

between the tenant and the owner.

***Tenant***

The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

***Tenant-paid utilities***

Utilities and services that are not included in the rent to owner and are the responsibility of the assisted family, regardless of whether the payment goes to the utility company or the owner. The utilities and services are those necessary in the locality to provide housing that complies with housing quality standard. The utilities and services may also include those required by HUD through a Federal Register notice after providing opportunity for public comment.

***Tenant rent to owner***

See “Family rent to owner”.

***Term of Lease***

The amount of time a tenant agrees in writing to live in a dwelling unit.

***Total Tenant Payment (TTP)***

The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

***Unearned income***

Upon implementation of HOTMA 102/104, any annual income, as calculated under 24 CFR 5.609, that is not earned income.

***Unit***

Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

***Utility allowance***

If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy- conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

***Utility reimbursement***

In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

***Utility hook-up charge***

In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

***Vacancy Loss Payments***

(Applies only to pre-10/2/95 HAP Contracts in the Rental Certificate Program). When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the PHA as soon as s/he learns of the vacancy, makes an effort to

advertise the unit, and does not reject any eligible applicant except for good cause.

***Very Low-Income Family***

A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

***Veteran***

A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.

***Violence Against Women Act (VAWA)***

Prohibits denying admission to the program to an otherwise qualified applicant or terminating assistance on the basis that the applicant or program participant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

***Violent criminal activity***

Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

***Voucher (Housing Choice Voucher)***

A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

***Voucher holder***

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

***Voucher program***

The housing choice voucher program.

***Waiting list admission***

An admission from the PHA waiting list.

***Welfare assistance***

Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, childcare or other services for working families. FOR THE FSS PROGRAM (984.103(b)), “welfare assistance” includes only cash maintenance payments from Federal or State programs designed to meet a family’s ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

***Welfare-to-work (WTW) family***

A family 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).

***Withholding***

Stopping HAP payments to an owner while holding them for potential retroactive disbursement.