

**Albuquerque Housing Authority**  
**Rental Assistance Housing Programs**  
**Administrative Plan**  
**April 2016 Edition**



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ALBUQUERQUE HOUSING AUTHORITY

*"Empowering people in our community through affordable housing and self sufficiency opportunities."*

1840 University Boulevard SE  
Albuquerque, NM 87106  
Phone: (505) 764-3920  
Fax: (505) 764-3981  
[www.abqha.org](http://www.abqha.org)

Contents	
Mission Statement, Local Objectives & Purpose of Plan.....	10
Mission Statement.....	10
Vision.....	10
Core Values.....	10
Purpose of Plan.....	11
Administrative Flexibility Due to Reduced Funding.....	11
Marketing and Outreach to Households & Owners.....	12
Local Objectives.....	12
Chapter 1 Nondiscrimination & Accessibility.....	13
1.1 Complying With Federal & State Civil Rights Laws.....	13
1.2 Affirmative Marketing.....	14
1.3 Accessibility for People with Disabilities (Section 504).....	14
1.4 Reasonable Accommodation.....	16
1.5 Requests for Reasonable Accommodation.....	16
1.6 Reasonable Accommodation Request Denial.....	17
1.7 Reasonable Accommodation Modifications & Alterations (Section 504).....	17
1.8 Limited English Proficiency (LEP).....	18
Chapter 2 Privacy, Postings & Objectives.....	18
2.1 Right to Privacy.....	18
2.2 Required Postings.....	19
2.3 Management Assessment Objectives.....	19
Chapter 3 Application Process Overview.....	20
3.1 Outreach.....	20
3.2 Where & How to Apply.....	20
3.3 Pre-Application Review.....	21
3.4 Portability Requirements.....	21
Chapter 4 Waiting List Administration.....	21
4.1 Organizing the Waiting List.....	22
4.2 The Preference System.....	22
4.3 Preference Based on Income.....	22
4.4 Local Preferences.....	22
4.5 Verification of Preferences.....	24
4.6 Preference Denial.....	24

4.7 Establishing & Maintaining the Waiting List.....	24
4.8 Reasons an Applicant may be Removed from Waiting List .....	25
4.9 Updating the Waiting List .....	26
Chapter 5 Misrepresentation by the Applicant or Tenant.....	26
Chapter 6 Eligibility Determination.....	27
6.1 Eligibility & Admissions Screening.....	27
6.2 Eligibility Criteria .....	27
6.3 Eligible Households .....	28
6.4 Definition of Household .....	29
6.5 Descriptions of Household Members .....	29
6.6 Required Documentation .....	31
6.7 Screening Activities.....	34
6.8 Mitigating Circumstances.....	35
6.9 Qualifying / Disqualifying Applicants.....	35
Chapter 7 Section 8 Rental Assistance Program Issuance of Housing Choice Vouchers .....	35
7.1 Process for Issuing Housing Choice Vouchers to Applicants.....	36
7.2 Housing Choice Voucher Holder's Briefing Packet.....	37
7.3 Assistance Provided to Housing Choice Voucher Holders .....	38
7.4 Public Housing Tenant Transfers to Housing Choice Voucher Program .....	38
7.5 Term of Housing Choice Voucher .....	39
7.6 Encouraging Participation in Areas without Low Income or Minority Concentration - (Achieving Deconcentration of Poverty).....	40
7.7 Security Deposit Requirements .....	40
7.8 Housing Choice Voucher Issuance Determination for Split Households .....	41
7.9 Subsidy Standards - Determining Housing Choice Voucher Size .....	41
7.10 Monitoring of Selection .....	41
7.11 Changes in Housing Choice Voucher Size .....	41
7.12 Household Composition for Household.....	42
7.13 Unit Size Selected .....	42
7.14 Veterans Affairs Supportive Housing (VASH) Vouchers.....	43
Chapter 8 Household Obligations .....	43
Chapter 9 Factors Related to Total Tenant Payment (TTP) Determination .....	44
9.1 Minimum Rent .....	45
9.2 Proration of Assistance for Mixed Immigration Status Households .....	45

9.3 Annual Re-Certification Rent Adjustments.....	45
9.4 Interim Rent Adjustments.....	45
9.5 Sporadic / Seasonal Income.....	47
9.6 Lump-Sum Receipts.....	47
9.7 Regular Contributions & Gifts.....	47
9.8 Alimony & Child Support.....	48
9.9 Assets Disposed of for Less Than Fair Market Value (FMV).....	48
9.10 Childcare Expenses.....	48
9.11 Medical Expenses.....	49
9.12 Numerical Rounding Requirements.....	50
9.13 Disability Expense Allowance.....	50
9.14 Utility Allowance & Utility Reimbursement Payments.....	50
Chapter 10 Verification Procedures.....	50
10.1 Introduction.....	51
10.2 Release of Information.....	51
10.3 Timing of Verification.....	51
10.4 Methods of Verification.....	52
10.5 Items to be Verified.....	53
10.6 Methods Used to Verify Sources of Income.....	54
10.7 Acceptable Verification of Income & Assets.....	55
10.8 Methods Used to Verify Assets.....	57
Chapter 11 Approval of Assisted Tenancy.....	58
11.1 Introduction.....	58
11.2 Request for Tenancy Approval (RFTA).....	58
11.3 Suitability of Household.....	59
11.4 Lease Review.....	59
11.5 Disapproval of Proposed Rent.....	60
11.6 Information to Owners.....	60
11.7 HAP Contract Execution Process.....	61
11.8 Change of Ownership.....	61
Chapter 12 Housing Quality Standards (HQS) & Inspections.....	62
12.1 Introduction.....	62
12.2 Acceptable Inspection Standards.....	62
12.3 Manual & Automated Inspection Systems.....	63

12.4 Inspection Types.....	63
12.5 Acceptability Criteria & Exceptions to HQS.....	67
12.6 HQS Non-Compliance & Termination of HAP Contract .....	68
12.7 Determination of Responsibility .....	68
Chapter 13 Payment Standards, Owners Rent & Rent Reasonableness .....	69
13.1 Introduction.....	69
13.2 Payment Standard .....	69
13.3 Housing Assistance Payments to Owners .....	70
13.4 Making Payments to Owners.....	71
13.5 Rent Increase Requests from Owners.....	71
13.6 Rent Reasonable Determinations.....	72
13.7 PHA Rent Reasonableness Methodology.....	72
Chapter 14 Annual & Interim Recertifications .....	73
14.1 Introduction.....	73
14.2 Required Annual Activities.....	74
14.3 Annual Recertification .....	74
14.4 Reporting Interim Changes.....	75
14.5 Changes in Household Composition.....	76
14.6 Live-In Aide.....	80
14.7 Disability Related Overnight Care .....	81
14.8 Continuance of Assistance for Mixed Immigration Status Households.....	81
14.9 Special Consideration for Continued Assistance for Military Personnel.....	82
Chapter 15 Relocations with Continued Assistance & Portability.....	82
15.1 Introduction.....	82
15.2 Allowable Moves with Continued Assistance .....	82
15.3 Restrictions on Moves/Relocations.....	83
15.4 Procedure for Moves/Relocations.....	83
15.5 Restrictions on Portability .....	84
15.6 Incoming Portability.....	84
15.7 Outgoing Portability.....	86
Chapter 16 Contract Terminations .....	87
16.1 Introduction.....	87
16.2 Contract Termination.....	87
16.3 Termination by the Household: Household Moves (Relocations).....	87

16.4 Owner Terminations: Evictions & Judgements.....	87
16.5 Conditional Relocations.....	89
16.6 Termination of the Hap Contract by AHA.....	89
Chapter 17 Denial or Termination of Assistance .....	90
17.1 Introduction.....	90
17.2 Grounds for Denial/Termination.....	91
17.3 Terminations Due To Ineligible Immigration Status.....	93
17.4 Household Obligations.....	94
17.5 Tenancies with Zero (\$0) HAP .....	96
17.6 AHA Option Not To Terminate For Misrepresentation.....	96
17.7 Misrepresentation in Collusion with Owner .....	96
17.8 Missed Appointments & Deadlines.....	96
Chapter 18 Denial or Termination of Assistance .....	97
18.1 Drug-Related & Other Violent Criminal Activity .....	98
18.2 Definitions .....	98
18.3 Screening for Drug-Related or Violent Criminal Activity.....	99
18.4 Termination of Assistance.....	99
18.5 Denial of Assistance for Sex Offenders.....	99
18.6 Notice of Denial & Termination of Assistance .....	100
18.7 Required Evidence.....	100
18.8 Right to Informal Hearing.....	100
18.9 Confidentiality of Criminal Records.....	100
Chapter 19 Owner Disapproval & Participation Restrictions .....	101
19.1 Introduction.....	101
19.2 Termination/Disapproval of Owner.....	101
19.3 Owner Restrictions & Penalties .....	102
19.4 Other Remedies for Owner Violations.....	102
Chapter 20 Owner or Household Debts to AHA.....	102
20.1 Introduction.....	102
20.2 Repayment Agreement.....	103
20.3 Terms & Conditions.....	103
20.4 Debts Owed for Claims.....	105
20.5 Debts Due to Fraud .....	105
20.6 Owner Debt to the AHA .....	105

20.7 Debt Write-Offs.....	105
Chapter 21 Complaints, Appeals & Informal Reviews.....	105
21.1 Introduction.....	106
21.2 Complaints.....	106
21.3 Informal Review Procedures for Applicants.....	106
21.4 Informal Hearing Procedures .....	107
21.5 Grievance Procedures .....	107
Chapter 22 Special Housing Types .....	108
22.1 Introduction.....	108
22.2 Congregate Housing.....	108
22.3 Group Homes .....	108
22.4 Shared Housing.....	109
22.5 Single Room Occupancy (SRO).....	109
Chapter 23 Monitoring Program Performance.....	109
23.1 Introduction.....	109
Chapter 24 Project-Based Vouchers.....	110
24.1 Introduction.....	110
24.2 General Requirements.....	111
A. Tenant-Based Vs. Project-Based Voucher Assistance.....	111
B. Relocation Requirements.....	111
C. Equal Opportunity Requirements.....	112
24.3 PBV Owner Proposals.....	112
A. Overview.....	112
B. Owner Proposal Selection Procedures.....	112
C. Housing Type.....	116
D. Prohibition of Assistance for Certain Units .....	116
E. Subsidy Layering Requirements .....	117
F. Cap on Number of PBV Units in Each Project 25 Percent per Project Cap .....	117
G. Site Selection Standards .....	118
H. Environmental Review .....	120
24.4 Dwelling Units.....	121
A. Overview.....	121
B. Housing Quality Standards.....	121
C. Housing Accessibility for Persons With Disabilities.....	121

D. Inspecting Units .....	121
24.5 Rehabilitated & Newly Constructed Units .....	122
A. Overview.....	122
B. Agreement to Enter Into Hap Contract .....	123
C. Conduct of Development Work .....	124
D. Completion of Housing .....	124
24.6 Housing Assistance Payments Contract (HAP) .....	125
A. Overview.....	125
B. HAP Contract Requirements.....	125
C. Amendments to the HAP Contract.....	127
D. HAP Contract Year, Anniversary & Expiration Dates.....	128
E. Owner Responsibilities Under the HAP.....	128
F. Additional Hap Requirements .....	128
24.7 Selection of PBV Program Participants .....	129
A. Overview.....	129
B. Eligibility for PBV Assistance.....	129
C. Organization of the Waiting List.....	130
D. Selection from the Waiting List .....	130
E. Offer of PBV Assistance .....	131
F. Owner Selection of Tenants.....	132
G. Tenant Screening.....	133
24.8 Occupancy .....	134
A. Overview.....	134
B. Lease .....	134
C. Moves .....	137
D. Exceptions to the Occupancy Cap.....	138
24.9 Determining Rent to Owner.....	138
A. Overview.....	138
B. Rent Limits.....	139
C. Reasonable Rent.....	141
D. Effect of Other Subsidy & Rent Control.....	142
24.10 Payments to Owner.....	143
A. Housing Assistance Payments .....	143
B. Vacancy Payments .....	143



C. Tenant Rent to Owner..... 144

D. Other Fees & Charges..... 145

Glossary of Terms ..... 145

    Acronyms Used In Subsidized Housing..... 145

    Definition of Terms in Subsidized Housing..... 146

    Glossary of Terms Used In the Noncitizen Rule..... 157

Grievance Procedures ..... 158

    Informal Hearing Procedures..... 158

    Hearing & Appeal Provisions for "Restrictions on Assistance to Non-Citizens" ..... 160

    Mitigating Circumstances for Applicants & Participants with Disabilities ..... 161

        Appendix I Violence Against Women Act (VAWA) Policy..... 161

        Appendix V Enterprise Income Verification (EIV) Security and Procedure Policy ..... 162

        Appendix VI Limited English Proficiency Policy ..... 162

        Appendix VII Deconcentration Rule..... 162

## Mission Statement, Local Objectives & Purpose of Plan

### Mission Statement

Empowering people in our community through affordable housing and self-sufficiency opportunities.

### Vision

The vision for the Albuquerque Housing Authority is to be one of the highest performing housing authorities in the country. This achievement will be evident through the creation of excellent housing products, delivery of top-quality client services, and a reputation as a great place to work.

### Core Values

Core values provide the foundation for the AHA staff members to perform work and conduct themselves in a professional way. AHA's core values include:

**Service** – We empower clients and co-workers through education and opportunities for growth and success.

**Compassion** – We serve our clients and co-workers with honest understanding, empathy, and respect.

**Accountability** – We achieve organizational excellence by operating as a team, investing in staff training, and embracing the belief that every individual has the capacity to solve problems and fulfill personal goals.

**Integrity** – We are consistent in dealing professionally, honestly, and fairly with the public and each other.

**Stewardship** – We are committed to growing and sustaining AHA's financial resources and implementing environmentally friendly practices in all operations and facilities.

## Purpose of Plan

The purpose of this Administrative Plan is to establish policies for carrying out the housing program(s) in a manner consistent with the U.S. Department of Housing and Urban Development (HUD) requirements and with local objectives. The Plan covers all Rental Housing Assistance Programs for privately owned rental properties, including the Section 8 Housing Choice Voucher/Project Based Voucher (HCV/PBV) Program, Veterans Affairs Supportive Housing (VASH) Program, Mainstream Voucher Program, Tenant Protection, Moderate Rehabilitation (Mod Rehab) and Single Room Occupancy (SRO) programs. This Plan is consistent with the federal Quality Housing and Work Responsibility Act of 1998 (QHWRA), the City of Albuquerque Consolidated Plan and the HUD approved PHA Five Year Plan and Annual Plan.

The Section 8 Administrative Plan shall be consistent with the HUD approved PHA Five Year and Annual Plans.

AHA reserves the right to amend and revise this Administrative Plan from time-to-time in its effort to ensure compliance with changing program regulations and PHA policies and to preserve the integrity of the Plan. Any policy changes shall be made in writing and shall be in the form of formally adopted amendments and/or full revisions. In either case, AHA will allow for a 30-day comment period prior to the adoption of any policy amendments and/or revisions to the Plan.

**NOTE:** AHA will not permit these policies to be subverted to do personal or political favors. AHA will not offer rental housing assistance outside the prescribed policies in this Section 8 Administrative Plan, since doing so, would violate the policy, federal law, and the civil rights of the other families on the Waiting List.

## Administrative Flexibility Due to Reduced Funding

HUD requires public housing agencies to manage their Section 8 Voucher Program within the fixed amounts budgeted for the program calendar year. As a result, AHA may have to implement various cost-savings measures in order to stay within the fixed program fund amounts allocated to the program. Some of these cost-savings measures may include, but are not limited to, those measures identified in HUD Notice PIH 2005-9 & 2013-03 (HA). AHA shall refer to this “Notice” if it is determined that cost-savings measures need to be implemented.

In the event, due to insufficient funding, AHA is required to “terminate assistance” of participating households; those households who are “**LAST IN**” according to the date the initial HCV/PBV was issued will have their housing assistance terminated first. A thirty-day written notice will be mailed to the voucher program participant and the landlord, notifying them of the termination of the households housing assistance and the HAP contract.

Households whose housing assistance has been terminated as part of cost-savings measures **will be placed at the TOP of the Waiting List and will have the first opportunity to receive the next available voucher**. All households terminated due to insufficient funding will be offered the first opportunity to accept the next turnover voucher until all affected households have been re-assisted.

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## Marketing and Outreach to Households & Owners

### Household Outreach

Outreach efforts will include the use of the local media (i.e., radio/newspaper) to include minority owned radio stations and publications, as well as various state and local social service agencies. Advertising for applicants has and will continue to be carried out on an as needed basis. AHA will communicate the status of housing assistance availability to other service providers in the community, and advise them of housing eligibility factors and guidelines in order that they may make proper referrals for housing assistance.

In addition, a close relationship shall be established and maintained with several agencies serving special populations, such as the elderly and disabled. These agencies may refer applicants to the AHA Rental Assistance Office, particularly from the Senior Citizen Activity Centers, Social Security Administration, State Human Services Department, ARCA (the group formerly known as: Association of Retarded Citizens of Albuquerque), Transitional Living Services (TLS, Inc.) and various other public and private social service offices.

### Owner Outreach

AHA outreach efforts will serve to encourage participation by owners of rental units located outside areas of poverty or minority concentration. Any efforts to recruit landlords will be made through the Apartment Association of New Mexico (AANM), the local media, and rental property management firms and through other local realty businesses to increase consumer awareness.

The staff of AHA will make personal contact in the form of formal/informal one-to-one discussions or group meetings with private property owners, property managers, and real estate agencies where rents are possible within Rent Reasonableness limitations. Program requirements (such as the use of [www.GoSection8.com](http://www.GoSection8.com) for listing properties) will be explained and printed material will be offered to acquaint the property owner property owner/managers with the opportunities available under the program.

### Local Objectives

- To provide improved living conditions for very low and low-income families while maintaining their rent payments at an affordable level.
- To operate a socially and financially sound Public Housing Agency (PHA) that provides decent, safe, and sanitary housing within a drug free, suitable living environment for tenants and their families, ensuring that all properties meet the Uniform Physical Condition Standards (UPCS).
- To avoid concentrations of economically and socially deprived families in any one, or all of AHA public housing developments.
- Promote a safe environment by denying initial or continued assistance to families who have demonstrated a history of violent criminal or drug-related activity.
- Promote a safe environment by denying initial or continued assistance to families who have shown a pattern or repeated acts of any criminal activity, due to any drug and/or alcohol abuse by household members.
- To attempt to house a tenant body in each development, that is composed of households with a broad range of incomes and rent-paying abilities that are representative of the range of incomes of low-income families in AHA's jurisdiction.

- To provide opportunities for upward mobility for households who desire to achieve economic self-sufficiency.
- To facilitate the judicious management of AHA housing inventory and the efficient management of AHA staff.

## Chapter 1 Nondiscrimination & Accessibility

24 CFR § 1 and 100, § 107, § 146 and CFR § 8

It is the policy of AHA to protect the rights of applicants and program participants and to comply fully with all Civil Rights laws, Federal, State, and local Fair Housing and Equal Opportunity requirements in housing, employment, and age discrimination, including Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act 1973 (as amended), and all related federal, state and local Executive Orders.

### 1.1 Complying With Federal & State Civil Rights Laws

AHA shall not discriminate on the basis of race, religion, color, sex, creed, national or ethnic origin, ancestry, sexual orientation, gender identity, spousal affiliation, familial status, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation, or in the admission to, leasing, rent, occupancy, use, or other disposition of housing or related facilities, including land that is part of a development under the AHA jurisdiction covered by a public housing Annual Contributions Contract (ACC) with HUD. To further its commitment to full compliance with applicable Civil Rights laws, AHA will provide federal/state/local information to applicants, voucher holders and public housing tenants regarding "discrimination" and any recourse available to them. AHA provides and reviews information regarding Fair Housing rights and responsibilities during household briefing sessions. Such information will be made available during the household briefing session in each briefing packet.

Specifically, AHA shall not, on account of race, religion, color, sex, creed, national or ethnic origin, ancestry, sexual orientation, gender identity, spousal affiliation, familial status, physical or mental handicap, or if a victim of domestic violence, dating violence or stalking:

1. Deny anyone the opportunity to apply for housing (when waiting list is open), nor deny to any qualified applicant the opportunity to lease housing suitable to his or her needs;
2. Provide anyone housing that is of lower quality from that provided to others;
3. Subject anyone to segregation or disparate treatment;
4. Restrict anyone's access to any benefit enjoyed by others in connection with the housing program(s);
5. Treat anyone differently in determining eligibility or other requirements for admission;
6. Deny anyone access to the same level of services; or
7. Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program.

AHA shall not deny admission to otherwise qualified applicants because of their membership in some group to which negative behavior may be imputed.

## 1.2 Affirmative Marketing

AHA will conduct affirmative marketing as needed so the Waiting List includes a mix of applicants with races, ethnic backgrounds, ages, and disabilities proportionate to the mix of those groups in the eligible population of the program area. The marketing plan will take into consideration the number and distribution of housing choice vouchers and characteristics of families on the waiting list. AHA will review these factors regularly to determine the need for and scope of marketing efforts. All marketing efforts will include outreach to those individuals and families least likely to apply. At a minimum, marketing and informational materials will:

1. Comply with Fair Housing Act requirements on wording, logo, size of type, etc.;
2. Describe the housing programs available, application process, waiting list and preference structure;
3. Use clear and easy to understand terms and more than strictly English-language print media;
4. Contact agencies that serve potentially qualified applicants least likely to apply (e.g., the disabled) to ensure that accessible/adaptable units are offered to applicants who need their features;
5. Make clear who is eligible; low income individuals and families; working and non-working people; and people with both physical and mental disabilities; and
6. Be clear about AHA responsibility to provide reasonable accommodations to people with disabilities.

## 1.3 Accessibility for People with Disabilities (Section 504)

AHA policies and practices will be designed to provide assurances that all persons with disabilities will be provided reasonable accommodation so that they may fully access and utilize the housing program and any other related services. A person with a disability must request in writing (unless that person has a specific disability that prevents him from doing so) for any specific change to a policy as an. AHA will provide policy modification only if the modification does not fundamentally alter the nature of the program, or place an undue financial and/or administrative burden on AHA. The availability of specific accommodations will be made known by including notices on AHA forms and letters to all families, and all requests will be verified (unless the nexus between the request and disability is obvious) so that AHA can properly accommodate the need presented by the specific type of the disability.

### **Who is a Person with a Disability under Federal Civil Rights Laws**

The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act and their implementing regulations, define an individual or person with a disability in virtually the same language. Section 504's definition of disability (handicap) is found at 24 CFR § 8.3, the Fair Housing Act definition is at 24 CFR § 100.201, and the ADA definition is found at 28 CFR § 35.104.

A person with a disability is 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 impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users; and
- Persons who objectively pose direct threat to health or safety.

As used in this definition the phrase “physical or mental impairment” includes:

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

“Major life activities” mean functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

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

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

The above definition of disability determines whether an applicant or tenant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this definition of disability is not entitled to a reasonable accommodation under Section 504 and the Fair Housing Act.

This definition of disability relevant to reasonable accommodation is not the operative definition of disability for determining eligibility for Housing Choice Vouchers that serve persons with disabilities such as mixed population housing, vouchers targeted for persons with disabilities, and eligibility for preferences or medical deductions related to having a disability.

### **Exclusion of Individuals Who Pose a Direct Threat to Health or Safety of Others.**

Federal disability discrimination laws do not cover persons whose tenancy would pose a direct threat to the health or safety of others or whose tenancy would result in substantial physical damage to the property of others. However, neither Section 504 nor the Fair Housing Act allows for exclusion of individuals based upon fear or stereotype about a particular disability or persons with disabilities in



general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, a recent history of overt acts) A housing provider's good faith belief or speculation that an individual poses a direct threat is not sufficient. The assessment should consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable modifications of rules, policies, practices, procedures, or services that will reduce or eliminate the risk of a direct threat. Consequently, in evaluating a recent history of overt acts, a provider should take into account whether the individual has received intervening treatment or medication that has reduced or eliminated the risk of a direct threat. In such a situation, the provider may request that the individual document how the circumstances have changed so that he/she no longer poses a direct threat. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him or her from the housing on that basis.

It is the policy of AHA to ensure that all applicants and program participants with disabilities are provided equal opportunity and access to housing assistance programs. AHA will ensure that facilities and programs used by applicants/participants will be accessible to a person with a disability. Application and Management offices, interview and hearing rooms, community centers, laundry facilities, craft and games rooms, etc. (to the extent AHA has or provides such facilities or services) will be usable by individuals with a full range of disabilities. To the extent that AHA offers such facilities, if none are already accessible, some will be made so, subject to the undue financial and administrative burden test.

All requests for modification to program policies or structural alterations MUST be requested through the reasonable accommodation process.

#### **1.4 Reasonable Accommodation**

[24 CFR § 8.4, § 8.20, § 8.21(b) & § 8.24(a) (2)]

AHA, as a public agency that provides housing choice vouchers to eligible families, has a legal obligation to provide "reasonable accommodations" to applicants and housing choice voucher holders, if they or any eligible household member have a disability.

A reasonable accommodation is some modification or change AHA can make to AHA owned housing units, buildings, or to provide certain exceptions to policies, procedures or rules and regulations that will assist an otherwise eligible applicant, rental assistance program participant with a disability to take full advantage of and use of AHA' programs, including those that are operated by other agencies in AHA-owned public facilities.

An accommodation is not reasonable if it causes an undue financial and administrative burden; or represents a fundamental alteration in the nature of AHA' housing assistance programs.

Upon application AHA intake staff is verifying Section 504 Accessibility Requirements to ensure the household needs the features of the unit.

#### **1.5 Requests for Reasonable Accommodation**

A request for reasonable accommodation can be made at any time by a disabled applicant / participant or by the disabled persons authorized representative or by a current household member



on their behalf. Notifications to disabled households of annual recertification's, inspections, appointments, will also include information about requesting a reasonable accommodation. Anyone who requests an application for housing assistance or who is a current housing program participant and is requesting a reasonable accommodation for a disabled household member will be provided with a “**Request for Reasonable Accommodations**” form. Upon application AHA intake staff will verify Section 504 Accessibility Requirements.

The form **MUST** be completed, signed and dated by the requestor and the verification section **MUST** be completed, signed and dated by a professional who can substantiate the person's claim (i.e., Nurse Practitioner, Physician's Assistant or Psychologist, etc.). The form **MUST** be submitted to the 504 Coordinator for review and processing.

The 504 Coordinator will make the final decision and send a written notice of the decision within thirty (30) calendar days from the date of receipt of completed verification packet from the third party.

### 1.6 Reasonable Accommodation Request Denial

If denied, the reason(s) for denial will be included in the notification letter and identification of alternative accommodations, if any are to be offered.

The requestor may request an Informal Hearing by submitting a written request to AHA within 10 (10) business days from date of the Notice of Denial. The hearing process shall follow the same procedures identified in AHA Grievance Procedures.

**NOTE:** Copies of all requests, verifications, notifications and Informal Hearing decisions will be maintained in the applicant or tenant/client file. Copies will also be held in the Reasonable Accommodation Log.

### 1.7 Reasonable Accommodation Modifications & Alterations (Section 504)

AHA will correct situations or provide exceptions to policies, procedures or rules and regulations that create a barrier to equal housing opportunity. To permit people with disabilities to take advantage of AHA housing program(s) and non-housing programs, in accordance with Section 504, and the Fair Housing Amendments Act of 1988, there are requirements, optional actions and prohibitions:

1. AHA will, upon request by an applicant/participant with a disability,
  - Make structural modifications to its housing and non-housing facilities; and
  - Make reasonable accommodations through exceptions to its policy and procedures or other practices, **unless** such structural modifications or program policy and procedure exceptions would result in an **undue financial and administrative burden on AHA** or would result in a fundamental alteration in the nature of the housing programs.
2. In making structural alterations to “existing housing structures” or carrying out “Other Alterations” for otherwise qualified persons with disabilities, AHA **may**, but is not required to:
  - Make each of its existing facilities accessible, or

- Make structural alterations when other methods can be demonstrated to achieve the same effect;
  - Make structural alterations that require the removal or altering of a load-bearing component;
  - Provide an elevator in any multi-household housing project solely for the purpose of locating accessible units above or below the grade level; or
  - Provide exceptions in program policies and procedures and rules and regulations to household members requesting reasonable accommodation from impediments associated with certain policies and procedures or rules and regulations.
3. When AHA is making “Substantial Alterations” to an existing housing facility AHA **may**, but is not required to:
- Provide an elevator in any multi-household housing project solely for the purpose of locating accessible units above or below the grade level;
  - Make structural alterations that require the removal/altering of a load-bearing structural member;
  - Make structural alterations to meet minimum accessibility requirements where it is structurally impracticable.

### 1.8 Limited English Proficiency (LEP)

#### “Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons with Limited English Proficiency, “65 F.R. 50123 (August 16, 2000)”

(See APPENDIX VI)

1. Some applicants/participants may not read or understand English, **AHA staff will read and explain anything that they would normally hand to an applicant/participant to be read or be filled out if the applicant/participant is unable to read.**

Applicants/Participants, who don’t understand English and upon request, will be **furnished with an interpreter** who can explain what is being verbally communicated to them, **AHA is required by law to pay reasonable costs associated with providing a foreign language interpreter. Please refer to Limited English Proficiency Plan (LEP). AHA will document translation services.**

**Accessibility for the hearing impaired is provided by Relay New Mexico (711).**

## Chapter 2 Privacy, Postings & Objectives

### 2.1 Right to Privacy

Recognizing the expectation of privacy held by applicants/participants and other housing program participants, AHA will respect applicants/participants privacy within the constraints of the New Mexico Inspection of Public Records Act (specifically, Chapter 14, Article 2,, Part 1 et seq., New Mexico Statutes Annotated, 1978 compilation) and other local laws. Since AHA files are not an exception under the Act to the general provision that all governmental records are subject to inspection, when a request is made that complies with the requirements of the Act, AHA will allow

inspection of the records with medical records and any other material that is not a public record redacted.

Applicants will be required to sign the Form HUD-9886 Authorization for Release of Information that incorporates the Federal Privacy Act Statement that states under what conditions HUD will release applicant/tenant information. A Household's refusal to cooperate with this requirement will result in denial of admission or termination of assistance.

It is a household obligation to supply any information requested by either AHA or HUD.

## **2.2 Required Postings**

AHA will post in a conspicuous place for reading by all persons, or will have available upon request, the following:

1. Statement of Policies and Procedures governing the SECTION 8 ADMINISTRATIVE PLAN
2. Notice of the Status of the Waiting List
3. A listing of all public housing developments by name, address, number of units and units designed with special accommodations.
4. Income Limits for Admission
5. Utility Allowance Schedules for both the Public Housing and Housing Choice Vouchers
6. Current Schedule of Maintenance Charges (Public Housing)
7. Public Housing Flat Rent Schedule
8. Dwelling Lease (Public Housing only)
9. Grievance Procedures (Public Housing only)
10. Pet Policies (Public Housing only)
11. Fair Housing/Equal Housing Opportunity Poster
12. Equal Opportunity in Employment Poster
13. Any Other Current Housing Division program related notices
14. Housing Choice Voucher Payment Standards

## **2.3 Management Assessment Objectives**

AHA operates its Rental Assistance Housing Program with efficiency and can demonstrate to HUD or other independent auditors that AHA is using its resources in a manner that reflects its commitment to quality service. AHA policies and practices are consistent with the Section Eight Management Assessment Program. AHA is continuously assessing its programs and consistently strives to make improvements.

AHA acknowledges that its performance ratings are important to sustaining its capacity to maintain flexibility and authority. AHA intends to diligently manage its current program operations and continuously make efforts to be in full compliance with HUD requirements. The policies and procedures of this program are established so that the standards set forth by HUD are demonstrated and can be objectively reviewed by an auditor whose purpose is to evaluate performance.

## Chapter 3 Application Process Overview

### Section 8 Housing Choice Vouchers Program

The purpose of the Intake/Admissions application process is to permit AHA to obtain household income and composition information, to determine if an applicant household meets the eligibility requirements to be admitted to the program. At a minimum, the application will contain questions designed to gather the pertinent information required for admission to the Section 8 Housing Choice Voucher Program.

#### 3.1 Outreach

It is the goal of AHA that as much information about the Section 8 Housing Choice Voucher Program may be disseminated through local media. For those who call AHA Administrative Offices, staff will convey essential information. Outreach examples include:

- AHA will hold meetings with local community social service agencies to convey program information.
- AHA may make known to the public, through publications in a newspaper of general circulation as well as through minority media and other suitable means, the availability and nature of housing assistance for lower-income families. The notice shall inform such families where they may apply for public or private rental housing. AHA shall take affirmative action to provide opportunities to participate in the program to persons who, because of such factors as race, ethnicity, sex of head of household, age, or source of income, are less likely to apply for housing assistance.

#### 3.2 Where & How to Apply

Families wishing to apply for participation in the Section 8 Housing Choice Voucher Program Assistance Programs **MUST** complete an on-line application Applications will be accepted at [www.abqha.org](http://www.abqha.org) when the waiting list is open.

Applicants requiring reasonable accommodation or special assistance should contact AHA. Applicants applying for VASH, a displacement preference or a Nursing Home Transition Voucher should contact AHA directly by telephone.

**1840 University Blvd. SE  
Albuquerque, New Mexico, 87106  
505-764-3920**

\* in order to be eligible to receive a Category 2 voucher, in addition to being eligible for the PHA's regular HCV program and a non-elderly person with a disability, the family's head, co-head or sole member must be:

1. Transitioning from a nursing home or other healthcare institution, and
2. Provided the services needed to live independently in the community.

### 3.3 Pre-Application Review

Once the application is submitted, AHA will provide a confirmation number to applicants verifying. Applicants receipt shall be confirmation they are on the waiting list.

The pre-application constitutes the basic record of each household's placement on the waiting list. Therefore, each applicant **MUST** provide all required information when requested and self-certify the application. The pre-application and related documentation will become the property of AHA. Based on the information obtained at the time an applicant applies for placement on the waiting list, an assessment of the applicant's preliminary eligibility or ineligibility may be made.

**NOTE: A final determination of an applicant's eligibility will be made prior to an issuance of a Housing Choice Voucher. The applicant must continue to meet the income eligibility requirements of the housing programs, including the required arrest and criminal background check and/or other related tenant/participant screening requirements.**

Applicants are also required to respond to AHA requests to update information on their application, or to determine their continued interest in the program. Failure to provide required information or to respond to mailings will result in the applicant being removed from the Waiting List.

### 3.4 Portability Requirements

[24 CFR § 982.353 (c) (1) and (2)]

A household **that has not yet leased a unit** under the Section 8 program **must provide AHA with acceptable and verifiable documentation, to prove one year residency prior to being permitted to exercise immediate portability of their housing choice voucher.** A current lease, school records, utility records or other similar records are acceptable forms of documentation to demonstrate and certify legal domicile.

A "tenant" for the purpose of determining eligibility for immediate portability, is a person who has a legal domicile ("residency") in AHA's jurisdiction. The Deputy Director or Program Manager may make exceptions in cases where the health and welfare of a household member may be adversely impacted by this policy. Supporting verifiable documentation **MUST** be provided at time of exception request.

## Chapter 4 Waiting List Administration

[24 CFR § 960.260 & 24 CFR § 982.204]

It is the policy of AHA to ensure that all households are placed in the proper order on the Waiting List - and, that they are selected from the Waiting List for admissions in accordance with the policies and procedures in this Section 8 Administrative Plan. **AHA will do whatever is necessary to ensure and maintain the integrity of the Waiting List in accordance with HUD rules and regulations and the policies identified in this Section 8 Administrative Plan.**

This section identifies the criteria for qualifying for admission under the housing assistance programs administered by AHA and the criteria for applicant placement on the Waiting List,

including placement based on the local preferences system adopted by AHA in its efforts to meet the local housing needs in the community. It also defines the eligibility criteria for qualifying for a particular preference, process for verifying preference, AHA denial of preference and how preference(s) will be applied for placement on the Waiting List.

This section also identifies the policy and procedures that governs the establishment, organizing, maintenance, including the opening, closing and purging of the Waiting List, and applicant removal from the Waiting List.

#### 4.1 Organizing the Waiting List

It is AHA policy that each applicant shall be assigned his/her appropriate place on a **Waiting List** in sequence based on:

1. Applicant preference, or priority, if any; and
2. Date and time the application is received.

AHA will maintain its Waiting List in a form that records the type and size of unit needed, each applicant's priority/preference status, the date and time of application, and the race and ethnicity of the household head.

#### 4.2 The Preference System

[24 CFR § 960.206 & § 982.207]

A preference **DOES NOT GUARANTEE ADMISSION** to the Section 8 Housing Choice Voucher program. Preferences only establish the order on the waiting list together with date and time the application was received.

#### 4.3 Preference Based on Income

##### **Income Targeting (Rental Assistance Programs)**

Seventy-five percent of families admitted to the rental assistance programs (HCV) during the fiscal year shall be extremely low income families.

- Families with incomes between 0% and 30% of area median income.

#### 4.4 Local Preferences

All eligible families will be placed on the **waiting list by date and time following local "Ranking Preference(s)" with one (1) being the highest priority.**

##### **1. Upward Mobility (Employment, Education or Economic Development Self-Sufficiency) Preference:**

- a. Eligible Working Families where the head, co-head or spouse is currently employed at least 1040 hours for the past 12 months. Seasonal or non-traditional employment will be reviewed on a case by case basis and approved by the Program Manager. Currently employed means presently maintaining employment. (See Note below for further review)

- b. Eligible Families where the head, co-head or spouse are participating in a job training or economic self-sufficiency programs for at least the past 12 months including but not limited to the following:
  - NM Department of Human Services (TANF) Welfare to Work Programs
  - NM Department of Work Force Solutions Job Training Programs
  - UNM "Career Works Program"
  - College or university
  - Technical or Vocational Institutions
  - Division of Vocational Rehab through the State of New Mexico
- c. A household head of household, or co-head or spouse of the head of household is attending an educational institution MUST be at least a part-time student to qualify for the education preference. The standard for "part-time student" is a minimum of 9 or more credit hours per semester, trimester or quarter as defined by the university, college or technical vocational institution. Anything less than 9 credit hours will not qualify the applicant for the education preference. In addition, the student must have been classified a full or part-time student for at least one year prior to qualifying for the Upward Mobility preference

**NOTE: Any combination of education, employment, economic self-sufficiency program will qualify for a "Preference" as long there is no more than sixty (60) days interruption. Documented Involuntary job loss that is not resignation or termination of the employee for cause shall not result in removal of an employment preference provided the period of unemployment does not extend beyond 120 days. Students who are between semesters including summer break, etc. and are pre-registered for the next semester, etc. will receive and/or retain an education preference.**

Additional information may be requested to verify any aspect of a preference claimed by applicant.

2. **Any household member who is Elderly (62 years of age or older) and/or Disabled (including physical, mental or emotionally impaired persons). Verification is required according to HUD regulations.**
3. **No-Preference Category:** Families that do not qualify for the Upward Mobility, or Elderly, Disabled local preferences will be categorized as No-Preference Families.

### **A Change in Preference Status While On the Waiting List**

Families who did not qualify for a local or ranking preference at initial application may provide documentation once their application has been processed in order to qualify for a preference. The household should contact AHA so their status may be reviewed and recertified. Applicants whose preference status changes while they are on the waiting list retain their original date and time of application.

If AHA determines that the household **does** become qualified for a preference, they will be moved up on the waiting list in accordance with their preference(s) and their date and time of application.

If AHA determines that the household **is not** qualified for a preference, they will be moved down on the waiting list in accordance with their date and time of application.



### AHA Changes to Local Selection Preferences

In the event, AHA desires to amend its local preferences through amendments to its Admissions and Continued Occupancy Plan and Rental Assistance Housing Administrative Plan, AHA will provide the opportunity for the public to comment on the preference change(s).

By submitting an application the applicant understands that changes to Local Selection Preferences may affect their placement of the waiting list.

### 4.5 Verification of Preferences

At the time of initial application the **applicant will be required to certify eligibility for local preference**. The burden of **providing such proof rests solely** with the applicant. Applicant will be required to verify their eligibility for a local preference prior to unit offer and/or placement in a low-rent public housing unit

### 4.6 Preference Denial

If an applicant falsifies documents or makes false statements within the document in order to qualify for a local preference, AHA will deny the household admission to the program(s) and automatically remove them from the Waiting List, including terminating their Section 8 assistance, if placed, or their Housing Choice Voucher if searching for a unit. The offending household will not be permitted to be admitted to the waiting list for at least three (3) years.

### 4.7 Establishing & Maintaining the Waiting List

It is the policy of AHA to compile and administer its Waiting List as required by HUD regulations. There are three (3) waiting lists one for public housing units, one for Section 8, and one for Section 504. AHA shall administer the Waiting List on a **FIRST-COME, FIRST-SERVE** basis, by date and time of application and in accordance with local preference prioritizing procedures.

The opening and closing of the waiting list will occur when the following conditions exist:

1. For any unit size or type, if AHA's waiting list has sufficient applications to fill anticipated public housing unit vacancies or that no housing choice vouchers are expected to be available for the next 24 months, AHA may elect to:
  - a. Close the waiting list completely or partially, depending on availability of public housing units or
  - b. Section 8 program funding; or
  - c. Close the list during certain times of the year; or
  - d. Restrict intake by preference(s); type of development or size and type of dwelling for public housing.
2. **A decision to close the waiting list will consider the number of applications for each size and type of unit, the number of applicants who qualify for a preference, and the ability of AHA to house applicants within twenty-four months...**

### Re-Opening the Waiting List

If AHA determines that the waiting list can be re-opened, AHA will issue a Public Notice. At a minimum, the notice will include the following:



1. The date applications will be made available online by prospective applicants;
2. Provide a brief description of the Section 8 Housing Choice Voucher program; and
3. Inform applicants that they may apply for the Section 8 Housing Choice Voucher Program or both; and
4. That they will not lose their place on the Section 8 Housing Choice Voucher waiting list if they also choose to apply for Public Housing assistance or vice-versa.
5. Describe any limited terms the wait list may be open for including preference, bedroom size or number of applicants.

AHA will distribute fact sheets to the local broadcasting media and the AHA internet web site to communicate this message to the general public.

#### 4.8 Reasons an Applicant may be Removed from Waiting List

To ensure vouchers are issued in a timely manner AHA needs a waiting list that is accurate. No applicant shall be removed from the waiting list except when one of the following situations occurs:

1. The applicant requests (in writing) that their name be removed from the waiting list; or
2. Documented evidence that the sole applicant/household member has passed away; or
3. The applicant is rejected following failure to meet all AHA admissions criteria screening, or
4. The application is withdrawn because AHA attempted to contact the applicant and was unable to do so. **In attempting to contact an applicant, the following methods shall be undertaken before an application may be withdrawn:**
  - a. The applicant will be sent a contact letter by first class mail return receipt requested to the applicant's last known address, asking the applicant to notify AHA.
  - b. When ten (10) business days have elapsed from the date when AHA mails the letter, if there is no response from the applicant, the application will be removed from the waiting list;
  - c. If an applicant contacts AHA as requested/required within any of the deadlines stated above, the applicant would be reinstated based on the date and time of their initial application in effect at the time the correspondence was sent.
  - d. When AHA is unable to contact an applicant by first class mail to schedule a meeting, interview or to make a unit offer, AHA shall suspend processing of the application until the applicant is either withdrawn (e.g., no contact by the applicant) or reinstated (e.g., contact by the applicant within the stated deadlines). If an application is suspended, applicants next in sequence will be processed.

**Note: In the event an applicant is withdrawn due to correspondence “not received”, it is the applicant’s responsibility to provide detailed verification from the local U.S. Post Master that there has been an error with the mail delivery service. If AHA receives the returned correspondence as “undeliverable”, it is the applicant’s responsibility to provide 60-day current verification that the address is the current mailing address and AHA can rule out failure to update address as required.**

Persons who fail to respond to AHA attempts to contact them because of verified situations related to a disability, shall be entitled to reasonable accommodation exemptions upon request and approval of the 504 Coordinator. Requests for reinstatement must be made within 60-days of withdraw date. For those exemptions, AHA shall reinstate the applicant based on the date and time of their initial application in effect at the time the correspondence was sent.

**NOTE: Families whose applications are withdrawn or rejected must re-apply for housing when the waiting list is open for applications.**

#### 4.9 Updating the Waiting List

The Waiting List will be **UPDATED** at the discretion of the Executive Director in consultation with the Board of Housing Commissioners.

An “Update Notice” letter will be mailed first class mail to all current applicants on the AHA Waiting List. The applicant is required to complete and return the enclosed questionnaire within thirty (30) business days from the date of the initial notice, as a confirmation of their continued interest for remaining on the Waiting List. This process will ensure that the waiting list remains current and accurate. Applicants who respond during this (30) business day period will remain on the wait list; however, their current wait list position may be affected based on the information provided by the applicant. An example of this would be a possible change in preference status.

In the event the U.S. Postal Service returns the initial “Update Notice” letter as undeliverable or there is no response after 15 business days from the applicant AHA will mail a second and final update notice letter to the applicant first class mail return receipt. The applicant **MUST** return the subsequent enclosed questionnaire with signature within fifteen (15) business days from the date of the second and final notice (30 business days total having elapsed from initial notice). The applicant’s failure to respond to the **SECOND AND FINAL** notice will result in the applicant’s name being **REMOVED** from the waiting list without further notification.

The Deputy Director may allow exemptions only in certain hardship circumstances, i.e., death of an immediate household member or hospitalization of the applicant or other listed household member. The applicant **MUST** provide AHA with **ACCEPTABLE** and **VERIFIABLE** written documentation that supports their request for an exemption.

**NOTE: All requests for reconsideration including “reasonable accommodation” MUST be made within 90 calendar days from the deadline to submit the updated form. AHA will also collaborate with local service providers to ensure clients who are chronically homeless are made aware of the update process. AHA will also issue public notices and advertise the update process in a cost effective manner so that the update process may be broadly communicated to the public.**

## Chapter 5 Misrepresentation by the Applicant or Tenant

If an applicant or current program participant is found to have made willful misrepresentations at any time that resulted in the applicant or participant being classified as eligible to receive assistance, when, in fact, they were ineligible, the applicant will be declared ineligible and the Section 8 Housing Choice Voucher lease, and/or application will be terminated in accordance with state law due to the misrepresentation(s). If such misrepresentation resulted in tenant paying a lower housing rent than was appropriate, the tenant **must** pay the difference between the actual payments and the amount

that should have been paid by the participant. In justifiable instances, AHA may take other action it deems appropriate, including referring the assisted household to the proper authorities for possible criminal prosecution.

**Applicants who misrepresent information provided in the application may be denied admission to federal housing assistance programs administered by AHA for up to three (3) years.**

## Chapter 6 Eligibility Determination

### 6.1 Eligibility & Admissions Screening

[24 CFR § 960, Subpart B and 24 CFR § 982, Subpart E]

AHA will accept and process admissions applications in accordance with applicable federal HUD regulations and AHA policies and procedures for taking applications described in this Section 8 Administrative Plan. AHA will assume that the facts certified to by the applicant in the application packet are correct and true, although **all facts will be verified later in the admissions process**. In addition, all families who are admitted must be **individually determined eligible** as prescribed under 24 CFR § 960.201 or 982.201 and the policies of this Section 8 Administrative Plan.

The applicant **must** provide AHA with all necessary documents that will assist AHA in determining the program eligibility of the applicant and the applicant's household members, prior issuance of a Section 8 Housing Choice Voucher. At a minimum, documentation includes proof of birth, identification (18 or older), citizenship and immigration status, marriage, divorce, and the furnishing of Social Security numbers for each household member. This chapter describes verification standards and methods to be used for verifying income, assets and deductions information as well as any other documentation needed to verify eligibility as prescribed by HUD.

This chapter also identifies the information and documents associated with the **screening and processing of applications for admission**. **ALL** applicants will be screened to determine suitability for issuance of a Section 8 Housing Choice Voucher in accordance with the occupancy guidelines adopted by AHA in this Section 8 Administrative Plan, including the applicant's ability to comply with the requirements of the lease agreement

AHA **will** conduct a criminal background check, credit check and previous landlord screening on new admissions and their household members 18 years of age and older. Previous landlord screening will be conducted on an as needed basis such as in cases where evictions are present on an applicant's record.

### 6.2 Eligibility Criteria

It is the policy of AHA to admit to Section 8 Housing Choice Voucher program **ONLY** applicants who are determined eligible and who meet the applicant admissions and selection standards. An applicant is qualified and eligible if he/she meets all of the following criteria:

1. Meets definition of a Household as defined in Chapter 21;

2. Head of Household (H/H) is at least 18 years of age or older, or the H/H is an emancipated minor; and
3. Meets HUD requirements on citizenship or immigration status per 24 CFR §5.508; and
4. No adult household member 18 years of age or older has ever been arrested, formally charged or convicted for the sale or manufacture of drugs or violent criminal activity, or any alcohol abuse that resulted in any violent criminal activity in the past seven years. Exception, an applicant will not be denied admission if the criminal activity is related to an act of domestic violence, dating violence, or stalking **against** the applicant or any member of the applicant's household. The applicant **must** be the victim of such crimes and the perpetrator cannot be admitted as a household member. Arrests that do not lead to formal charges may not be the sole criteria for rejection of an application. In such cases AHA will conduct a further review to determine if there is disqualifying conduct.
5. The household has satisfied any debt owed AHA or any other PHA, as a result of prior participation in any federal housing program within 30-days notification by the AHA Intake/Admissions staff.
6. Has an Annual Income as defined in the Glossary of Terms of this plan at the time of admission that does not exceed the income limits (maximum incomes by household size established by HUD) posted in AHA offices; and
7. Provides documentation of Social Security numbers for all household members no matter what the age of the household member per 24 CFR § 5.216, or certifies in writing that they do not have Social Security numbers (in the event no Social Security number is provided applicant will complete a "No Social Security" form); and
8. Provides Proof of Birth that includes the name, date, place of birth and the names of the parent(s) for each household member;
9. Meets the Applicant Selection Criteria as defined in these policies,
10. Single applicants who are not elderly, near elderly (i.e., 50 years or older), disabled, physically impaired or displaced can only be admitted to the Section 8 Rental Assistance program, and
11. Applicants or participants found to be subject to lifetime sex offender registration requirements under a state sex offender registration program are prohibited from program participation for life.

**NOTE: If an adult household member was arrested and can provide verifiable documentation that the arrest DID NOT result in the household member being either formally charged and/or convicted, AHA may review the documentation and make a determination of eligibility to participate.**

### 6.3 Eligible Households

An applicant is eligible for assistance under the Section 8 Housing Choice Voucher Program, at the time they initially received assistance under the program(s), and they met at least one or more of the following:

1. Very Low-Income Household, and who's income must be at or below 50% of the area-wide median income as determined by HUD; or
2. Have been continuously assisted under the U.S. Housing Act of 1937 (or the remaining eligible member of a tenant household), or;
3. Must not have been evicted from public housing or any Section 8 housing assistance program for drug- related and/or violent criminal activity for at least seven years from the date of the eviction or as prescribed by HUD regulations.

## 6.4 Definition of Household

A “household” is either a single person or a group of persons and includes:

1. An elderly household that is defined as a household whose head of household, co-head of household, spouse, or sole member is at least 62 years of age; or
2. A disabled household means a household whose head, co-head, spouse or sole member has a disability as defined in 42 U.S.C. § 423 or are determined, pursuant to HUD regulations, to have a physical, mental or emotional impairment;

## 6.5 Descriptions of Household Members

### Split Households

When an applicant/participant household splits into two otherwise eligible families due to divorce or legal separation, and the new families both claim the same wait list position/assistance, and the split families are unable to decide among themselves, AHA will base its decision taking into account the following factors:

1. Which of the two families’ retains custody of any minor children or any disabled or elderly members to provide for reasonable accommodation.
2. Any role domestic violence may have had on the household split.
3. Recommendation of social service agencies, law enforcement agencies, including local District Attorney’s office or other qualified professionals such as local or state children's protective services.

Documentation (e.g., burden of proof) of these factors is the sole responsibility of the applicant/participant families. If either or both of the families **DO NOT** provide the documentation, they may both be denied for failure to supply the required information requested by AHA.

In the event, the split of the household results in each parent taking custody of one or more of the minor children as ordered by the Court, both families will then be offered a voucher. The applicable program occupancy or subsidy standard will be applied for each household based on the size and composition of each household to be assisted in conjunction with AHA’ Occupancy Standards.

### Multiple Families in the Same Household

When two families living together apply, (such as mother and father, and a daughter with her own husband or children), and they apply as a household unit, they will be treated as one household unit for purposes of program occupancy and subsidy standards.

### Joint Custody of Children (Allowances for Minors)

When children are subject to a joint custody agreement, but live with one parent at least 51% of the time, that parent will be eligible for the \$480 allowance for minors. When both parents are on the Waiting List and both are claiming full-time custody of the same minor child, the parent who provides verifiable evidence (i.e., court issued decree) that they hold full-time or majority custody, will be allowed to claim the minor(s) as a dependent(s) for purposes of housing assistance eligibility.

Regarding household size and the joint custody of children. AHA must review the details of the custody order and can only assist the children in one household. If custody is split 50/50 only one parent/guardian can claim the children for household size and appropriate allowances.

### **Emancipated Minor**

State statute, 28-6-1 NMSA 1978, Age of Majority, sets forth that a person 18 years of age is an adult in every sense of the law, including the law of contracts. If the applicant is under 18 years of age, AHA will not accept the individual's application unless he/she is sixteen or older and has entered into a valid marriage, or, is an emancipated minor. An emancipated minor shall be considered as being over the age of majority for the purposes of entering into a binding contract and for establishing his/her own residence.

Based upon State law, if the minor in question is 15 years old or younger, he/she cannot enter into a binding lease agreement. If the minor is at least 16 years of age, he/she may be emancipated (by a valid marriage or Court Declaration of Emancipation) and, therefore, able to enter into a lease agreement. The potential applicant will be required to show documented proof of valid marriage or Court Declaration of Emancipation.

### **Student Eligibility Requirements**

The eligibility restrictions imposed on students enrolled at institutions of higher education are set out in two parts, Section 327(a) of Title III of Public Law 109-115 (119 Stat. 2936) and 24 CFR §5.612 and provide as follows:

No assistance shall be provided under Section 8 of the U.S. Housing Act of 1937 ("1937 Act") (see 42 U.S.C. 1437(f)) to any individual who:

1. Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher
2. Education Act of 1965 (20 U.S.C. 1002); and
3. Is under 24 years of age; and
4. Is not a veteran of the United States Military; and
5. Is unmarried; and
6. Does not have a dependent child, and
7. Is not otherwise individually eligible, or has parents who, individually or jointly are not eligible on the basis of income to receive assistance under Section 8 of the 1937 Act.

These restrictions do not apply to students residing with their parents in a Section 8 assisted unit or who reside with parents who are applying to receive Section 8 assistance.

For a student under the age 24 who is not a veteran, is unmarried, does not have a dependent child who is seeking assistance, both the student and the student's parents (individually or jointly) must be income eligible for the student to receive section 8 assistance.

A student under the age of 24 who meets the following criteria may become eligible for assistance if:

1. The individual is of legal contract age under state law.
2. The individual has established a household separate from parents or legal guardians for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of an independent student (for Student Financial Aid purposes).



3. The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS income tax regulations.
4. The individual must obtain a certification of the amount of financial assistance that will be provided by his/her parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.

**Any financial assistance, in excess of amounts received for tuition under the Higher Education Act of 1965, from private sources, or from an Institution of higher education shall be considered income. This only applies to the eligibility of students applying for or receiving Section 8 assistance.**

## 6.6 Required Documentation

Applicants are required to provide proof of eligibility by providing the following documentation:

1. **Proof of Birth** - Families are required to provide proof of birth for ALL listed household members as a condition of and prior to admission and continued assistance. Birth certification documentation must include the name, date, place of birth and the names of the parents. Acceptable documentation consist of copies of the following:
  - An official State issued Birth Certificate (usually issued by a state Vital Statistics Agency); or
  - A church issued certificate (i.e., baptismal certificate); or
  - A Permanent Resident Card, Employment Authorization Card or U.S. issued Passports (copies of both the front side and back side of these government issued documents), or
  - Military issued Certification of Birth Abroad or Military form DD-214.
  - A hospital issued Proof of Birth in circumstances of a recent birth

If none of the above is available and after making serious documented attempts and providing our office with written verification from all sources listed above. AHA will accept a sworn/certified affidavit provided by AHA and signed by the applicant and section Housing Program Manager. The affidavit will indicate the person's name, parent's names, date and place of birth.

2. **Proof of Marriage** - Families who make application and are legally married must provide, at a minimum, a certified copy of a "Marriage Certificate" duly signed by both spouses and the public official recording the marriage in its public books of records. If a marriage certificate is not available the following information is acceptable:
  - Federal or State tax forms that indicate "Married Filing Jointly" for most recently filed tax year;
  - Other acceptable forms of documentation of marriage would include any document that has been issued by a federal, state, city, county or tribal government that has recognized the legal union (living as a married couple) of the household co-heads of household;
  - Couples that are considered married under a common law arrangement can provide the same information as that listed above to certify that they are living together as husband and wife.

The applicant household (or Couple) **MUST** also certify in their application they are living together as a married couple.

3. **Proof of Divorce** - If an applicant is divorced, the applicant must provide at least one of the verification documents listed below:
  - A final executed divorce decree from a court of law and a Supplemental Agreement, if applicable; or
  - Federal or State tax forms that indicate “Single Filing” or Head of Household for the most recently filed tax year.
4. **Proof of Social Security Numbers** – [24 CFR §5.216 and §5.218] Applicants are required to provide Social Security Numbers for ALL household members as a condition of admission and continued assistance. **Failure to furnish verification of Social Security Number for each household member is grounds for DENIAL of ADMISSION, TERMINATION of TENANCY** Verification of Social Security Number will be through the applicant presenting a valid Social Security Card issued by the U.S. Social Security Administration for each household member to AHA at the application interview.

If the applicant or any household member cannot provide a Social Security card at the time of application, other documents with the Social Security Number may be used temporarily for verification purposes.

These documents include:

- a. An original SSA-issued document (i.e., NUMI), which contains the name and SSN of the individual; or
- b. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

Social Security cards for ALL household members will be required at time of initial placement where the NUMI would be acceptable. AHA will assign alternative numbers for a new born. If applicant cannot provide Social Security cards for all household members, the applicant may retain their place on the waiting list, but **MUST** provide appropriate documentation before the household is admitted into any housing program.

5. **Citizenship or Eligible Immigration Status** [24 CFR 5, SUBPART E]  
Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or non-citizens that have eligible immigration status. At least ONE household member **MUST** be a citizen, national, or non-citizen with eligible immigration status in order for the household to qualify for any level of assistance. Eligible immigrants are persons who are in one of the six immigrant categories specified by HUD. (Refer to “Declaration of Immigration Status” for definition of the six categories.)

### **Declaration of Section 214 Status**

[24 CFR § 5.508]

HUD requires each household member to declare whether the individual is a citizen, a national, or an eligible non-citizen, except those members who elect not to contend that they have eligible immigration status. For the U.S. Citizenship/Eligible Immigration requirement, the status of each member of the household is considered individually before the household's status is defined. Those who elect not to contend their status are considered to be ineligible non-citizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and any other household member 18 or older, and by a parent or guardian for minors. The household must identify in writing any household members who elect not to contend their immigration status (see Ineligible Non-citizens below).



**Eligible Non-Citizens:** In addition to providing a signed declaration, those declaring eligible non-citizen status must sign a verification consent form and cooperate with AHA efforts to verify their immigration status. The documentation required for establishing eligible noncitizens status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the household began receiving HUD-funded assistance. If documentation expires during continued occupancy, AHA will require updated verification of eligible immigration status.

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

**Ineligible Non-Citizens:** Those non-citizens who do not wish to contend their immigration status are required to have their names listed on a non-contending household members listing, signed by the head, spouse or co-head (regardless of citizenship status), indicating their ineligible immigration status. AHA is not required to verify a household member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

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

- **Mixed Families** A mixed household, is one in which at least one member is a U.S. citizen or has eligible immigration status, but other members do not have eligible immigration status (or elect not to state that they have eligibility status). These families are referred to as "mixed families". Mixed families are eligible for assistance on a pro-rata basis.
- **No eligible members.** Applicants that include no eligible members will be ineligible for assistance and will be denied admission. They will be given an opportunity to request an informal hearing.
- **Acceptable Proof of Eligible Immigration Status** For applicants and household members born outside the United States of America, AHA will require a copy of both front and back of official government documents issued by the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), or if issued before 2003, the U.S. Immigration and Naturalization Service (ICE). These documents include:
  - a. Resident Alien Card or Permanent Resident Card; or
  - b. I-94, Refugee, Asylum, or Conditional Entry Card; or
  - c. Temporary Evidence of Lawful Admission for Permanent Residence Card; or
  - d. U.S. Department of Homeland Security Employment Authorization Card; or
  - e. Parole Status Card
- **Appeals** For this eligibility requirement only, the applicant is entitled to an informal hearing like those provided for other eligible participants.
- 6. **Proof of Custody** – Applicants that are applying for assistance of a minor, and they are not the parent, must provide a notarized statement from the current legal guardian that the

minor will be living in the household. AHA may request additional information regarding the custodial arrangement to ensure proper housing assistance is being provided.

7. **Photo Identification** – All applicants 18 years of age and older are **required to provide a photo identification card**. Acceptable types of photo identification consist of:
- a valid government issued driver’s license,
  - or a valid government issued identification card, including Permanent Resident Card,
  - or U.S. Military or U.S. Veterans Affairs Administration issued photo identification card,
  - or U.S. Passport Book, or U.S. Passport Card,
  - or a currently valid public school, college or university issued student photo identification card,
  - a photo identification card issued by a federally recognized Indian Nation, Tribe or Pueblo, etc.

AHA will certify identification of the applicant and household members by cross-referencing documents provided by the applicant with a valid photo identification card.

### 6.7 Screening Activities

All applicants will be required to attend either a Pre-Occupancy briefing or both, depending on the assistance being offered. AHA will conduct a **detailed interview** of all applicants using an Interview Checklist as a part of the screening process. The form will ask questions based on the essential elements of tenancy and program participation. Answers may be subject to third party verification.

All applicants prior to admission will be required to undergo ALL the following screening activities:

1. **Monies Owed PHA:** Any payment of funds owed to AHA or any other PHA is part of the screening evaluation including any EIV confirmations of debts owed to any PHA. Applicants must pay in full all debts owed to AHA, and/or any other PHA, in order to be eligible to accept a Section 8 Housing Choice Voucher **AHA will reject an applicant for unpaid balances owed a PHA**, only, if the applicant refuses to make full restitution.
2. **Criminal Background Checks** AHA will complete a **criminal background check** on **ALL** new admissions and household members 18 years of age or older. Criminal background checks will be performed using the Social Security numbers of all adult household members. If a member does not have or has not been issued a Social Security number, AHA will use the member’s name & date of birth to perform the criminal background check. If the applicant or any adult household member has ever been arrested, formally charged or convicted for the sale or manufacture of drugs or violent criminal activity, or any drug or alcohol abuse that resulted in any criminal activity, or has a pattern of criminal activity, **MAY NOT BE ELIGIBLE FOR ADMISSION OR CONTINUED PARTICIPATION** with housing assistance programs administered by AHA. AHA may require an applicant to **exclude a household member** in order to be admitted if that household member has participated in or been culpable for criminal actions that warrant rejection. AHA will also conduct yearly criminal background checks at recertification on all household residents 18 years of age or older to ensure no criminal violations have taken place during tenancy. Arrests shall not be considered the sole reason for rejection of admission or continued participation. In such cases AHA will conduct a further review to ascertain if there is any disqualifying conduct.
3. **Court Case Searches:** In instances where the background check reveals an arrest and/or charge that requires “Judgment and Sentencing” resolution, AHA may first search in the

NM State Judiciary Case Look-Up website, to determine if the charge and/or criminal case received a “NOLLE PROSEQUI” (i.e., No Prosecution/Case Dismissed), if so, a Judgment and Sentencing (J&S) will not be required from the applicant or applicable household member. The applicant will then be eligible for admission unless the arrest is part of a pattern of criminal activity.

### **6.8 Mitigating Circumstances**

Provide evidence of successful and sustained modification of previous disqualifying behavior.

1. Examples of mitigating circumstances by AHA may include items such as the following:
  - a. Evidence of 100% successful completion of any required probation and being in compliance with conditions of that probation unless the behavior disqualifies the applicant;
  - b. Evidence of the applicant household’s participation in social services or other appropriate counseling service.
2. Consideration of mitigating circumstances does not guarantee that applicant will qualify for admission, and failure to successfully complete 100% of required probation, will result in the application being withdrawn from the Wait List and/or will be terminated from the program.

### **6.9 Qualifying / Disqualifying Applicants**

1. Qualified families will be notified in writing and/or by telephone by AHA when an offer of assistance has been processed. An offer of assistance only qualifies an applicant household to be considered for Section 8 Housing Choice Voucher and does not guarantee admission to the program.
2. AHA will promptly mail a “Notice of Rejection” to an unqualified applicant within 10 business days of the determination. The notice must state the basis for such determination and offering the applicant an opportunity to request an informal hearing (see Procedures for Informal Hearings). Informal hearings for applicants are different from the tenant grievance process. Applicants are not entitled to the use of the tenant’s grievance procedure.

Applicants known to AHA to have a disability that are generally eligible for admission but in one or more ways fail to meet the Selection Criteria will be offered an opportunity for a second meeting with AHA staff to determine whether mitigating circumstances or reasonable accommodations will or will not make it possible for them to be housed in accordance with the Screening Procedures

## **Chapter 7 Section 8 Rental Assistance Program Issuance of Housing Choice Vouchers**

This Part describes the policies and procedures in the issuance of the Section 8 Rental Assistance Program to eligible program applicant households. Our primary objective is to ensure that all households on the waiting list are given equal access and opportunity to participate in the Housing Choice Voucher Program (HCV) AHA will demonstrate this by working towards achieving and

maintaining at least the HUD mandated lease-up rate and all available vouchers will be issued upon becoming available, either through newly funded vouchers or turnover of existing vouchers.

AHA will perform monthly voucher fund utilization assessments, in accordance with HUD guidelines, to determine the month-to-date expenditure of its budget authority and to determine if AHA is meeting its calendar year program budget authority utilization requirements. If AHA is over leased, we will adjust future issuance of Vouchers accordingly, in order not to exceed our Annual Contributions Contract (ACC) budget authority over the balance of the program year. The opposite will occur if sufficient budget authority is available. We will over-issue Vouchers until it is projected AHA will meet its budget authority utilization requirements for the program year. Included in this Chapter is the process for issuance of Veterans Affairs Supportive Housing (VASH) vouchers.

### **7.1 Process for Issuing Housing Choice Vouchers to Applicants**

Households will be issued a Housing Choice Voucher according to the date and time the application was accepted by AHA. Vouchers can only be issued when funds are available in the Housing Choice Voucher project account for this purpose.

#### **Housing Choice Voucher/ Offers and/or Refusals**

An applicant will be permitted up to ONE OFFER and/or refusal to accept a Housing Choice Voucher. Following the failure to accept the offer, the applicant will be removed from the waiting list and may reapply at a future time.

#### **Applicant Briefing**

Once an applicant is selected for participation, the applicant is scheduled for a briefing appointment in the AHA office for the purpose of determining continued eligibility and issuing Housing Choice Voucher Notification letters shall be sent to applicants at least five (5) calendar days in advance of their Voucher offer briefing date.

Voucher recipients will be briefed one-on-one by an AHA Staff Member or in a group session or individually whenever such sessions are scheduled. The briefings are normally conducted in U.S. English in accordance with HUD prescribed guidelines. If an applicant speaks a language other than U.S. English, the applicant can bring an interpreter with them to the briefing session, or AHA will provide an interpreter at AHA expense, if requested by the applicant.

The following information is communicated to the applicant at the briefing session:

- Household's responsibilities and obligations under the Housing Choice Voucher program;
- Household and owner responsibilities and obligations under the lease and HAP contract;
- How to find a suitable unit that meets Housing Quality Standards (HQS);
- Location and boundaries where the program can execute Housing Assistance Payments (HAP) contracts;
- Inspection requirements and procedures;
- Information on State and local law and tenant rights;
- Information on Federal, State and local Fair Housing Laws;
- Information on procedures on Informal Review and Informal Hearing Procedures;

- A discussion of Fair Market Rents (FMR) and Payment Standards; determination of Total Tenant Payments (TTP) and the 40% Rule; and the importance of the requirements of Rent Reasonableness determinations;
- The household is advised they may obtain copies of the HQS Standards, the HAP Contract and other pertinent forms or documents on request;
- A listing of potential landlords and available units for participants is provided;
- Explanation of the importance of the Voucher 60 day expiration time limitation for locating a suitable unit;
- Warning regarding making fraudulent statements to AHA to receive federal assistance and that side payments to the landlords are not permitted and that it is a form of fraud to do so;
- Inform households of Housing Choice Voucher portability procedures, including domicile requirements;
- How to volunteer to participate in the FSS participation (Family Self Sufficiency (FSS) Program)
- Grievance Procedures; and
- Methods that AHA uses to communicate to Section 8 Voucher Holders, such as letters sent by U.S. Mail, etc.

### **Failure to Attend the Briefing Session**

In the event the applicant fails to attend the briefing session and does not contact AHA to cancel the appointment and/or reschedule the appointment, a written notification will be sent to the applicant instructing the applicant to contact AHA in writing within ten (10) calendar days from the date of the notification letter. The letter will inform the applicant that if AHA fails to receive their written response to the failure to appear notice by the deadline, this will result in removal from the Section 8 waiting list.

## **7.2 Housing Choice Voucher Holder's Briefing Packet**

[24 CFR §982.301(b)]

The Housing Choice Voucher holder's packet will include the following:

- Voucher for the Housing Choice Voucher Program (Voucher), Form HUD-52646;
- Request for Tenancy Approval (RFTA), Form HUD 52517A;
- Payment Standard Schedule for the unit size for which the applicant qualifies;
- A statement of minimum HUD HQS requirements, including general local city Housing code standards;
- Form HUD 375-F, which relates to lead-based paint poisoning hazards, symptoms and precautions;
- List of Landlord Referral properties available for rent including properties accessible to persons with disabilities;
- Equal Housing Opportunity Complaint Form, HUD-903, and "Fair Housing USA", Form HUD 63-90;
- Explanation of procedure for landlord or program complaints;
- A copy of a sample lease agreement and the required Lease provisions and prohibited lease provisions;
- Information on the Total Tenant Payment (TTP) and Total Contract Rent;

- Explanation of applicant's/tenant's right to hearings;
- Information on how the estimated voucher subsidy is determined for Housing Vouchers;
- The tenant's responsibilities regarding increased rent when they choose to rent a unit where the rent is more than the combined total of the voucher payment allowed and their basic or minimum payment; and
- Grievance Procedures.

### 7.3 Assistance Provided to Housing Choice Voucher Holders

Voucher holders will be notified at their briefing session that AHA periodically updates the Available Unit Listing and how the unit listing may be obtained. AHA will also assist households with rent negotiations with owners.

**NOTE: Disabled households will be provided special consideration and additional assistance in accordance with HUD Notice PIH 2005-5 (HA) and Executive Order (E.O.), New Freedom Initiative.**

### 7.4 Public Housing Tenant Transfers to Housing Choice Voucher Program

Public housing assisted tenants who intend to initiate termination of the public housing dwelling lease to accept a **Public Housing Tenant Moving to Housing Choice Voucher Program**

Public housing assisted tenants who intend to initiate termination of the public housing dwelling lease to accept a housing voucher under AHA's Section 8 Housing Choice Voucher Program (HCV) must comply with the following requirements:

The household must schedule an appointment with their Public Housing Specialist before proceeding to HCV Issuance. This appointment will review their tenancy in public housing and devise a transition plan to successfully transition to Section 8.

- The tenant moving public housing will be briefed on Public Housing tenant lease termination requirements during HCV issuance; and
- Tenant **MUST** provide a written "Notice to Terminate Lease" 30 days in advance with a scheduled date for a move-out inspection to their assigned Housing Specialist in the Public Housing Program & a copy to the Intake Housing Specialist for the Section 8 Housing Choice Voucher program; and
- Tenants moving from the Public Housing unit to the HCV unit **MUST MOVE** within 72 hours (3 days to move). If not, the vacating Public Housing tenant **WILL** be charged market rent, by the day, for the period of time the Public Housing unit and/or the unit door lock keys remained in the possession of the vacating tenant, after 72 hours of moving into the Housing Choice Voucher unit. If HCV unit move-in is scheduled to occur more than 72 hours prior to the scheduled public housing move-out, tenants who are moving are required to contact the Public Housing staff to re-schedule their move-out of Public Housing unit, to occur sooner, so the tenant will be out of the Public Housing unit within 72 hours of moving into the HCV unit.; and
- The tenant who is moving, **MUST return the entire Public Housing dwelling unit, including the exterior premises** (i.e., yard) in the same condition as it was at the initial



MOVE-IN (except for normal wear and tear). This includes removing **ALL trash and debris** from interior and exterior of the dwelling unit.

- PLEASE NOTE THAT PUBLIC HOUSING PROGRAM PARTICIPANTS MUST FULFILL AT MINIMUM THE TERM ONE YEAR ON THE ORIGINAL LEASE TO BE ELIGIBLE TO MOVE TO THE HCV PROGRAM. PARTICIPANTS ARE TO UNDERSTAND THEIR PLACE ON ANY WAITING LIST BEFORE MAKING A DECISION TO SIGN A LEASE.

The Public Housing staff will check AHA records to determine if **ANY MONIES ARE DUE** to the AHA Public Housing program (i.e., unpaid Rent, Security Deposit, Pet Deposit, outstanding maintenance work order charges, unpaid utilities, or any balances due under any Repayment Agreement) prior to issuing a housing voucher to the Public Housing tenant. Any monies due **MUST first be paid-in-full, prior to being issued the Housing Choice Voucher.**

**NOTE: Any Public Housing tenants who have MOVED to the HCV Program and who owe monies to the Public Housing program will be notified in writing and be required to pay ALL amounts owed. Failure to do so will be cause to terminate the Housing Choice Voucher.**

### 7.5 Term of Housing Choice Voucher

[24 CFR § 982.303, 982.54(d) (11)]

During the briefing session, each household will be issued a Housing Choice Voucher which represents an agreement between AHA and the Household specifying the rights and responsibilities of each party. It does not constitute admission to the program, which occurs when the lease and Housing Assistance Payments (HAP) contract become effective. The maximum term of the HCV is 60-days from date of initial issuance.

#### Expirations

The Housing Choice Voucher is valid for a period of 60 calendar days from the date of issuance. The household must submit a signed Request for Tenancy Approval (RFTA) form and Lease Agreement within the 60-day period unless an extension has been granted by AHA.

If the Housing Choice Voucher has expired and has not been extended by AHA or expires after an extension, the household will not be entitled to a review or hearing.

#### Extensions

Extensions are permissible at the discretion of AHA up to a maximum of 60 days, primarily for the following reasons:

- Extenuating circumstances such as documented hospitalization of a household member or a household emergency for an extended period of time, which has affected the household's ability to find a unit within the initial 60-day period.
- AHA is satisfied that the household has made a reasonable effort to locate an available rental unit, including seeking the assistance of AHA, throughout the initial sixty-day period. A completed search record may be required at the discretion of the Section 8 Supervisor / Manager.

All requests for extensions of time shall be in writing and must be received by AHA prior to the expiration date of the housing voucher. Extension will be for periods of one (1) week to an additional 60 days. Any requests for extension of time MUST be received and date stamped prior to the (or less) prior to expiration date of the housing voucher. Under no circumstances will AHA grant an extension after the expiration of the Housing Choice Voucher unless the expiration was due to an error in procedure by AHA staff. The Deputy Director or the Section 8 Program Manager shall have the discretion, after an investigation of the circumstances surrounding any claims in errors in procedure, to grant an extension of time to the affected Housing Choice Voucher holder.

If the household was prevented from finding a unit due to disability accessibility requirements, AHA may grant extension(s) of time to provide a reasonable opportunity to locate an appropriate accessible unit. Extensions due to reasonable accommodation will be reviewed and considered based on the Reasonable Accommodation Policy.

AHA will also review extension of time requests, in order to allow more time to locate an available rental unit, for a larger sized dwelling, for a larger bedroom size Voucher, where many bedrooms are needed (i.e., four (4) bedrooms or more in one household).

**NOTE: Expiration of a Housing Choice Voucher does not preclude the household from submitting a new application for housing assistance, and going through the waiting list process again, provided that AHA is currently accepting applications.**

### 7.6 Encouraging Participation in Areas without Low Income or Minority Concentration - (Achieving Deconcentration of Poverty)

At the briefing, households will be encouraged to search for housing in non-impacted low-income and minority areas. AHA will provide assistance to any household who requests such assistance. The assistance provided to households includes, but is not limited, to the following:

- Direct contact with Landlords;
- Advising households where non-impacted areas are located;
- Counseling with the household; and
- Encourage participation by owners of units located outside areas of poverty or minority concentration.

### 7.7 Security Deposit Requirements

[24 CFR § 982.313]

Security Deposits charged by owners may not exceed those charged to unassisted tenants, or the maximum prescribed by State or local law.

For lease-in-place households, responsibility for pre-paid dwelling rent (i.e. first month and last month of rent) is not considered a security deposit issue. In these cases, the owner should settle the issue of pre-paid rent with the tenant household prior to the beginning of the period of section 8 rental assistance. It is recommended that the owner include such language and requirement in the lease agreement.



## 7.8 Housing Choice Voucher Issuance Determination for Split Households

[24 CFR § 982.315]

Refer to the current edition of the AHA Admissions and Continued Occupancy Policy (SECTION 8 ADMINISTRATIVE PLAN).

## 7.9 Subsidy Standards - Determining Housing Choice Voucher Size

The following has been established to determine appropriate bedroom unit size to correspond with household composition in issuing Housing Choice Vouchers to the greatest extent possible, AHA will allow households to select the bedroom size to best meet their particular household composition needs.

One bedroom is assigned for the head of household/spouse or head/co-head, and one bedroom for every two additional household members, including permanent foster children, regardless of sex, age or relationship until the age of five (5).

- Household members 5 years old or older, and of different gender, will be entitled to a separate bedroom.
- A live-in aide may be entitled to a separate bedroom, pending a review of household needs

Exceptions to these standards may be made in accordance with state and federal law to accommodate a legally recognized and documented disability, upon request.

## 7.10 Monitoring of Selection

AHA will monitor its selection process, to make certain all clients certified to participate in the program meet all program eligibility criteria. Additionally, AHA will review and insure that all applicants on the waiting list have been properly verified for local admission preferences.

Households meeting requirements for local preferences shall be given priority for assistance over those households with no preferences.

## 7.11 Changes in Housing Choice Voucher Size

[24 CFR § 982.403 (A) & (B)]

### **Changes for Applicants**

The Voucher size is determined prior to briefing by comparing the household composition to AHA subsidy standards. If an applicant requires a change in the Voucher size, the following guidelines will apply:

### **Exceptions to Subsidy Standards for Applicants Requiring Reasonable Accommodation of a Disability**

#### **Higher Payment Standard Amount as a Reasonable Accommodation**

AHA also reserves the right under this Plan to establish a higher payment standard amount within the basic range (90% to 110% of FMR) as a reasonable accommodation for a disabled household or hard to house household AHA also reserves the right to petition HUD to approve a higher or lower payment standard outside the 90% and 110% basic range.

Per HUD Notice 2013-03 AHA has adopted the HUD provision to establish a payment standard of not more than 120 percent of the fair market rent (FMR) without HUD approval as a reasonable accommodation. A "Request for Reasonable Accommodation Form" should be filled out and submitted to the Deputy Director and Section 8 Program Manager for approval.

An elderly or disabled household may request a larger sized Voucher than indicated by the AHA subsidy standards. A request for reasonable accommodation of disability form must be completed by a medical professional for a determination to be made.

### 7.12 Household Composition for Household

[24 CFR § 982.551 (h)(2)]

The composition of the assisted household residing in the unit MUST be approved by the PHA. The household must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The household MUST request PHA approval to add any other household member as an occupant of the unit. No other person [i.e., nobody but members of the assisted household] may reside in the unit (except for a foster child or live in aide. The household must inform AHA in writing of the addition of the household member within 10 days to the change occurring. AHA will then require the household to submit written verification of the change (i.e. need a copy of the proof of birth, adoption decree, marriage license, or court order granting custody of child/person).

Written requests by the household for permission from AHA to add additional household members to the assisted household will only be approved if it does not create an overcrowded condition in the unit. If granting approval of adding the additional person to the current household membership will trigger an increase in bedroom unit size, then the request will be denied. Each adult added after initial tenancy, other than by marriage, must provide a verifiable work history for the last 12 months or written, verifiable records of other steady income for the last 12 months (i.e. a social security pension for disability or retirement). Exceptions must be approved by the Section 8 Program Manager.

- If a unit does not meet HQS space standards due to an increase in household size, (unit too small), due to birth of a child, adoption of a child, marriage or court awarded custody, and then AHA will issue a new Voucher at annual re-certification examination.

### 7.13 Unit Size Selected

The household may select a different size dwelling other than that listed on the Housing Choice Voucher. AHA will use the applicable Payment Standard for the Voucher size or the actual unit size selected by the household, whichever is less.

**Utility allowance:** The utility allowance used to calculate the gross rent is based on the actual size of the unit the household selects, regardless of the size authorized on the household's housing voucher.

**Occupancy Standards:** AHA will relax its subsidy standards to allow households wishing to remain in place and to prevent displacement. However, AHA will strictly adhere to its adopted Occupancy Standards in all instances. The following occupancy standards will prevail.

At a minimum, federal occupancy standards allow at least two persons per living/sleeping room and permit maximum occupancy levels (assuming a living room is used as a living/sleeping area) as reflected in the table below.

### Minimum and Maximum-Number-of-Persons-Per Unit Standard

Number of Bedrooms	Number of Persons Minimum	Number of Persons Maximum
0	1	1
1	1	4
2	2	6
3	3	8
4	4	10
5	5	12
6	6	14

#### 7.14 Veterans Affairs Supportive Housing (VASH) Vouchers

1. Waiting lists and preferences do not apply;
2. Initial Voucher terms are for 120 days (i.e. 4 months);
3. Income targeting requirements do not apply (must be very low-income (50% of AMI));
4. Initial lease may be for less than 1 (one) year;
5. Households may live in units owned by the U.S. Department of Veterans Affairs (VA);
6. Must be referred by U.S. Department of Veterans Affairs (VA) Case Manager;
7. Program Participant must agree to participate in case management; and
8. All household members must not be subject to a lifetime requirement to register as a sex offender.

## Chapter 8 Household Obligations

[24 CFR §982.551]

The Household (including each member) must:

1. Supply any information that AHA or HUD determines is necessary in the administration of the program, including submission of required evidence of U.S. citizenship or eligible immigration status and information for use in a regularly scheduled re-certification or interim re-certification of household income and composition.
2. Disclose and verify Social Security Numbers (as required under 24 CFR §5.216) and must sign and submit consent forms for obtaining information in accordance with 24 CFR §5.230.
3. Supply any information requested by AHA to verify that the household is living in the unit or information related to household absence from the unit.
4. Promptly notify AHA in writing when the household is away from the unit for thirty days or longer.
5. Allow AHA to inspect the unit at reasonable times and after reasonable notice.
6. Notify the owner and AHA before the household moves out of the unit or terminates the lease.

7. Use the assisted unit for residence only by the approved household, and the unit must be the household's only residence.
8. Promptly (within ten days) notify AHA in writing of the birth, adoption, or court-awarded custody of any child.
9. The household must request AHA approval to add any other household member, or person, as an occupant of the unit.
10. The household must promptly (within ten days) notify AHA in writing if any household member or person no longer resides in the unit.
11. Give AHA a copy of any owner eviction notice within ten days.
12. Pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.
13. Members of the household may engage in legal profit-making activities in the unit, but only if such activities are approved by the owner and incidental to primary use of the unit as a residence by members of the household.

The Household (including each member) must not:

1. Own or have any interest in the unit (other than a cooperative, or the owner of a manufactured home leasing a space to park the home, such as in a Mobile Home Park).
2. Commit any serious or repeated violation of the lease.
3. Commit fraud, bribery or any other corrupt or criminal act in connection with the Housing Choice Voucher Program.
4. Engage in drug-related criminal activity or violent criminal activity. Or any criminal activity, including alcohol abuse, that threatens the health, safety or right to peaceful enjoyment of other tenants and persons residing in the immediate vicinity of the premises.
5. Sublease or let the unit or assign the lease or transfer the unit.
6. Damage the unit or premises (other than from normal wear and tear) or permit any guest to damage the unit or premises.
7. Rent from a relative (except as a reasonable accommodation for a disabled household member).
8. An assisted household, or members of the household, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit, or for a different unit, under any other Federal, State or local housing assistance program.

### **Enforcing Household Obligations**

AHA shall enforce "Household Obligation" requirements as required under federal regulations, specifically 24 CFR§982, and the termination of assistance policies provided for in the Rental Assistance Housing Programs Administrative Plan.

### **Explanations and Terms**

The term "promptly" when used with the Household Obligations means "within 10 calendar days." Denial or termination of assistance is always optional except where this Plan or the program regulations state otherwise.

## **Chapter 9 Factors Related to Total Tenant Payment (TTP) Determination**

## 9.1 Minimum Rent

[24 CFR § 5.630]

1. Participating households will be required to pay the greater of:
  - a. 30% of the household's monthly adjusted income;
  - b. 10% of household's gross monthly income; or
  - c. \$50.00.
2. Maximum Initial Rent Burden:
  - a. A household initially renting a unit shall not pay more than 40% of the monthly-adjusted income as rent, when the total rent exceeds the Payment Standard based on unit size.

## 9.2 Proration of Assistance for Mixed Immigration Status Households

### Applicability

Mixed immigration status households that are participants in the Section 8 housing program and that do not qualify for continued assistance must be offered prorated assistance (See Annual Re-certifications). Participating "mixed" households shall be entitled to prorated assistance. Households that become mixed by addition of an ineligible member are entitled to prorated assistance.

### Prorated Assistance Calculation

Proration of assistance must be offered to any "mixed" applicant or participant household. A "mixed" household is one that includes at least one United States Citizen or eligible immigrant and any number of ineligible members.

**Prorated assistance is calculated by determining the amount of assistance payable if all household members were eligible and multiplying by the percent of the household members who actually are eligible. Total Tenant Payment (TTP) is the gross (contract) rent minus the prorated assistance.**

## 9.3 Annual Re-Certification Rent Adjustments

A re-certification of each tenant household will be performed at least annually an assisted. **Each tenant household will be notified by mail of their re- certification appointment date at least ten calendar days. A copy of notification shall be retained in the tenant's file. Upon completion of re- certification, tenant shall be notified, in writing, no later than thirty (30) days prior to the effective date of the following:**

1. Any change in rent and the date on which it becomes effective.
2. Any change required in the size of dwelling unit occupied.
3. Any misrepresentation of information used to determine continue eligibility or noncompliance with the terms of the Dwelling Lease and the corrective action(s) to be taken to participate in the program.

## 9.4 Interim Rent Adjustments

Tenants are required to report in writing any changes in household income or composition to AHA within 10 calendar days of the occurrence. Failure to report changes may result in a retroactive rent increase, but not a retroactive credit or rent reduction. When an interim re-examination (i.e., interim rent change) is performed, AHA will verify and update only the changes being reported, and any

other related income sources. In order to qualify for a dwelling rent reduction that will take effect on the first of the following month, AHA MUST receive all required 3rd party verification documents by or before the 25th day of the month prior to the effective date of the reduction.

### Effective Date of Adjustment

Tenants will be notified in writing of any rent adjustments including the effective date of the adjustment.

1. Rent decreases will go into effect the first day of the month following the reported change. Income decreases reported and verified after the 25th day of the month, will be effective the first day of the second month.
2. Rent increases require a minimum thirty (30) calendar days advance notice and become effective the first day of the second month.

AHA will process interim changes in rent in accordance with the following chart.

INCOME CHANGE	AHA ACTION
(a) Decrease in income for any reason, <b>except for decrease that lasts less than 30 days.</b>	* AHA will process an interim reduction in rent <b>if the income decrease will last more than 30-days</b> , and <b>ONLY</b> if AHA receives <b>ALL</b> required supporting verification documents no later than the 25th of the month, prior to rent reduction.
(b) Increase in unearned income (e.g., COLA –Cost Of Living Adjustment for Social Security pension benefits).	* AHA will defer the SSA COLA increase to the next regular recertification.
(c) Increase in income because a person with income (from any source) joins the household.	* AHA will process the increase in household income for purposes of rent adjustment, and rent change including any new addition(s) will take affect the first day of the month preceding the minimum 30-day notice of rent increase requirement.
(d) Increase in income, any source.	AHA will process rent increases for any increase per household that totals more than \$200 monthly, providing the minimum 30-day notice of rent increase
(e) Zero Income Households	Households reporting zero income (other than grants/loans) will have their financial circumstances re-examined every 90 days until they have stable income. Households with zero income will be required to complete and submit an Income Questionnaire. In addition, AHA will also require the household to complete a release in order to perform a credit check. The purpose of the credit check is to identify any hidden assets or assistance not being reported to AHA. FICO scores will not be utilized to determine whether a household qualifies for zero income status, and the credit check will only be run at

(f) Reduction in Welfare (TANF) Benefits	<p>AHA will not decrease rent for the following reasons:</p> <ol style="list-style-type: none"> <li>1. Being in a “Sanctioned”/Non-compliance status with any economic self-sufficiency program requirements;</li> <li>2. Non-compliance with work activities requirements; or</li> <li>3. Due to fraud.</li> </ol> <p>All other reductions in Temporary Aid to Need Households (TANF) benefits will result in an interim rent adjustment.</p>
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**Enterprise Income Verification (EIV)** – AHA will review EIV reports 90-days after move-in and all rent adjustments (interim and re-exam). All household members age 18 and over will be required to sign the “EIV Certification” at each annual re-examination.

**NOTE: AHA will process an interim increase in rent if it is discovered that a tenant has misrepresented or failed to report facts upon which rent is based, so the rent the tenant is currently paying is less than the tenant should have been paying. AHA will apply any increase in rent retroactive to the month following the month in which the misrepresentation occurred.**

### 9.5 Sporadic / Seasonal Income

When income is sporadic, AHA will require the following:

1. Income tax returns from the prior year to determine the amount of earned income to anticipate for the next 12 months; or
2. If by averaging prior income adjustments, an estimate can be made for those households whose income fluctuates from month to month; this estimate will be used so that the housing payment will not change from month to month.

The method used depends on the regularity, source and type of income.

### 9.6 Lump-Sum Receipts

Lump-sum disbursement amounts received by a household, such as Social Security (i.e. disability pension), inheritances, insurance settlements (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, are not included in income but are considered assets.

### 9.7 Regular Contributions & Gifts

AHA will count as income any regular contributions and gifts (monetary or not) from persons outside the household and use it to calculate the Total Tenant Payment (TTP). This includes rent and utility payments made on a regular basis on behalf of the household and any other cash or non-cash contributions. Any contribution or gift received every three (3) months or more frequently will be considered a “regular” contribution or gift.



**Loans from private parties are considered income if there is no written, well defined, notarized repayment agreement (i.e. Promissory Note or Loan Agreement) contract executed between the parties at the time the loan began.**

### 9.8 Alimony & Child Support

Regular alimony and child support payments are counted as income for calculation of Total Tenant Payment. If the amount of child support or alimony received is less than the amount awarded by the court, AHA must use the amount awarded by the court unless the household can verify that they are not receiving the full amount.

AHA will accept as verification that the household is receiving an amount less than the award if:

1. AHA receives verification from the agency responsible for enforcement or collection.
2. The household furnishes documentation of child support or alimony collection action filed through a child support enforcement/collection agency, or has filed an enforcement or collection action through an attorney.

**NOTE: It is the household's responsibility to supply a certified copy of the divorce decree with child support worksheet to AHA.**

If a household member receives support payments directly from the non-custodial parent, a notarized letter with the amount per month/week must be provided to AHA.

### 9.9 Assets Disposed of for Less Than Fair Market Value (FMV)

At initial certification or re-certification, AHA staff must ask whether a participating household has disposed of an asset for less than its market value within the past two (2) years. If the household has, AHA staff must determine the difference between the cash value of the asset at time of sale or other disposal and the actual payment received for the asset. AHA will count the difference between the market value and the actual payment received in calculating total assets.

Assets disposed of as a result of a divorce, separation, foreclosure or bankruptcy are not considered to be assets disposed of for less than fair market value. Assets that must be considered include cash, real property, stocks, bonds, and Certificates of Deposit (CDs) if the household gave them away or sold them for less than market value.

AHA's threshold for counting assets disposed of for less than fair market value is \$1,000. If the total value of assets disposed of within one-year period is less than \$1,000 they will not be considered an asset.

### 9.10 Childcare Expenses

Childcare expenses for children 12 years of age and under may be deducted from annual income if they enable an adult to work or attend school. The deduction for childcare expenses is based on the following guidelines:

1. Childcare that enables an adult to work. The maximum childcare deduction must be "reasonable". The number of hours claimed for childcare may not exceed the number of hours the household member is working (allowing one hour travel time to and from school).

2. Childcare that enables adult to attend school, childcare expenses will not be allowed if a household member provides the childcare. The number of hours claimed for childcare may not exceed the number of hours the household member is attending school (allowing one hour travel time to and from school).

### 9.11 Medical Expenses

Medical expense deduction is permitted only for households in which the Head of Household, or their spouse, is at least 62 years old or disabled (at any age) (Elderly or Disabled households).

If the household is eligible for a medical expense deduction, the medical expenses of all household members may be counted.

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three (3) percent of annual income.

Medical expenses are those expenses expected to be incurred during the 12 months following certification or re-certification that are not covered by an outside source (such as health insurance, or medical assistance programs).

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- AHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. AHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

Expenses Incurred in the Past Years:

- When anticipated costs are related to on-going payment of medical bills occurred in past years, AHA will verify:
  - The anticipated repayment schedule
  - The amounts paid in the past, and
  - Whether the amounts to be repaid have been deducted from the family's annual income in the past years

Documentation of medical expenses must be provided by the household prior to determining Total Tenant Payment. Medical expense deductions will be addressed at initial move-in or annual re-certification only.

**NOTE: All medical expenses MUST meet the requirements as specified in Internal Revenue Service (IRS) Publication 502.**

### 9.12 Numerical Rounding Requirements

It will be the policy of AHA to round to the nearest whole number for purposes of averaging hours WORKED for determining EARNED INCOME.

*[Example: AHA verifies that an applicant or participating tenant works 30 to 35 hours per week, the average hours worked is 32.5. AHA will round this figure from 32.5 to 33 hours.]*

### 9.13 Disability Expense Allowance

The Disability Expense Allowance provides for the deduction of reasonable expenses for attendant care and auxiliary apparatus for a disabled member that are necessary to enable a household member to be employed. Expenses cannot be paid to a household member or reimbursed.

### 9.14 Utility Allowance & Utility Reimbursement Payments

The same Utility Allowance Schedule is used for all private Rental Assistance Programs, including the Section 8 Housing Choice Voucher/Project Based Voucher, Moderate Rehabilitation and Single Room Occupancy (SRO) Project-Based programs.

The Utility allowance is intended to help defray the cost of utilities not included in the rent and is subtracted from Total Tenant Payment to establish the household's rent to the landlord. The allowances are computed on basis of actual rates and average consumption studies and not on a household's actual consumption.

AHA will review the Utility Allowance Schedule on an annual basis and revise it if needed based on substantial utility rate changes. For purposes of changing the Utility Allowance Schedule, substantial means more than a ten (10) percent increase/decrease in utility rates. If the amount of decrease/increase is not substantial, the Utility Allowance Schedule will remain the same for the subsequent year.

The approved Utility Allowance Schedule is given to households along with their Housing Choice Voucher/Project Based Voucher. The utility allowance is based on the actual unit size selected and not the bedroom size the household is eligible for under the program. Where the utility allowance exceeds the household's Total Tenant Payment, AHA will issue a Utility Reimbursement Payment to the household each month. The check will be made-out directly to the head of household or to the local utility service provider.

**NOTE: Where households provide their own range or refrigerator, AHA will establish and provide an allowance.**

## Chapter 10 Verification Procedures

[24 CFR Part 5, Subparts B, D, E and F; 24 CFR §982.158; and 24 CFR §5.6XX]

### 10.1 Introduction

HUD regulations require that the factor of eligibility and Total Tenant Payment be verified by the housing agency.

Applicants and program participants must furnish true and complete information whenever information is requested by AHA. AHA verification requirements are designed to maintain overall program integrity. This PART explains AHA's procedures and standards for verification of income, preferences, assets, allowable deductions, household status, changes in household composition and other factors that affect the determinations of eligibility and calculations resulting in adjusted income.

AHA will always obtain proper authorization from the household before requesting verification information from independent sources.

### 10.2 Release of Information

[24 CFR §5.230]

- Each household member age 18 and older is required to sign the General Authorization form;
- Each household member age 18 and older will be required to sign a Form HUD-9886, Release of Information/Privacy Act; and
- Each household member age 18 and older may also be required occasionally, to sign authorizations for specific purposes, which include but are not limited to: Social Security Records, Internal Revenue Service (IRS) records.

**NOTE: Household refusal to cooperate with this process will result in denial of admission or termination of assistance. It is a Household Obligation to supply any information and supporting documents requested by AHA or HUD.**

### 10.3 Timing of Verification

Initial Move-in/Relocations and Interim certifications: Verifications cannot be more than 60 days old from the effective date of the calculation.

Annual Re-certification: Verifications cannot be more than 120 days old from the effective date of the calculation.

It is the tenant's responsibility to report any and all changes in income to AHA in writing, within ten (10) days of the event, and to provide acceptable, and verifiable, documentation as to changes in household income. Though applicant households are able to self-certify as to having assets of less than \$5000 at time of consideration for admission to the Housing Choice Voucher Program/Project Based Voucher, once a household has been admitted they will be required to supply current verification documentation as stated in Administrative Plan in order to determine whether they in fact have assets of less than \$5000.

## 10.4 Methods of Verification

The primary methods of verification acceptable by AHA for the tenant file to be properly documented in order of acceptability include:

1. **Enterprise Income Verification (EIV):** HUD's EIV system MUST be used to verify income of current program participants. It should be used at: 90-days after initial admission, interim rent changes, and at the annual recertification. The EIV Security and Procedure Policies are incorporated into the SECTION 8 ADMINISTRATIVE PLAN by reference and as an Appendix.
2. **Written Third Party Verification:** Independent verification of income and/or expenses by contacting the individual income/expense sources(s) supplied by the household. The written request for verification of documents must be supplied directly to the independent source by the PHA, and the written confirmation of verification of income and/or expense must be returned directly to AHA, from the independent source.
3. **Oral Third Party Verification:** Independent verification of income and/or expense by contacting the individual income/expense source(s) supplied by the household, via telephone call, the name of the person contacted and telephone number, along with the confirmed verified information. This form of third party verification will be used in the event that the written confirmation of verification of income and/or expense by the independent third party is not received prior to the processing of a rent calculation, the return of a RFTA form, or a unit placement.
4. **Self-Certification/Self-Declaration:** Written affidavit or notarized written statement of reported income and/or expenses signed by the household. This verification method will only be used as a last resort when all other verifications options are not available. The file MUST be documented as to the reason(s) why third party verification (both written and oral) was unattainable.

AHA will allow households to submit the following income verification documents:

- a. Award Letters and statements from the U.S. Social Security Administration (SSA) (i.e. disability benefits, retirement pensions, survivors, orphans, etc.);
- b. Supplemental Security Income (SSI) benefits;
- c. U.S. Department of Veterans Affairs (VA), Veteran's benefits;
- d. State of NM, Department of Workforce Solutions, Unemployment Insurance (UI) benefits;
- e. State of NM, Workers' Compensation Administration benefits;
- f. Retirement pension benefits (i.e. PERA, ERA, etc.);
- g. State of NM, Human Services Department (HSD), Income Support Division (ISD);
- h. Temporary Assistance for Needy Families (TANF) benefits;
- i. General Assistance (GA) payments and Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps (FS)
- j. State of NM, HSD, Child Support Enforcement Division (CSED);
- k. Child support payments award statements or receipts;
- l. State of NM, Children, Youth & Families Department (CYFD) child care services payment checks;
- m. Letter from employer;
- n. Student loan and student financial aid grant (i.e. Pell Grant) award letters;
- o. Tribal per capita payment notices;
- p. Self-employment certifications; and

- q. Records from U.S., State, Tribal, District, Metropolitan, City or County Courts.

AHA will accept verifications in the form of computerized printouts delivered by the household that were generated by the following government agencies:

- a. Social Security Administration (SSA);
- b. Veterans Administration (VA);
- c. State of NM, Human Services Department (HSD);
- d. State of NM, Department of Workforce Solutions, Unemployment Insurance (UI);
- e. State of NM, Workers Compensation Administration, and Federal, State, Tribal, Metropolitan, County and Municipal Courts; or
- f. State of NM, Child Support Enforcement Division (CSED).

### **Self-Certification / Self-Declaration**

When verification cannot be made by third-party verification or review of documents, households will be required to submit a self-certification statement or affidavit under penalty of perjury. The statement must be written and the signatures must be witnessed by a notary.

### **Streamlined Annual Re-certifications for Elderly / Disabled Households on Fixed Incomes**

Per PIH 2013-03 (HA) PHAs may opt to conduct a streamlined re-certification of income for elderly households and disabled households when 100 percent of the household's income consists of fixed income. In a streamlined re-certification, PHAs will recalculate household incomes by applying any published cost of living adjustments to the previously verified income amount.

For purposes of this notice, the term 'fixed income' includes income from:

1. Social Security payments to include Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI);
2. Federal, State, local, and private pension plans; and
3. Other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic receipts that are of substantially the same amounts from year to year.

### **10.5 Items to be Verified**

[24 CFR § 982.516]

Items to be verified include, but are not limited to:

1. All household income not specifically excluded by the regulations;
2. Full-time student status including High School students who are 18 years of age or older;
3. Current assets including assets disposed of for less than fair market value in the preceding two years;
4. Childcare expense where it allows an adult household member to be employed and/or to further his/her education;
5. Total medical expenses of all household member in households whose Head of Household or Spouse is elderly or disabled;
6. Disability expenses to include only those costs associated with attendant care or auxiliary apparatus, which allow an adult household member to be employed;
7. Disability status for determination of admissions preferences, income allowances or deductions;
8. U.S. Citizenship/eligible immigrant status;



9. U.S. Social Security Numbers for all household members;
10. Admissions Preference Status claimed;
11. Familial status when needed for Head of Household or Spouse definition; and
12. Reductions in benefits for non-compliance with TANF program requirements.

### **10.6 Methods Used to Verify Sources of Income**

This section identifies the procedures and defines the methods AHA will use to verify various types of household income:

#### **Procedures for Obtaining Third Party Written Verification**

Third party written verification is used to verify information directly with the source and will be obtained using the following procedures:

1. Third Party verification form together with a copy of a signed "Release of Information" form will be sent to the source. The verification form returned from the source MUST have been returned via first class mail, e-mail or FAX.
2. The hand-carried verification(s) must be date stamped as received by AHA and followed-up with written or oral verification by the independent third party.
3. AHA will not require additional third party verifications when agency generated computerized printouts delivered by the household are provided. Computerized printouts from, but not limited to:
  - a. U.S. Social Security Administration (SSA);
  - b. U.S. Department of Veterans Affairs (VA);
  - c. State, Human Services Department (HSD);
  - d. State, Department of Workforce Solutions, Unemployment Insurance (UI);
  - e. State, Workers' Compensation Administration (WCA);
  - f. U.S., State, Tribal, District, Metropolitan, County or City Courts; g) U.S. Department of the Treasury, Internal Revenue Service (IRS); h) State, Taxation and Revenue Department (TRD);
  - g. Employer check stubs (only when employer income is reflected in EIV);
  - h. State, Child Support Enforcement Division; or k) Educational loan/grant
  - i. Carbon Copy Termination of Employment filled out by employer, signed by employee

#### **Procedures for Obtaining Third Party Oral Verification**

Oral verification will be used in the event that the written third party has not been received prior to the processing of the calculation, return of a RFTA or placement. When third party oral verification is used, AHA staff will be required and note the call in the file accordingly. At a minimum, the note must include the following:

- Name and title of the "third-party source" (i.e., person) that provided verbal verification; and
- Date and time verbal verification was answered including the initials of the AHA staff person accepting the verbal verification from the third-party source.

#### **Self-Certification / Self-Declaration**

When confirmation cannot be made by third-party verification, households will be required to submit a self-certification statement or sworn affidavit signed under penalty of perjury as true. The signature(s) must be notarized.



## 10.7 Acceptable Verification of Income & Assets

### Employment Income

Acceptable methods of verification:

1. Most recent consecutive check stubs/earning statements covering a 4 week period.
2. For new hires/terminations, employment verifications must include the following information:
  - a. Dates of employment/termination;
  - b. Hourly wage;
  - c. Hours per week/month/etc.;
  - d. Estimated income from overtime, tips, commissions, or bonus pay expected during the next 12 months; and
  - e. Any other relevant information that may affect income during the next 12 months.
3. Employer supplied employment forms (i.e., IRS Form W-2), plus income tax return forms; and
4. Self-certification forms or income tax returns signed by the household may be used for verifying self-employment income, or income from tips and other gratuities.

**NOTE: In cases where there are questions about the validity of the information or cases of temporary sporadic income, AHA may require the most recent State and Federal income tax returns.**

### Social Security, Supplementary Security Income (SSI), Disability Income, Railroad Pension, other Pensions

Methods of verification will be accepted:

1. Award or benefit notification letters prepared and signed by the providing agency;
2. Computer report electronically obtained or a printout submitted in hard copy; and
3. Bank/Credit Union Account statements or direct deposits receipts (written third party verification will be sent).

### Unemployment Insurance (UI) Compensation

Methods of verification will be accepted:

1. Verification form completed by government or private agency providing the benefits;
2. Computer reports electronically obtained or a printout submitted in hard copy from the unemployment Insurance (UI) office stating payment dates and amounts or payment stubs; and
3. Bank/Credit Union Account statements or direct deposits receipts (written third party verification will be sent).

### Temporary Assistance for Needy Families (TANF), General Assistance (GA)

Note: Per HUD Notice PIH 2013-04, AHA will accept an applicant's or participant's self-certification as verification of fully excluded income; such as SNAP benefits. Reporting fully excluded income is not required in Section 7 of the form HUD-50058.

Methods of verification will be accepted:

1. AHA verification form completed by payment provider;
2. Computer generated notice of benefit (income) reports;
3. Application for Continued Occupancy Form (Only for SNAP benefits)

**Alimony or Child Support Payments**

Methods of verification will be accepted:

1. Court endorsed copy of separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules;
2. Letter from a State/local government child support enforcement agency;
3. A notarized letter from the person paying the support;
4. Copies of latest check and/or payment stubs from either the District Court, or Court Trustee; or
5. Household's self-certification of amount received and of the likelihood of support payments being received in the future or that support payments are not being received.

If payments are irregular, the household must provide:

1. Court endorsed copy of the separation or settlement agreement, or a divorce decree stating the amount and type of support and payment schedules;
2. A statement from a State/local government agency responsible for enforcing payments to show that the household has filed for enforcement;
3. A Welfare notice of action showing amounts received by the welfare agency for child support; or
4. A written statement from an attorney certifying that a collection or enforcement action has been filed.

**Dependent Full Time Students**

Only the first \$480.00 of the earned income of dependent full-time students age 18 and over will be counted towards household income. Student Financial Aid, scholarships, student loans and grants received by dependent full-time students are not counted towards household income. Any income derived from Student Internship Employment Program will be counted towards household income. Exceptions are permitted if the internship employment program is part of the student's financial-aid package (such as federal Work Study funding).

Verification of full time student status includes:

1. Written verification of enrollment from the Registrar's Office or other school official (e.g. transcript); and
2. School records indicating enrollment for sufficient number of credits to be considered a full-time student by an institution of higher learning (e.g. a schedule of classes for the current semester).

**Net Income from a Business**

In order to verify net income derived from a business, AHA will review IRS and other financial documents from the preceding year, and if necessary from prior years and use this information to determine the business income for the next twelve (12) months.

Acceptable methods of Business Income Verification include:

1. IRS Form 1040, including Schedule C (Small Business), Schedule E (Rental Property Income), and Schedule F (Farm Income). If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense will be required otherwise a computation using straight-line depreciation rules will be used;
2. Audited or un-audited financial statement(s) of the business; or

3. Household's self-certification as to net income realized from the business during prior years will be required.

### **10.8 Methods Used to Verify Assets**

[24 CFR § 982.516]

AHA will require the necessary documentation to determine the current cash value; the net amount the household would receive if an asset were converted to cash. Documents include, but not limited to:

1. Verification forms, letters, or documents from a financial institution or broker.
2. Checking and/or savings account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
3. Real Estate tax statements, if the approximate current value can be deducted from assessment (i.e. Notice of Value or Property Tax Bill).
4. Financial statements for business assets.
5. Copies of closing documents showing the selling price and the distribution of the sales proceeds.
6. Appraisals of personal property, market analysis or bill of sale.
7. Liability on property (i.e. mortgage balance).

### **Income from Assets (Account Interest Income and Dividends)**

1. Account statements and Certificates of Deposit (CDs) that must include name of institution, minimum last four digits of account number, account holders name, account balance and applicable interest rate, or AHA provided verification forms completed by the financial institution, including broker statements showing value of stocks or bonds and the earnings credited the household. (NOTE: Earnings can be obtained from the business and financial section of a daily newspaper such as the Albuquerque Journal or the Wall Street Journal (WSJ).)
2. IRS Form 1099 from the financial institution provided that AHA must adjust the information to project earnings expected for the next 12 months.

### **Interest Income from Mortgages or Similar Arrangements**

1. A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for the next 12 months that indicates a breakdown of principal and interest.
2. Amortization schedule showing interest for the 12 months following the effective date of the certification and/or recertification.

### **Net Rental Income from Property Owned by Household**

Acceptable methods of verification include, in this order:

1. IRS Form-1040 with Schedule E (Rental Income); or
2. Copies of latest rent receipts, leases, or other documentation of rent amount paid.

### **Assets Disposed of for Less than Fair Market Value during Two Years Preceding Effective Date of Initial Unit Offer/Placement, Certification or Recertification**

1. For all unit offer, certifications or re-certifications, AHA will obtain the Household's certification as to whether any member has disposed of assets for less than fair market during the two years preceding the effective date of the certification or recertification.

2. If the household certifies that they have disposed of assets for less than fair market value, verification [or certification] is required that shows: (a) all assets disposed of for less than Fair Market Value (FMV); (b) the date they were disposed of; (c) the amount the household received; and (d) the market value of the assets at the time of disposition. Third party verification will be obtained whenever possible.

## Chapter 11 Approval of Assisted Tenancy

### 11.1 Introduction

After households are issued a Housing Choice Voucher/Project Based Voucher, they may search for a unit anywhere within the jurisdiction of AHA, or outside AHA's jurisdiction if they qualify for portability. The household must find an eligible unit under the program rules, with an owner/landlord who is willing to enter into Housing Assistance Payments (HAP) Contract with AHA. This part defines the types of eligible housing, AHA's policy that pertains to initial inspections, lease requirements, owner disapproval, and processing Requests for Tenancy Approval (RFTA).

### 11.2 Request for Tenancy Approval (RFTA)

[24 CFR § 982.305 (B)]

The household must submit the Request For Tenancy Approval (RFTA) form. The RFTA form must be completed and signed by both the property owner and household.

AHA will not permit the household to submit more than one RFTA form at a time for processing. AHA will review the documents for completeness to determine whether or not they can be approved or rejected. AHA will determine if the Rent Requested by the owner (plus applicable utility allowances) is within the applicable Payment Standard (unless an exception rent has been requested and approved).

The RFTA will be approved only if:

1. The unit is an eligible type housing;
2. Unit has been inspected and meets federal minimum Housing Quality Standards (HQS) plus any additional standards identified in this Administrative Plan;
3. Proposed rent is reasonable when compared to unassisted rental properties of similar size in the area;
4. Proposed lease complies with all HUD requirements and includes tenancy addendum, and meets State and Local law requirements; and
5. The owner is approvable and there are no conflicts of interest.

AHA will schedule and conduct the initial move-in inspection within 7 to 15 business days of receipt and acceptance of the RFTA, provided the unit is ready for inspection and occupancy by the household. The Housing Voucher time clock (60 days usually) will be suspended during any period when the unit is not available for inspection.

### Disapproval of Request for Tenancy Approval (RFTA)

If AHA determines that the Request cannot be approved for any reason, the landlord and the household will be notified immediately by electronic communications (telephone, email or fax) or in writing. AHA will instruct the owner and household of the steps necessary to approve the RFTA. The tenant will be given up to five (5) business days to re-submit an approvable RFTA for the same unit to AHA.

If a RFTA is not approved, AHA will furnish another blank RFTA form to the household. The time limit on the Voucher is suspended while the RFTA is being processed, or if there is a delay through no fault of the households.

AHA will not approve a RFTA if HUD informs AHA that an owner is debarred, suspended, or subject to a limited denial of participation under 24 CFR Part 24. Refer to 24 CFR § 982.306 for further regulatory guidance.

All units listed in a RFTA form must be ready for inspection within 30-days of submittal.

If the initial inspection fails, all failed items must be cured within 30-days, otherwise the RFTA will be considered null and void.

### 11.3 Suitability of Household

[24 CFR § 982.202 (B) (1)]

#### Tenant Screenings

AHA has no liability or responsibility to the owner or other persons for the household's behavior or suitability for tenancy. The Owner has the sole responsibility for screening and selecting the assisted household to occupy the owner's unit. This includes screening prospective tenants for any drug-related criminal activity or any other criminal activity that is a threat to the health, safety or property of others. The screening process used by the land owner would be no different than the admissions process used in screening and selecting unassisted tenants. The owner shall take care when screening and selecting prospective assisted households in that no Fair Housing laws (Federal, State and Local) are being violated during the screening and selection process.

### 11.4 Lease Review

[24 CFR § 982.308]

AHA staff will review the lease, particularly determining the approvability of optional charges and compliance with regulations and State/Local laws (i.e. Uniform Owner-Resident Relations Act of NM). Distribution of responsibility for providing and paying utilities, appliances and optional services must correspond to those provided in the RFTA. **In the first year of tenancy, the initial lease must be for a term of not less than one year. At the end of the initial one-year term, the lease may take the form of a month-to-month lease agreement at the mutual election of the owner and assisted tenant household.**

AHA will make available to owners a sample lease agreement form upon request, which includes HUD-required language. The owner may include language such as House Rules to the lease as an addendum, provided they are approved by AHA prior to the signature and execution of the lease.

Owners may either submit their own lease agreement or use the AHA sample lease. In either case, the HUD lease addendum must be attached and executed. If owner refuses to sign and execute the HUD lease addendum, AHA will NOT enter into a HAP Contract with the owner for the subject rental unit. The household will then be required to find another eligible rental unit.

### **Separate Agreements (side agreements)**

Households and owners will be advised of the prohibition of illegal side payments for additional rent, or for items normally included in the rent of unassisted households or, items not shown on the approved lease.

Any appliances, services or other items, which are routinely provided to unassisted households as part of the lease (such as dishwasher, attached garage, etc.) or other items that are permanently installed in the unit cannot be put under separate agreement and must be included in the lease.

**NOTE: AHA is not liable for any unpaid charges by an owner's assisted tenant.**

### **11.5 Disapproval of Proposed Rent**

AHA may disapprove an Owner's Contract Rent request; if AHA is unable to justify the amount requested because of HUD rent reasonableness test or 40% TTP Exception Rent requirements.

AHA may offer the owner an alternative Contract Rent amount that is more in line with the rent of comparable unassisted units in the immediate area, for purposes of rent reasonableness requirements.

If the owner accepts the offer of a revised rent, AHA will continue processing the RFTA and Lease. If the revised rent involves a change in the provision of utilities, a revised lease will need to be submitted by the owner.

If the owner does not agree on the Contract Rent after AHA has attempted and failed to negotiate a revised rent, AHA will inform the household and owner that the lease is disapproved.

### **11.6 Information to Owners**

[24 CFR § 982.307(b), 982.54(d)(7)]

AHA has no liability or responsibility to the owner or other persons for the household's behavior or suitability for tenancy. The Owner has the sole responsibility for screening and selecting the assisted household to occupy the owners unit. This includes screening prospective tenants for any drug-related or other criminal activity that is a threat to the health, safety or property of others. The process used would be no different than the process used in screening and selecting unassisted tenants. The owner shall take care that no Fair Housing laws (Federal, State and Local) are being violated during the process.

AHA will inform owners that it is the responsibility of the landlord to determine the suitability of prospective tenants. Owners will be encouraged to screen applicants for rent payment history, eviction history, damage to prior rental units, and other factors related to the household's suitability as a tenant.

Upon owner written request, AHA will provide the following information: based on documentation in its possession:

1. Household's current and previous addresses\*;
2. Rental payment history;
3. Eviction History; and
4. Household's previous tenancy history to include, but not limited to, police reports, any claims for damages, neighbor/landlord complaints, any information on any illegal drug use, or possession with intent to distribute, and any information on any violent criminal activity.

\*AHA will make an exception to this requirement if the household's whereabouts must be protected due to domestic abuse or witness protection. The information may be provided verbally or in writing.

### **11.7 HAP Contract Execution Process**

[24 CFR § 982.305 (c)]

AHA prepares the Housing Assistance Payments (HAP) Contract for signature and execution by the Owner and AHA on behalf of the assisted household. The household and the owner will execute the Lease agreement. Copies of the executed documents will be furnished to the parties who signed the respective documents.

AHA makes every effort to execute the HAP Contract before the commencement of the lease term. In either case, the HAP Contract and the lease term must run concurrent and no payments will be made until the contract is duly executed and AHA has a copy of the executed lease. Owners must provide AHA with their current residential address.

Owners must provide Employer Identification Number (EIN), or Social Security Number (SSN), Proof of Ownership (i.e. a Warranty Deed for land), copy of executed Dwelling Lease, business or home telephone number. This information must be provided to the Inspector at the time of the dwelling unit inspection, or within thirty (30) calendar days of the inspection, if approved. If the owner fails to provide the required information/documents within thirty (30) calendar days, AHA will NOT execute the HAP Contract with the property owner/manager, and the assisted tenant may be required to move from the subject dwelling unit.

### **11.8 Change of Ownership**

When a subsidized property is sold and the new owner chooses to assume the lease and HAP Contract, AHA will require the following documents:

1. Copy of a recorded 'Deed' showing transfer from seller to purchaser; Copy of a recorded 'Real Estate Contract', recorded at the County Clerk's office; Copy of a recorded 'Special Warranty Deed' from a foreclosure case;
2. If no warranty deed is available, a signed settlement statement can be used temporarily until a recorded copy of the Warranty Deed is provided as soon as possible;
3. Completed IRS Form W-9;
4. Completed and notarized 'Assignment of HAP Contract'; and/or
5. Completed RFTA and/or Assignment of Lease.



**NOTE: If a Warranty Deed (or other type of Deed) isn't immediately available, AHA will accept a signed copy of a Settlement Statement from the real estate title company, as long as a final copy of the Warranty Deed (that has been recorded at the County Clerk's office) is provided to AHA as soon as it becomes available.**

**NOTE: Once AHA has been notified of the change of ownership, HAP payments will be placed on hold for forty- five (45) days in anticipation of all required documentation to process all updates. If all required documents are not received, AHA will issue a final letter to the owner informing them that failure to provide the required documentation will result in termination of the HAP contract effective retroactively according to the date that AHA was formally notified of the ownership change. Under these circumstance, the program participant will not be penalized and will be provided relocation paperwork and initial 60 day search time on the voucher.**

## Chapter 12 Housing Quality Standards (HQS) & Inspections

### 12.1 Introduction

The primary objective of AHA and the Housing Choice Voucher/Project Based Voucher Program is to provide decent, safe and sanitary housing at an affordable cost to qualified low-income households. To accomplish this, program regulations and this Plan set forth basic housing quality standards which all participating rental units must meet before assistance can be paid on behalf of a household and at least annually throughout the term of the assisted tenancy.

Housing Quality Standards (HQS) defines "standard housing" and establishes minimum criteria necessary for the health and safety of the participating households. These standards for tenant-based programs are identified in the HUD Housing Inspection Manual for Section 8 Housing, and the most recent HUD Inspection Form, form HUD-52580 and most recent Inspection Checklist, form HUD 52580-A. All rental units are required to meet these minimum HQS requirements both at initial occupancy and during the terms of the lease. HQS applies to dwelling units, exterior premises and other non-dwelling buildings.

These HQS standards are enhanced by AHA in conjunction with local City and County Building and Housing Codes. It should be noted, these provisions do not overly restrict the number of units available for lease under the program.

The use of the term "HQS" in this Administrative Plan refers to the combination of both HUD and AHA requirements. This PART describes AHA's procedures for performing HQS and other types of inspections and standards for the timeliness of repairs. It also explains the responsibilities of the owner, household and AHA, and the consequences of non- compliance with HQS requirements for both households and owners.

### 12.2 Acceptable Inspection Standards

[24 CFR § 982.401]

AHA has adopted the following standards in addition to the HUD minimum Housing Quality Standards:

1. Window screen on at least one window in each room containing windows, for fresh air cross-ventilation purposes;
2. Iron bar doors and bars over windows require emergency releases and safety bolt locks as per Fire Code;
3. At least one working 5-pound Fire Extinguisher in each rental dwelling unit (single household/multi-household) provided by the Landlord;
4. Adequate cooling (e.g. evaporative or refrigerated air conditioner) is required;
5. No evidence of Fungi or mold should be present anywhere in the dwelling unit;
6. Ground Fault Interrupter (GFI) is required in at least kitchen or bathroom sink area as per local building code. (Exemption is permitted for 'grandfathered in' older residential properties as per City building code ordinance);
7. Double keyed door locks are prohibited. Safety bolt locks can be used instead; and
8. As per code requirements each sleeping room must have one working smoke detector.

In cases of inconsistency between the local requirements and HQS, local codes will always prevail. Efforts will be made at all times to encourage owners to provide housing quality above HQS minimum standards.

### 12.3 Manual & Automated Inspection Systems

In an effort to meet all HQS requirements, AHA will conduct and record inspections using paper form(s) HUD-52580A or HUD-52580. These HUD Inspection Checklist form (i.e., facsimile) has also been incorporated into a computer (hand-held) device, and can interface with our operating software and mainframe system. AHA will use these hand-held computer devices in the performance of HQS inspections. The paper forms will be used when training new program staff in the performance of HQS inspections, but will convert to hand-held devices upon completion of the training period. Paper forms will also be used when a hand-held device is out-of-service (broken) and others are not available for use by an inspector.

Regardless of how inspection results are recorded, AHA will produce and retain a facsimile that includes AHA-adopted standards. Form HUD-52580, Inspection Checklist.

**NOTE: AHA reserves the right to convert back and forth between the use of paper inspection checklist forms and the hand-held devices when it would be in the best interest of the programs.**

### 12.4 Inspection Types

[24 CFR § 982.405]

#### **HQS INSPECTIONS ARE PERFORMED TO:**

- Determine if the dwelling unit and property meet federal minimum Housing Quality Standards (HQS) and minimum local safety building code standards;
- Document the current condition of the rental unit as a basis to assess whether the condition of the unit will exceed normal wear and tear in the future; and

- Document the physical aspects of the dwelling that will be used for determination of Rent Reasonableness tests.
- Photographs, video and audio may be used to record and document all inspections.

### **Initial Inspection Procedures**

- AHA will conduct an initial move-in inspection for each unit as part of the tenancy approval process upon receipt and acceptance of a completed and signed original RFTA form from either an owner or tenant ;
- AHA will notify the head of household of the initial move-in inspection within (3) days of receipt and acceptance of the RFTA, provided the unit is ready for inspection and occupancy by the household;
- AHA will notify the household head of household and owner of the date and time of the scheduled inspection within 7-10 days, and both the head of household and owner or their representatives MUST be present at the inspection;
- If either the head of household, owner or their representative, fail to keep the scheduled inspection appointment, the inspector WILL NOT perform the initial move-in inspection;
- The inspection will be rescheduled for the earliest date and time that ALL parties would be available for the inspection;
- The unit must PASS the HQS inspection before the execution of the assisted lease and Housing Assistance Payments (HAP) Contract [24 CFR § 982.305] and the initiation of any payments; and
- The Section 8 participant is encouraged NOT to execute a Lease or to move into the subject unit until the dwelling has been inspected and HAP Contract approved and signed by AHA.

**NOTE: If AHA is not in receipt of an executed Lease Agreement within 30 days of the passed inspection, AHA will not execute a HAP contract and the program participant will be required to relocate to a different location to find a qualified unit.**

### **Annual HQS Inspections**

- AHA will make no more than two (2) attempts to complete an annual inspection;
- AHA will conduct an annual HQS inspection of a unit occupied by an assisted household at least annually or at the anniversary of the initial move-in inspection [24 CFR § 982.405(a)];
- AHA will conduct the inspection no more than 90 calendar days prior to but within at least 30 days of the anniversary month of the HAP contract;
- AHA will notify the tenant and owner in writing two weeks prior to the scheduled annual re-certification HQS inspection, as to the date the inspection will be conducted;
- The head-of-household or their representative (e.g., an adult household member 18 years of age or older) must be present for the required annual re-certification HQS inspection (The owner is not required to be present for the re-exam, but may be present at their own discretion);
- When the inspector conducts the annual inspection, each item on the inspection checklist must receive a rating of PASS, in order to approve the HAP and assisted lease for continuation for a subsequent 12 months;
- Should any item on the inspection checklist receive a rating of FAIL, and the failed item(s) violate either HQS or local building or housing code requirements, the inspector will take

the necessary steps to ensure full HQS and local code compliance of the unit prior to approving the unit for renewal. This includes immediately notifying the owner and tenant in writing of the HQS deficiencies and providing a reasonable time frame to make the required repairs;

- If the required repairs have not been made in the reasonable time frame, the HAP payment to the landlord will be abated and the HAP Contract will be terminated;
- Depending on the nature of HQS violations, the Inspector shall have the discretion to determine the amount of time to give either the owner or tenant to repair any HQS failed items, but in no case shall the time allotted exceed thirty (30) calendar days from the date of the annual inspection; and
- The only exceptions to the aforementioned will be considered in cases of HQS violations, caused by fire or other types of natural disasters, and in cases where death or critical illness of a household member prevented the timely repairs of HQS violations by the owner and/or tenant. The owner and/or tenant must provide this office with documented evidence to the facts when asking for an extension of time to make repairs. In these cases, the Inspector may then extend the repair period an additional 30 to 60 calendar days, and only if the immediate health and safety of the assisted household is not compromised because of the time extension.

### **HQS Emergency Inspections**

From time-to-time AHA will receive complaints or information that a particular assisted unit is in non-compliance with HQS requirements and that the tenant household's health and/or safety is being compromised due to emergency HQS violations. AHA has adopted the following procedures for handling and documenting emergency violations in accordance with 24 CFR §982.404.

It is possible that either the Section 8 Housing Specialist or Housing Quality Compliance Inspector may receive information that an emergency HQS violation/situation exists. In these cases, the department that is first notified of an emergency HQS violation will verify that the information is valid and issue the appropriate letter via first class, return receipt mail to the tenant/owner to include:

1. Date complaint/information was received;
2. Details about the nature of the emergency (life-threatening) violation(s) including whether the owner and/or tenant are aware of the situation (only if the informant is someone other than the owner and/or tenant);
3. Any instructions the AHA staff person receiving the complaint/information may give the informant (i.e., caller) on what to do.

This will subsequently be documented in the computer system and forwarded to the Inspection Department Supervisor via email, and a representative from the Inspections Department will complete the following steps:

1. Conduct an HQS emergency inspection of the assisted unit in accordance with 24 CFR §982.404;
2. Record inspection violation(s) on form HUD 52580-A or 52580 and determine the nature of the HQS emergency violation(s) and ascertain the responsible party (i.e., owner or tenant); and

3. The Housing Quality Compliance Inspector may refer household to appropriate emergency assistance agency (i.e., Red Cross, Society of St. Vincent DePaul, and Catholic Charities, etc.) for temporary shelter and assistance; and
4. If the Violation is the responsibility of the owner, the Housing Quality Compliance Inspector will:
  - Contact the property owner by phone (if possible) and in writing (by first class, return receipt mail with a cc: to the landlord) to notify them of the results of the emergency HQS inspection and that the repairs are required to be made within 24 hours (unless an extension of an additional 24 hours is granted) and that failure to make repairs will result in immediate abatement of HAP portion of the rent and that the HAP Contract will be terminated if repairs have not been made by that time with the specific date indicated on the written notification.

If the Violation is the responsibility of the tenant, the Housing Quality Compliance Inspector will:

- Contact the tenant by phone (if possible) and in writing (by first class, return receipt mail with a cc: to the landlord), and notify them of the results of the emergency HQS inspection and that failure to make repairs will result in termination of the HAP Contract and their Housing Choice Voucher with the specific dates indicated on the written notification.
5. The Housing Quality Compliance Inspector will provide all Emergency HQS inspection documentation to Section 8 HSS by no later than one (1) business day after the final outcome of items 1 – 4 above.

### **Emergency HQS Violation Items**

The following is a list of items that are considered (but not limited to) by AHA to be "Emergency" HQS violations and that will require immediate emergency attention by AHA:

1. Waterlogged ceiling in imminent danger of falling in;
2. Flooding caused by leaky plumbing or natural flooding;
3. Natural gas leaks or fumes or Red-Tagged Heating or Water Heating systems;
4. Electrical problem that could result in electrical shock or fire;
5. No heat in unit, with outside temperature below 32 degrees F and temperature inside unit is below 60 degrees F;
6. Utilities (natural gas and/or electricity) not in service;
7. No running water;
8. Obstacle(s) which prevents tenant's safe entrance or exit to unit;
9. Lack of functioning toilet, if only one available in dwelling unit; or
10. Non-functioning Smoke Detectors.

### **Special or Complaint Inspections**

AHA may conduct special HQS inspections or other investigative visits to an assisted unit based on information received in writing from third parties such as owners, participants, neighbors or other interested third parties (i.e. City Code Enforcement, utility providers, law enforcement agencies).

- If at any time AHA is notified that the unit allegedly does not meet HQS, and the tenant has already notified the owner in writing, AHA will schedule and conduct an inspection after receiving a copy of the written notice to the owner (exception - emergency violations that are reported as indicated above will be inspected immediately);
- AHA will inspect the items which were reported;

- If the inspector identifies additional HQS deficiencies that cause the unit to fail, the responsible party (owner and/or tenant) will be required to make the necessary repairs; and
- Violations resulting from complaint inspections will be treated in the same manner as annual inspection violations, and the same rules will prevail.

### **Quality Control (QC) Inspections**

[24 CFR § 985.2 & 982.405(b)]

First, the purpose of Quality Control (QC) inspections is to ensure that landlords are maintaining the dwelling unit(s) in decent, safe and sanitary condition and that they continue to meet HQS requirements. Second, QC inspections will assist AHA in monitoring Section Eight Management Assessment Program (SEMAP) compliance, and QC inspections will provide feedback to management on inspectors' work, which can be used to determine if individual inspector performance or general HQS inspector division field staff training issues needs to be addressed.

The following guidelines will be used in determining the QC inspection sample size, type and process:

1. QC inspections will be conducted on at least two (2%) percent of all units.
2. Completed HQS inspections including the unit sample must be no older than three months at the time of QC inspection.
3. The sample must represent a cross section of neighborhoods where program units are located and inspections completed by all HQS inspectors on staff.
4. The sample will include a cross-section of initial and annual inspections.
5. QC inspections are required to be conducted by management staff (i.e., Quality Control & Audit Officer, or Section 8 Program Manager).
6. QC inspections will be conducted on a monthly or quarterly basis.

AHA will maintain a quality control tracking system for each SEMAP year, which indicates at a minimum:

- Address of the units;
- Date of original inspection and inspector conducting inspection;
- Date of the QC inspection;
- Results of the QC inspection; and
- Location of the unit by neighborhood, zip code, or census tract.

Reports will be generated which will indicate the total number of inspections conducted and the unit condition. This will prompt any system change or process change to make necessary improvements to the inspection process to ensure full regulatory and SEMAP compliance.

### **12.5 Acceptability Criteria & Exceptions to HQS**

[24 CFR § 982.401]

AHA adheres to the thirteen (13) HQS acceptability criteria in the program regulations, HUD Inspection Manual and local building and housing codes, which threaten the health and safety of the household.



HQS violations that cause a unit to fail are required to be corrected by the landlord, unless it is a fail item(s) for which the tenant is responsible. Fail HQS items for which the household is responsible for are defined in Section F below.

### **12.6 HQS Non-Compliance & Termination of HAP Contract**

If the owner is responsible for repairs, AHA will send an abatement and HAP contract termination notice to the property owner (with a copy to the tenant), which must include the date abatement will become effective (but no earlier than the first of the next month). In addition the notice must include a 30 day notice of termination of the HAP Contract. The HAP Contract termination is in the event the owner fails to make repairs or refuses to complete HQS deficiencies before or after the abatement period expires. If repairs are completed before the effective termination date, the termination may be rescinded by AHA, if tenant chooses to remain in the unit.

### **12.7 Determination of Responsibility**

[24 CFR § 982.404(b)]

The following deficiencies are considered the responsibility of the household:

1. Tenant-paid utilities not in service; (i.e. tenant fails to pay electric utility bill, so service is disconnected)
2. Failure to provide or maintain household-supplied appliances; (i.e. tenant fails to fix the tenant's gas stove)
3. Damage to the unit or premises caused by a household member or guest that is beyond normal wear and tear.

The owner/tenant is responsible for all other HQS violations.

The owner is responsible for abatement of all vermin and insect infestations even if caused by household's living habits, such as bad housekeeping. However, if such infestation is serious and repeated, it may be considered a lease violation and the owner may evict for serious or repeated violation of the lease. AHA may terminate the household's assistance on that basis. Owners/Tenants must ensure that the unit is kept in a decent, safe and sanitary condition.

If the household is responsible but the owner carries out the repairs, the owner will be encouraged to bill the household for the cost of the repairs and the household's file will be noted.

### **Non-Emergency HQS Violations**

If non-emergency violations of HQS are determined to be the responsibility of the assisted household, AHA will require the household to make any repair(s) or correction(s) needed within 30 days. A written notice will be sent to the tenant (with a copy to the landlord) stating that if the repair(s) or correction(s) are not made within the time allotted, AHA will terminate the HAP Contract and the Housing Choice Voucher/Project Based Voucher. Termination to be effective in not less than thirty days. Any requests by the household for an extension of time to make repairs must be approved by the inspector. Under no circumstances will the owner's rent be abated for failure to correct HQS violations that are the household's responsibility.



## Chapter 13 Payment Standards, Owners Rent & Rent Reasonableness

### 13.1 Introduction

The Payment Standard is used to calculate the housing assistance payment that AHA pays to the owner on behalf of the household leasing a qualified unit. This PART explains the procedures AHA will undergo for establishing and revising its Payment Standard Schedule initially, as well as annually, and how it will determine and handle housing assistance payments to owners, and how it will ensure that rents charged by owners to Housing Choice Voucher/Project Based Voucher Program participants are reasonable and in line with unassisted market rents.

### 13.2 Payment Standard

[24 CFR § 982.503]

The Payment Standard for each unit size will be set at 90% to 110% of the published Fair Market Rent (FMR) for each new Housing Choice Voucher/Project Based Voucher Program funding increment authorized under a new Annual Contributions Contract (ACC). In addition, AHA will monitor the local rental market conditions and will adjust its Payment Standard Schedule, up or down, depending on what the conditions reveal to AHA about actual rental market costs.

#### **Annual Adjustment to Payment Standard**

At least annually, AHA will review its Payment Standard to determine whether adjustments are needed for some or all unit sizes. The Payment Standard will be reviewed according to HUD's requirements. The Payment Standard may be adjusted 90% to 110% of current FMR without prior HUD approval in order to increase/decrease contract rents in accordance with local rental housing market conditions.

AHA may use some or all of the measures below in making its determination whether an adjustment should be made to the Payment Standard.

1. Rent Burdens to Assisted Households;
2. Availability of Suitable Vacant Units and Rents Below the Payment Standard Amounts;
3. Size and Quality of Units Selected;
4. Time to Locate Housing;
5. Vouchers Expired without Leasing; and
6. Large Number of Households Moving Out of AHA Jurisdiction.

#### **Lowering of the Payment Standard**

The Payment Standard may be lowered when studies or analysis reveal that the Payment Standard should be lower, in which case, the Payment Standard will not be less than 90% of the current FMR. If the FMR is lowered, the Payment Standard may not exceed the FMR except in those cases where households are held harmless until they move to a different dwelling unit or have a change in household composition, which would affect their Voucher size.

#### **Documentation of Review of Payment Standards**

AHA will maintain documentation of its review of its Payment Standard schedule to support its determination to change or not to change the payment standard amounts on the schedule.

**Financial Feasibility**

Before increasing the Payment Standards, AHA may review the annual budget to determine the impact projected subsidy increases would have on funding available for the program versus the number of households served.

**Application of the Payment Standard**

AHA will use the payment standard to calculate the monthly housing assistance payment for a household under the Housing Choice Voucher/Project Based Voucher Program. The HAP is determined by taking the lower of the:

- Payment standard minus the Total Tenant Payment (TTP); or
- Gross rent for the unit minus the TTP.

If the gross rent is lower than the payment standard, the household will pay the full TTP. If the gross rent is higher than the payment standard, the household will pay the TTP plus the amount by which the gross rent exceeds the payment standard. In any case, the household's TTP may not exceed 40% of adjusted income in the initial year of the lease.

**Payment Standard Amount for the Household**

The payment standard amount for a household is the lower of:

- Payment standard amount for the household voucher size, or
- Payment standard amount for the size of the unit actually leased by the household.

**Higher Payment Standard Amount as a Reasonable Accommodation**

AHA also reserves the right under this Plan to establish a higher payment standard amount within the basic range (90% to 110% of FMR) as a reasonable accommodation for a disabled household. AHA also reserves the right to petition HUD to approve a higher or lower payment standard outside the 90% and 110% basic range.

Per HUD Notice 2013-03 AHA has adopted the HUD provision to establish a payment standard of not more than 120 percent of the fair market rent (FMR) without HUD approval as a reasonable accommodation. A "Request for Reasonable Accommodation Form" should be filled out and submitted to the Deputy Director and Section 8 Program Manager for approval.

**13.3 Housing Assistance Payments to Owners**

When AHA has determined that the unit meets the minimum HQS as defined in this Plan, and that the lease is approvable and that the rent is reasonable, it will then execute the Housing Assistance Payments (HAP) Contract with the owner.

The maximum subsidy for each household is determined by the Payment Standard, less 30% of the household's Monthly Adjusted Income. The actual subsidy level could be less if the household is required to pay the Minimum Total Tenant Payment (10% of the household's monthly gross income, or 30% of the household adjusted monthly income, or the Minimum Rent of \$50.00 whichever is greater).

The Payment Standard for the household is based on the lesser of the Payment Standard for the Voucher size issued and the Payment Standard for unit selected.

The Housing Assistance Payment to the owner is the lesser of the subsidy described above or the rent charged by the owner.

### **Rent Specials**

From time to time landlords and multi-household apartment management companies may offer certain types of specials (or sales) as an incentive to attract new tenants to their particular unit or apartment complex. These special offers, more often than not, may include “free rent” offers for one or more months, if the tenants sign a lease agreement for multiple months (often for a 12 month long term). Under existing equal housing opportunity laws, such specials must be made available to both rent assisted and non-assisted prospective tenants. Therefore, AHA will require that “free rent” incentives to AHA Section 8 assisted tenants be based on the monthly rent charged for the unit to be leased. The “free rent” must be equal to the rent advertised and credited to the assisted tenants rent account in the first month of the lease. Thereafter, regular rent and HAP payments from both the assisted tenant and AHA shall commence in the subsequent month through the twelve-month term of the initial lease.

### **13.4 Making Payments to Owners**

AHA will begin processing payments to the landlord once the HAP Contract and Lease is executed. When there are changes in the amount of housing assistance payment, the effective date and the amount of AHA payment is communicated through a “rent adjustment notice” mailed to both parties. A HAP Register will be used as a basis for monitoring the accuracy and timeliness of payments. Normally, housing assistance payment checks (or direct deposits) are processed and disbursed to owners twice each month. Exceptions may be made with the approval of the Rental Assistance Program Manager in cases of hardship.

Checks that are not received by an owner will not be re-issued until every effort has been made to locate the missing check. AHA will issue a stop payment with the bank after 15 days on the missing check and a new check will be issued to the owner at the next scheduled payment processing cycle after an investigation has been completed regarding the status of the missing check.

### **Direct Deposit of HAP**

Beginning July 1, 2007, AHA will require that all new landlords entering into a Housing Assistance Payments Contract for the first time register for Direct Deposit of their housing assistance payments into a bank or credit union account. All owners will not presently on direct deposit will be required to convert to direct deposit no later than 12/31/2016.

### **13.5 Rent Increase Requests from Owners**

Owners may not request rent increases under the Housing Choice Voucher Program prior to the expiration of the first or subsequent year(s) of the lease.

Owner must submit a request to increase rent in writing to AHA. And the owner must submit the written request at least 60 days but no more than 120 days prior to the effective date of the increase. This 60 day rule will allow time for AHA to consider the reasonableness (or lack thereof) of the proposed rents increase and still allow enough time for giving the required thirty-days written advance notice to tenant of rent increase, as required by state law (the New Mexico Owner-Resident

Relations Act), if the AHA approves of the proposed rent increase. There will be no exceptions to the minimum 60 days in advance written request to increase rent notice from owner requirement.

The approval or disapproval decision regarding the owner's rent increase request will be based on Rent Reasonableness determination. The rent adjustment may be an increase or decrease, but may not result in a contract rent lower than initial contract rent on the current HAP Contract.

NOTE: Updated household income documentation is not required to process an approved rent increase when the household's TTP is not affected. Once a rent increase has been approved, the Inspection Department will transfer all corresponding paperwork attached to the annual inspection packet to the Section 8 Department

### **Disapproval of Owners Rent Increase Request**

If AHA rejects the owner's request for rent increase on the basis that the request fails the rent reasonableness test and the owner rejects AHA's determination, the owner may offer the tenant a new lease without housing assistance; give the tenant a thirty day notice of non-renewal of lease to terminate the lease, or the owner and tenant can enter into a mutual recession of the lease agreement. If the tenant wishes to remain in the unit in the future, unassisted, and start paying all of the full monthly rent without assistance, then the AHA will terminate the household's Housing Choice Voucher/Project Based Voucher.

## **13.6 Rent Reasonable Determinations**

[24 CFR 982.4; § 982.54(d)(15); § 982.158(f)(7); § 982.507]

AHA will make every effort to ensure that rents charged by owners to Housing Choice Voucher/Project Based Voucher participants are reasonable.

Rent reasonableness determinations are made:

1. prior to units being placed under HAP Contract for the first time;
2. when owners request a rent increase;
3. if there is a five percent decrease in the published FMR; or
4. at the direction of HUD.

AHA will compare, document, and certify on a case-by-case basis that the approved rent does not exceed the rents charged for similar sized unassisted units in the marketplace. The owner will be required to document and certify that the subject rental unit does not exceed rents charged by the owner for equivalent assisted or unassisted units in the same building or complex, and will make the certifications on both the RFTA and HAP Contract Addendum.

At least two (2) comparable units will be used for each rent determination. All comparables must be based on the rent that the unit would command if leased in the current market. The term "leased in the current market" means a comparable unit that is currently under lease.

## **13.7 PHA Rent Reasonableness Methodology**

### **How market data is collected**

AHA will collect and maintain data on unit information and market rent in AHA jurisdiction. Information sources may include [www.GoSection8.com](http://www.GoSection8.com), newspapers, realtors, appraisers, market

surveys, landlords, and other available sources. At a minimum, unit data will include the location, quality, size, type and age of the unit, as well as amenities, housing services, maintenance and utilities to be provided by the owner. Data will be updated on an ongoing basis and rent information that is more than 12 months old will not be used to determine rent reasonableness.

### **How rents are determined**

AHA uses a unit-to-unit comparison, by which the rent for a unit proposed for HCV/PBV assistance is directly compared to the rents for one or more unassisted units selected as comparables within the same market area. Geo-coded maps will be used to identify the unsubsidized units in closest proximity (e.g., within 3 to 6 miles) to the subject unit, and unit data information will be used to select the most similar units.

In comparing rents, AHA will take into account critical market factors that impact rent, including the location, quality, size, unit type and age of the contract provided by the owner in accordance with the lease.

Where comparable units differ from the unit proposed for HCV/PBV assistance, the AHA will determine whether those differences impact rent. Where they do, the AHA will adjust the rental value of the comparable units, up or down, based on assistance will be compared to the adjusted rents for the comparable units, enabling a fair, accurate, market based determination of rent reasonableness.

AHA will notify the owner of the rent AHA can approve based upon its analysis of rents for comparable units. If the owner disagrees with this analysis, the owner may submit additional information in support of their requested rent. The PHA will consider this information when making rent determinations. The owner must submit any additional information within 5 business days of AHA's notification.

## **Chapter 14 Annual & Interim Recertifications**

[24 CFR § 982.516]

### **14.1 Introduction**

HUD regulations require that AHA reexamine the income and composition of all Housing Choice Voucher/Project Based Voucher households at least annually. AHA will also require participating households to report interim changes in household income or other household circumstances. These changes may affect the amount of housing assistance they can receive including their continued participation in the program. In addition, AHA is required to inspect the assisted unit at least bi-annually or prior to the anniversary date of the HAP contract to ensure continued HQS compliance. These activities must be coordinated to ensure that they are completed in accordance with program regulations. This PART defines AHA's policy for conducting and coordinating annual recertification requirements. It also explains the interim changes reporting requirements for households, and the standards for timely reporting.

### **Supervisory Monitoring Requirements (Quality Control)**

## 14.2 Required Annual Activities

[24 CFR § 982.516; § 982.405]

There are two activities AHA must conduct on an annual basis:

1. Annual Re-certification of Income and Household Composition; and
2. HQS Inspection. (May be conducted bi-annually)

Every household is required to re-certify at least annually. The only exception to this requirement is when a household moves to another assisted dwelling unit prior to the HAP contract anniversary date of their previous unit. In these instances, the household will be re-certified as part of the relocation process. This will satisfy the annual re-certification requirements for the relocating household. All required recertification activities will be carried-out as originally scheduled until the relocation HAP is executed.

## 14.3 Annual Recertification

[24 CFR § 982.516]

### **Re-certification Notification to the Household**

The assisted household will be notified by mail of the scheduled date for the in-office annual re-certification of income and household membership appointment and of the date of the unit HQS inspection. A notice will be mailed to the property owner, advising the owner of the pending expiration of the HAP contract and annual HQS inspection appointment. The tenant/owner will be notified at least two weeks prior to the scheduled in-office appointment and unit inspection.

### **Procedure When a Scheduled Inspection Appointment is Missed or Information not Provided**

1. A "NOTICE OF INSPECTION APPOINTMENT" letter will be mailed to the unit address or secondary address on file at least 5 days prior to the scheduled appointment (Note: A signed written request to send mail to a secondary address must be on file);
2. If the first scheduled appointment is missed and the client has not contacted their Housing Specialist to re-schedule, a "NOTICE OF MISSED INSPECTION APPOINTMENT" letter will be mailed to the unit address or secondary address on file (cc to landlord);
3. If the second inspection appointment is missed and the client has not contacted their Housing Specialist to re-schedule, certified "NOTICE TO TERMINATE SECTION 8 RENTAL ASSISTANCE" letters will be mailed first class mail return receipt to the unit address or secondary address on file and to the landlord. This notice must include information regarding deadlines for requesting an informal hearing.

### **Tenant Rent Increases**

If the Tenant rent to owner reflects an increase, a notice of the tenant rent increase will be mailed to the household 30 days prior to the effective date of the re-certification.

If less than 30 days remain before the effective date of the annual re-certification; the tenant rent increase will take effect on the first day of the month following the 30 days' notice.



If there has been a misrepresentation or a material omission by the household, or if the household causes a delay in the re-certification processing, there will be a retroactive increase in rent to the anniversary date of the re-certification.

If the tenant rent to owner increases as a result of the re-certification, the assisted household must be given the opportunity to request an informal meeting with AHA staff to dispute the basis for the increase.

### **Tenant Rent Decreases & Determination of Zero Income**

If tenant rent to owner decreases, it will take effect on the first day of the following month.

If the household causes a delay so that the processing of the re-certification is not complete by the anniversary date, the change will be effective on the first day of the month following completion of the re-certification process.

Households declaring zero income status must complete a “Zero Income Questionnaire” and provide all required documentation based on assistance listed on the form. In addition, AHA will also require the household to complete a release in order to perform a credit check. The purpose of the credit check is to identify any hidden assets or assistance not being reported to AHA. FICO scores will not be utilized to determine whether a household qualifies for zero income status, and the credit check will only be run at time of initial zero income determination. AHA will incur any and all fees associated with performing the credit check (See additional provisions on page 21 of this Administrative Plan).

An interim re-certification will be scheduled every 90 days for households who report zero income.

### **Notification of Annual Re-certification Results**

AHA will notify the household and owner of the results of the annual re-certification in writing. The notice, at a minimum, will provide the following information on the results of the re-certification:

- Increase/Decrease in Contract Rent;
- Amount and effective date of the household’s rent contribution; and
- Amount and effective date of the Housing Assistance Payment (HAP).

## **14.4 Reporting Interim Changes**

[24 CFR § 982.516]

HUD and AHA require program participants to report any changes in household composition and income to AHA in between annual re-certifications of income. All household income changes must be reported to AHA by the participant, in writing, and by appointment with the assigned Housing Specialist within ten days of the date the change occurred.

### **Interim (Changes in Income) Re-certification Policy**

AHA will process rent increases for any increase per household that totals more than \$200 monthly, providing the minimum 30-day notice of rent increase requirement.

**An interim re-certification does not affect the date of the required annual recertification.**

### **Interim Rent Change Effective Dates**



**Increases:** If the change in income/household composition results in an increase in the tenant portion of the rent, the change will become effective on the first day of the month following the change. This will allow for the mandatory 30 days' notice as required by state law. The Housing Specialist must have received all required documents and third party verifications prior to processing a change.

**Decreases:** If the change in income/household composition results in a decrease in the tenant portion of the rent, the change will become effective on the first day of the month following the change, only if all required documentation and third party verifications have been received by the Housing Specialist prior to the 25th of the month.

### **Timely Reporting of Changes in Income, Assets and Household Composition**

#### **When the Change Is Not Reported By the Tenant in a Timely Manner**

- If the household does not report the change as described under Timely Reporting, the household will have caused an unreasonable delay in the interim re-certification processing and the following guidelines will apply:
- In the event the change in income/household composition is not reported in a timely manner, the rent increase will be made effective the first day of the month, following receipt of all documents and third party verifications by the Housing Specialist. This will allow for the required 30 days' notice.
- Increase in Tenant Rent will be effective retroactive to the date it would have been effective had it been reported on a timely basis. The household will be liable for any overpayment of housing assistance and will be required to repay all overpayment amounts. If it is determined the household is unable to repay the amount in full due to a lack of available funds, the household may be required to enter into a Repayment Agreement with AHA.
- The exception is if the household specifically requests the change occur sooner, in order to avoid repayment requirements of any overpayments in subsidy for that period.
- Decrease in Tenant Rent will be effective on the first of the month following completion of processing by AHA and not retroactively.

NOTE: No interim changes will be processed for any decrease in income for fewer than 30 days in duration.

### **14.5 Changes in Household Composition**

#### **Increases in Household Size**

The assisted household will be required to obtain prior AHA approval of additions to the household before person(s) occupy the assisted unit. **AHA will not increase bedroom size due to the addition of household member(s)** Exceptions must be approved by the Section 8 Program Manager who may evaluate the needs of the household and the change in household composition. Any tenant wishing to add a minor to the household (other than by birth or foster care) must provide acceptable guardian documentation including a signed affidavit from the child's legal guardian. The Housing Specialist may request additional information regarding the custodial arrangement if necessary to ensure housing services are properly provided. Custodial cases are reviewed on a case by case basis.

AHA will deny a household's request to add new household members who are:

1. Persons who have been evicted from any federally assisted housing;
2. Persons who have previously violated a household obligation listed in 24 CFR §982.551 of the HUD regulations;
3. Persons who have been part of a household whose assistance has been terminated under the Housing Choice Voucher/Project Based Voucher Program;
4. Persons who have been arrested, formally charged or convicted for drug-related or other violent criminal activity;
5. Persons who commit fraud, bribery or any other corrupt or criminal act in connection with federal housing programs;
6. Persons who currently owe rent or other amounts to AHA or to another PHA in connection with the Section 8 or public housing assistance programs under the 1937 U.S. Housing Act;
7. Persons who have engaged in or threatened abusive or violent behavior against AHA staff;
8. Adult additions must provide a verifiable work history for the last 12 months or other steady income for the last 12 months. Exceptions must be approved by the Section 8 Program Manager; and
9. The U.S. Citizenship/Immigration Status of additional household members must be declared and verified.

**NOTE:** If granting approval of adding an additional person to the current household membership will trigger an increase in bedroom unit size, then the request will be denied. Exceptions must be approved by the Section 8 Program Manager who will review the needs of the household as it relates to the composition of the household.

#### **Approval from Landlord of Household Member Additions**

Approval of any household member additions **MUST** be obtained from the participating landlord in writing prior to requesting consideration for approval from AHA. If the household does not obtain prior written approval from the owner and AHA, any person the household has permitted to move in will be considered an unauthorized person.

#### **Decreases in Household Size**

Households are required to notify AHA if any household member leaves the assisted household. In addition, the head of household **MUST** complete a Continued Occupancy form and certify by their signature, that the household member has left the assisted dwelling unit.

If a minor child has moved from the unit, a letter from the current guardian of the child should be in the file.

#### **Temporarily/Permanently Absent**

[24 CFR §982.54(D)(10), 982.551 (H) (2), (3), (7)]

AHA must compute all applicable income of every household member who is on the lease, including those who are temporarily absent. In addition, AHA must count the income of the spouse or the head of the household if that person is temporarily absent. If the spouse is temporarily absent and in the military, all military pay and allowance (except hazardous duty pay when exposed to hostile fire and any other exceptions to military pay HUD may define from time- to-time) is counted as income.

Income of persons permanently absent will not be counted.

AHA will evaluate absences from the unit using this policy as well as form HUD-52646 (Housing Choice Voucher/Project Based Voucher) Section 4.,B.,7, form HUD-52641 (HAP Contract) Part B, 7, a, (4), form HUD-52641-A (Tenancy Addendum) 3, c,.

### **Absence of Entire Household (Skip)**

[24 CFR §982.551(7)i]

These policy guidelines address situations when the household is absent from the unit, but has not moved out of the unit or in cases where the household has moved out of the unit. AHA will terminate assistance in accordance with appropriate termination procedures contained in this Plan.

Households are required to notify AHA before they move out of a unit and to give AHA information about any household members' absence from the unit.

If it is determined that the entire household is absent from the assisted unit for more than 30 consecutive days, the unit will be considered abandoned and housing assistance will be terminated.

In order to determine if the household has abandoned the unit, AHA will carry out the following confirmation activities:

- Write letters to the participant household at the unit.
- Telephone the household at the unit.
- Interview neighbors/landlord.
- Verify if utilities are in service.
- Verify if children are enrolled in local schools.

If the absence that resulted in termination of assistance was due to a tenants disability, and the tenant (or relative, case worker, other interested professional) can verify that the tenant was unable to notify AHA, in accordance with the tenants responsibilities, AHA may reinstate the household as part of reasonable accommodation requirements if requested by the tenant and if funding is available at the time.

### **Absence Due To Medical Reasons**

If any member leaves the household to enter a facility such as hospital, nursing home, or rehabilitation center, AHA will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the household member will be permanently confined to a nursing home, the household member will be considered permanently absent. If the verification indicates that the household member will return in less than 90 consecutive days, the household member will not be considered permanently absent.

If the person who is determined to be permanently absent is the sole member of the household, assistance will be terminated in accordance with AHA's "Absence of Entire Household" policy.

**Note: Exemptions shall be considered for a head of household whose absence from the unit will exceed no more than six months due to medical reasons. The Section 8 Program Manager shall consider approval for exemptions only upon receiving verifiable documentation as to the medical emergency.**

**Absence Due to Incarceration**

If any member is incarcerated for more than 30 consecutive days (furloughs included), he/she will be considered permanently absent.

**Foster Care and Absences of Children**

If the household includes a child or children temporarily absent from the home due to placement in foster care, AHA will determine from the appropriate agency when the child/children will be returned to the home.

If the time period is to be greater than 2 months from the date of removal of the child/children, the child/children will be removed from the household composition. If a social services agency transitional plan is in place the HCV size will not be reduced.

**Absence of Adult(s) members or Head of Household**

If neither parent remains in the household and the appropriate agency has determined that another adult is to be brought into the assisted unit to care for the children for an indefinite period, AHA will treat that adult as a visitor for the first 30 days. If by the end of that period, court-awarded custody or legal guardianship has been awarded to the caretaker, the Housing Choice Voucher will be transferred to the caretaker provided all eligibility requirements are met. If the court has not awarded custody or legal guardianship, but the action is in process, AHA will secure verification from the social services agency or the attorney as to the status. The caretaker will be allowed to remain in the unit, until a determination of custody is made.

When AHA approves a person to reside in the unit as caretaker for the child/children, the income should be counted. AHA will work with the appropriate service agencies and the landlord to provide a smooth transition in these cases.

If a member of the household is subject to a court order that restricts him/her from the home for more than 3 months, the person will be considered permanently absent.

If a household member, other than head, co-head or spouse goes into the military, they will be considered permanently absent from the household.

**Students Attending an Institute of Higher Education Outside AHA Jurisdiction**

A student (other than head of household or spouse) who attends school outside AHA's jurisdiction, but lives with the household during school recesses may, at the household's choice, be considered permanently absent.

If the household decides that the member is permanently absent, income of that member will not be included in total household income, the member will not be included on the lease, and the member will not be included for determination of Voucher size if the household decides to move during the absence.

**Remaining Member of a Tenant Household**

To be considered the remaining member of the tenant household, the person must have been previously approved by AHA to be living in the unit and be permitted by law to execute legal documents. A live-in aide for all intent and purposes, (other than a blood relative who is providing live-in services and who will be assuming custody of minor children, and will be treated as a

remaining member of a household, provided that documentation from a state or local social services agency has authorized the custody of the remaining minor household members to the live-in aide) will not be considered a remaining member of a household.

To be eligible to become a remaining member head of household the remaining member:

- MUST be at least 18 years old or 16 years old and “emancipated” by a legal proceeding and can provide documentation of the emancipation.
- MUST have been an authorized member of the household at the time the head of household relinquished their status as head of household by moving-out of the assisted unit.

**NOTE: A reduction in household size may require a reduction in the Housing Choice Voucher/Project Based Voucher size.**

### Visitors

Any adult not included on the Form HUD-50058, Household Report, who has been in the unit more than 14 consecutive days, or a total of 30 days in a 12-month period, will be considered to be living in the unit as an unauthorized household member.

Absence of evidence of any other address will be considered verification that the visitor is a household member. Statements from neighbors and/or the landlord and/or law enforcement officers will be considered in making the determination.

The use of the unit address by anyone other than an approved household member for any purpose is prohibited.

The burden of proof that the individual is a visitor rests on the household. In the absence of such proof, the individual will be considered an unauthorized household member and AHA will terminate assistance since prior approval was not requested.

### 14.6 Live-In Aide

A household may include or add a "Live-In Aide" to the lease provided that:

1. The Live-In Aide(s) has been determined by AHA to be essential to the care and wellbeing of the elderly, handicapped or disabled household member based on an independently verifiable written statement from a qualified attending physician; and,
2. The Live-In Aide is not obligated for the support of the elderly, handicapped, or near elderly (50 to 61 years of age), or disabled member; and
3. The Live-In Aide would not otherwise be living in the unit except to provide care of the elderly, handicapped or disabled household member; and whose income will not be counted for purposes of determining eligibility or rent; and who may not be considered the remaining member of the tenant household.
4. The Live-In Aide was NOT a member of the household for a least one year prior to being admitted as a Live-In Aide.

Relatives are not automatically excluded from qualifying as live-in aides, except for a spouse, co-head of household, former spouse or co-head, but must meet the definition described above. The Section

8 Program Manager shall have the discretion to over-ride this policy in special circumstances where the policy will adversely impact a household member's need for a live-in aide.

A Live-In Aide with dependents, spouse, or domestic partner who will attend to a sole occupant may qualify as a Live-In Aide, so long as it does not cause overcrowded conditions or increases the bedroom size other than what is necessary to house the eligible tenant household and the Live-In Aide.

Live-In Aides (whether related or not) cannot be classified as the remaining member of the tenant household for purposes of continuous assistance when the sole eligible person they are attending dies or leaves the program.

To determine whether a Live-In Aide is "essential" to the care and wellbeing of the elderly, handicapped or disabled person, AHA will provide the tenant with a "Reasonable Accommodation Request" form to be completed by health care professional familiar with the applicant's/tenant's medical condition and health care needs.

Live-In Aides will be required to sign a written statement stating that the aide will be living in the unit for the sole purpose of providing care for the elderly, handicapped or disabled household member. The Live-In Aide must also provide a copy of their Social Security card, birth certificate and Declaration 214.

At its discretion, AHA has the right to disapprove a request for a Live-In Aide based on the "Other Criteria for Eligibility" described in this Policy. In accordance with federal guidelines, the income of the Live-In aide is exempt from the household's total income. AHA reserves the right to verify the income to confirm that the live-in aide is in compliance with the policies in this Section 8 Administrative Plan. Criminal background and ICE checks shall be performed for all Live- In Aides as prescribed in this Administrative and Continued Occupancy Plan.

#### **14.7 Disability Related Overnight Care**

In cases where an elderly/disabled program participant requires additional care but does not specifically require a live- in aide, HUD PIH Notice 2010-51 (HA) allows a PHA to approve an extra bedroom as a reasonable accommodation for "Disability Related Overnight Care". AHA may allow this type of accommodation if requested by an elderly/disabled member of a household and our agency may request additional information from a qualified medical provider in order to make a determination of approval or denial. Cases are reviewed individually and are subject to the needs of the household.

#### **14.8 Continuance of Assistance for Mixed Immigration Status Households**

Under the Non-citizen Rule, "Mixed Households" are households that include at least one U.S. citizen or eligible immigrant and at least one non-citizen or ineligible immigrant. The non-citizen rule was made effective prior to November 29, 1996, and "Mixed Households" who were participants on June 19, 1995, shall continue receiving full assistance, if they meet the requirements of the November 29, 1996 rule. In the event they do not qualify for full assistance, the household will be subject to prorated assistance.



### 14.9 Special Consideration for Continued Assistance for Military Personnel

Military personnel participating in the Housing Choice Voucher/Project Based Voucher Programs who are deployed to active duty and, who will not continue to occupy the assisted unit, will be terminated in accordance with federal program regulations and these administrative policies.

In addition, AHA shall give special consideration to military personnel who have been deployed to active duty in the armed forces because of a declared military conflict. This includes regular U.S. Armed Forces and National Guard military personnel. These special considerations include the following:

1. Allow a guardian to move into the Section 8 assisted unit to provide care for any dependents the military person leaves behind in the unit. Income of the guardian temporarily living in the unit for this purpose shall not be counted in determining household income for purposes of determining household rent portion. The guardian must undergo and pass the required background check performed on all adult household members.
2. Allow the HCV housing assistance payment to continue for a reasonable period of time (depending on the length of deployment, but not to exceed eighteen months) beyond that required by Service members Civil Relief Act (“SCRA”), 50 U.S.C. 501 et seq., even though the adult members of the military household are temporarily absent from the assisted unit and only as long as the guardian and dependents continue to occupy the assisted unit.
3. AHA shall waive the waiting list requirements for military personnel returning from active duty who at the time of their deployment surrendered their Housing Choice Voucher. Military personnel returning from active duty that request that their HCV be reinstated must provide documented evidence of their release from active duty and they meet the program eligibility requirements of the program prior to issuance of a HCV.

## Chapter 15 Relocations with Continued Assistance & Portability

### 15.1 Introduction

This PART defines AHA policies and procedures for moves with continued assistance, both within AHA's jurisdiction, and the policies for restriction and limitations on moves under portability. HUD regulations permit households who have been issued a Housing Choice Voucher to use that voucher to lease a unit anywhere in the United States where there is a housing agency operating a Housing Choice Voucher program. This includes any move with continued assistance to another unit within AHA's jurisdiction, or to a unit outside of AHA's jurisdiction under federal “portability” procedures. HUD regulations allow AHA the discretion to develop policies that define any limitations or restrictions on moves with continued assistance, provided that such policies conform to instructions found in HUD PIH Notice 2004-12.

### 15.2 Allowable Moves with Continued Assistance

A household may move to a different dwelling unit with continued assistance if:

1. The household has given proper notice of lease termination in accordance with the terms of the lease and/or as required by State or local law.
2. The owner has given the household a notice to vacate.



### 15.3 Restrictions on Moves/Relocations

[24 CFR § 982.314, 982.552(a)]

Voucher holders will not be allowed to move/relocate within AHA's jurisdiction during the initial lease year. Following the initial lease year, voucher holders will only be allowed one move/relocation per year. **Possession of a mutual rescission is not a guarantee of relocation and may be rejected if the tenant exceeds one move per year.**

AHA will deny authorization to move/relocate if:

1. The move would be the second move within one year from the last approved relocation;
2. There is insufficient funding for continued assistance;
3. The household has violated a Household Obligation; or;
4. The household owes the AHA monies.

NOTE: The Section 8/Program Manager may make exceptions to these restrictions if there is an emergency reason for the move over which the participant has no control, the move will provide for education opportunities, job training, gainful employment, avoiding a domestic violence situation, access specialized medical care required by a household member that is not offered in AHA's jurisdiction, or if the landlord gives the tenant a mutual rescission of lease agreement. Proper verifiable documentation is required in order to approve any and all exceptions.

### 15.4 Procedure for Moves/Relocations

[24 CFR § 982.314]

#### Issuance of Housing Choice Voucher

Subject to the aforementioned restrictions on moves/relocations, AHA staff will issue the "Relocation" Voucher documents ONLY after conducting a recertification of the household's eligibility, including completing the AHA Continued Occupancy/Re-Certification Application form.

The annual recertification date will be changed to coincide with the new lease date upon the relocation (move) of the tenant household to another assisted unit.

If the household does not locate to another dwelling unit, they may remain in the current unit with assistance so long as the owner permits, and the owner and tenant notify AHA in writing prior to the termination date of the lease as specified in the 30 day notice and/or Mutual Rescission of Lease.

#### Notice Requirements

Briefing sessions will emphasize the household's responsibility to give the owner and AHA proper written notice of any intent to move.

The household must give the owner the required number of days of advance written notice of intent to vacate, as specified in the lease or as required by State and/or local law (i.e. a written notice of lease termination 30 days in advance). The household MUST give a copy of the written notice of lease termination to AHA prior to "Relocation" voucher documents being processed and issued.

## 15.5 Restrictions on Portability

### Applicants

A household that has not yet leased a unit under the Housing Choice Voucher is eligible for portability, if the head of household or spouse was a tenant of AHA's jurisdiction for a least one (1) year at the time the application for assistance was submitted. A "tenant" for the purpose of determining eligibility for portability, is a person who has a legal domicile (e.g., residency) in AHA's jurisdiction. The applicant must provide AHA with verifiable documentation to prove residency prior to being permitted to exercise portability of their voucher. A lease, school records, a voter registration or other similar records are acceptable forms of documentation to demonstrate and certify legal domicile.

The only exception to the domicile policy is for those applicants residing in a nursing home outside AHA program jurisdiction, but within the State of New Mexico and who qualify to participate in HUD's Project Access Housing Choice Voucher/Project Based Voucher Program initiative. These applicants will also be required to reside within the State of New Mexico in the first year of assisted occupancy except for circumstances identified below.

### Participants

After being housed in AHA's jurisdiction, the participant WILL NOT be permitted to exercise portability during the first year of assisted occupancy, except in the following circumstances:

- The household's move will provide education opportunities, job training or gainful employment, or access to specialized medical care required by a household member that is not offered in AHA's jurisdiction; or
- A household member is a victim of domestic violence, dating violence, or stalking, and by relocating outside the AHA's jurisdiction will protect the household or a household member from domestic violence, dating violence or stalking.

AHA will not permit households to exercise portability:

1. If the household is in violation of a household obligation;
2. If the household owes money to AHA for overpayment of subsidy; or
3. If the household has moved from the assisted unit in violation of the lease.

## 15.6 Incoming Portability

[24 CFR § 982.354 thru 982.355]

AHA will accept a household with a valid Housing Choice Voucher from another jurisdiction (PHA) and administer or absorb the Voucher in accordance with federal regulations and HUD Notice PIH 2004-12. AHA will issue its own Housing Choice Voucher to the household porting into AHA's jurisdiction only if funding is available. The term of the voucher will remain the same as the term that was first issued by the initiating PHA.

### Administration of Portability Voucher

If AHA elects to administer the incoming Voucher, AHA will issue the household a "Portability" Voucher in accordance with its Subsidy Standards.

The in-coming household may only change the household composition prior to lease up in accordance with this Administrative Plan on "additions to household".

The household must submit a RFTA for an eligible unit to AHA (the receiving PHA) during the term of the receiving PHA's Voucher. AHA may grant extensions as prescribed within this Plan. However, if the household decides not to lease in AHA's jurisdiction, the household must notify the initiating PHA to request an extension on the term of the Voucher.

### **Absorption of Portability Voucher**

AHA will absorb ALL INCOMING Housing Choice Vouchers (households) provided program funding is available. If AHA does not absorb the incoming Voucher, it will then administer the "Initial" PHA's Voucher. In either case, AHA policies will prevail in the administration of the incoming Voucher. Incoming portability households are not subject to "domicile" requirements since AHA will be the receiving PHA.

### **Income and TTP of Incoming Portables**

[24 CFR § 982.353(d)]

As the receiving PHA, AHA will conduct a recertification interview but will only verify the information if the documents provided are over 60 days old or there has been a change in the household's circumstances whichever is applicable. If AHA conducts a recertification of the household, it will not cause a delay in the issuance of a Voucher. If the household's income is such that a zero (\$0) subsidy amount is determined prior to leasing in AHA's jurisdiction, AHA will not enter into a HAP contract on behalf of a household who will receive no rental assistance from the program.

### **Requests for Tenancy Approval (RFTA)**

When the incoming household submits a RFTA, it will be processed using AHA's policies. If the Household is successful and executes a Lease, AHA will notify the "Initial" PHA within 30 days, and the billing process will commence immediately.

If AHA denies assistance to the household, AHA will notify the "Initial" PHA within 30 days and the household will be offered a review or informal hearing as provided for in this Plan.

### **Terminations**

AHA will notify the "Initial" PHA in writing of any termination of assistance within 30 days of termination. If an informal hearing is required and requested by the Household, the hearing will be conducted by AHA, using the regular hearing procedures prescribed in this Plan. A copy of the hearing decision will be furnished to the "Initial" PHA.

The Initial PHA will be responsible for collecting amounts owed by the Household for claims paid and for monitoring repayment. If the "Initial" PHA notifies AHA that the Household is in arrears or the Household has refused to sign a Repayment Agreement, AHA will terminate assistance to the household.

### **Required Documents**

As the Receiving PHA, AHA will require the documents listed on the HUD Portability Billing Form from the "Initial" PHA to include the following.

1. A copy of the household's Housing Choice Voucher, to include issue and expiration dates, formally acknowledging the household's ability to move under portability;
2. Form HUD-52665 Portability and the most recent Form HUD-50058;

3. Declarations of U.S. Citizenship/Alien Status; and
4. Income Verifications.

### **Billing Procedures**

As the Receiving PHA, AHA will bill the “Initial” PHA monthly for Housing Assistance Payments, including Administrative Fees and for any other Special Claims in accordance with HUD PIH Notice 2004-12.

AHA will bill 100% of the Housing Assistance Payment, 100% of any Special Claims and 80% of the Administrative Fee (at the “Initial” PHA's rate) including any other HUD-approved fees, for each "Portability" housing choice voucher leased as of the effective date of the HAP Contract.

AHA will notify the “Initial” PHA of changes in subsidy amounts and will expect the “Initial” PHA to notify AHA of changes in the Administrative Fee amount to be billed.

### **15.7 Outgoing Portability**

AHA will provide pre-portability counseling for the household by providing the following information:

1. AHA will notify the Receiving HA that the household wishes to relocate into its jurisdiction.
2. AHA will advise the household how to contact and request assistance from the receiving HA.
3. Determine if the receiving PHA will absorb the household.

AHA will provide the following documents and information to the Receiving PHA in accordance with HUD PIH Notice 2004-12:

1. A copy of the household's Housing Choice Voucher, with issue date and expiration date, formally acknowledging the household's ability to move under portability.
2. The most recent forms HUD-50058, HUD-52665 and income verifications.
3. Declarations and verifications of U.S. Citizenship/Alien Status.

The Receiving PHA must notify AHA within 10 days of having executed a HAP Contract of the following:

1. If the Receiving HA decides to absorb the household into their own program.
2. If the household leases up or fails to submit a Request for Tenancy Approval within the required 60 days.
3. If assistance to a household has been terminated by Receiving PHA.
4. If the household requests to move to an area outside the Receiving PHA's jurisdiction.

### **Payment to the Receiving PHA**

Payments for households in other jurisdictions will be made to other PHA's when billed or in accordance with other HUD approved procedures for payment. When billed, AHA will reimburse the Receiving PHA for 100% of the Housing Assistance Payment, 100% of the Special Claims if any, and 80% of the Administrative Fee (at the “Initial” PHA's rate), and any other HUD- approved fees.

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## Chapter 16 Contract Terminations

### 16.1 Introduction

AHA understands that in order to preserve the integrity of the Housing Choice Voucher Program, it is important that our households abide by their household obligations and lease agreements. It is also essential that participating landlords comply with their obligations under the terms of the Housing Assistance Payments (HAP) Contract. This PART describes the circumstances under which the contract can be terminated by AHA and the owner, and the policies and procedures that govern terminations.

### 16.2 Contract Termination

[24 CFR § 982.311]

The term of the HAP Contract is the same as the term of the lease. The Contract between the owner and AHA may be terminated by AHA, or by the owner or by the tenant terminating the lease.

No future subsidy payments on behalf of the household will be made by AHA to the owner after the month in which the Contract is terminated. The owner must reimburse AHA for any subsidies paid by AHA for any period after the contract termination date.

If the household continues to occupy the unit after the HAP contract is terminated, the household is responsible for the total amount of rent due to the owner. Under the terms of the contract, owners will have no rights to claim compensation from AHA for vacancy loss.

After a contract termination, if the household meets the criteria for a move/relocation with continued assistance, the household may enter into a lease for another unit. The contract for the new unit may begin during the month in which the household moved from the old unit.

### 16.3 Termination by the Household: Household Moves (Relocations)

[24 CFR § 982.314 (c)(2)]

If the household moves from the assisted unit without proper notice to the landlord and AHA, the tenant's assistance will be terminated.

If the Household moves from the Contract unit in violation of the Lease or for any other reason, AHA will not make any housing assistance payment to the owner for any month after the month when the household moves out.

### 16.4 Owner Terminations: Evictions & Judgements

[24 CFR § 982.310, 982.455]

The owner MUST only terminate the lease in accordance with the provisions of the lease and HUD requirements, as well as state and local laws. The owner must provide the tenant a written notice specifying the grounds for termination of tenancy, on or before the commencement of the eviction action. The notice may be included in, or may be combined with, any owner eviction notice to tenant. The owner must provide AHA with a copy of the termination or eviction notice immediately after serving the tenant household with the notice. The owner eviction notice means a notice to

vacate, or a complaint, or other initial pleading used under State or local law to commence an eviction action.

During the term of the lease, including the initial term and any extensions, the owner may ONLY terminate tenancy for the following reasons:

1. Serious or repeated violation of the terms and conditions of the lease. A serious or repeated violation includes, but is not limited to, failure to pay rent or other amounts due under the lease;
2. Violation of Federal, State or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises;
3. Criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control that threatens the health, safety or right to peaceful enjoyment of the premises by the other tenants, or persons residing in the immediate vicinity of the premises;
4. Any violent criminal activity on or near the premises by the tenant, household member, or guest, or any such activity on the premises by any person(s) under the tenants control;
5. Any drug-related criminal activity or alcohol abuse by household members on or near the premises and threatens the health, safety, or right to peaceful enjoyment of the premises by tenants, or any such activity on the premises by any person(s) under the tenants control;
6. When the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug threatens or interferes with the health, safety, or right to peaceful enjoyment of the premises by other tenants or by other tenants in the neighborhood;
7. Fleeing by any household member to avoid prosecution, or custody or confinement after conviction for a felony or attempt to commit a felony;
8. Violation by any household member of a condition of probation or parole under federal or state law; or
9. Other good cause, including, but not limited to:
  - Household history of disturbance of neighbors, destruction of property, or
  - Behavior resulting in damage to the premises, including bad housekeeping habits.

**NOTE: Tenancy will not be terminated if the criminal activity is related to an act of domestic violence, dating violence, or stalking against the applicant, voucher holder or any member of the applicant/voucher holder's household. The Owner MUST take the necessary steps to bifurcate the lease in order to protect the victim(s) of domestic violence, dating violence, or stalking, by evicting only the perpetrator from the unit.**

The owner may terminate tenancy for the above listed criminal activity by any household member, regardless of whether the household member has been arrested or convicted for such activity.

During the initial lease term, the owner may not terminate the tenancy for "other than good cause" unless the owner is terminating the tenancy because of something the household did or failed to do.

The following are examples of reasons that are NOT grounds for termination of tenancy by the owner during the initial lease term:

1. Business or economic reasons;
2. Owner's desire to use the unit for personal or other use; or



3. Household's failure to accept offer of a new lease or lease revisions.

After the initial lease term the owner MAY terminate for the aforementioned reasons.

Housing assistance payments are paid to the owner under the terms of the HAP Contract. If the owner has begun eviction and the household continues to reside in the unit, AHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

If eviction action is finalized in court, the owner must provide AHA with a copy of the Judgment for Restitution, including notice of the date a Writ of Restitution will be issued.

**NOTE: Public Housing or Section 8 program tenants evicted by AHA or by a participating Section 8 landlord through a court action and who are issued a "JUDGMENT FOR RESTITUTION", or who move voluntarily after receiving a Notice of Proposed Termination of Tenancy (Breach of Lease Agreement), shall NOT be eligible for admission to the wait list under either the Section 8 or public housing rental housing assistance programs for up to seven (7) years from the effective date of the JUDGMENT and/or NOTICE.**

AHA must continue making housing assistance payments to the owner in accordance with the HAP Contract as long as the tenant continues to occupy the unit and the contract is not violated. By endorsing the monthly check from AHA, the owner certifies that the tenant is still in the unit and that the tenant is in compliance with the lease and the owner with the contract.

### 16.5 Conditional Relocations

In the event that AHA receives notification from a participating Section 8 landlord regarding potential filing of a court action for "JUDGMENT FOR RESTITUTION" or eviction and no formal Notice of Judgment for Restitution or eviction has been received by AHA, the appropriate Housing Specialist will issue "CONDITIONAL RELOCATION" paperwork. In these cases, the RFTA will be stamped conditional and the program participant will be informed that the relocation paperwork is conditional pending the outcome of any and all court proceedings filed by the previous owner/landlord. If dismissed by the court, AHA will nullify the conditions of the relocation. If a judgment or eviction is issued, the conditions will be enforced through termination of rental assistance in accordance with this policy document.

In some cases, AHA may not become aware of a "JUDGEMENT FOR RESTITUTION" or eviction until after the program participant has already relocated to a new unit. Should this occur, AHA will not require the owner/landlord to repay any historical HAP, rather AHA will provide the program participant and owner with a 30 day notice of HAP and voucher termination.

### 16.6 Termination of the Hap Contract by AHA

[24 CFR § 982.404 (a), § 982.453, § 982.454, §982.455, § 982.552 (a)(3)]

The HAP contract terminates automatically under the following conditions:

1. The household moves from the dwelling unit with or without notice;
2. AHA terminates program assistance for the household;



3. The owner or household terminates the lease;
4. The owner evicts the household;
5. Six months (180 days) elapses since the last housing assistance payment to the owner; or
6. The owner has breached terms of the HAP contract.

The following will be considered a breach of contract:

1. The owner has violated any obligation under the HAP Contract - Section 8 of the 1937 U.S. Housing Act (42 U.S.C. 1437f) for the dwelling unit including the owner's obligation under the HQS standards, including any standards the HA has adopted in this policy.
2. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
3. The owner has failed to comply with regulations, the mortgage or note, or the regulatory agreement for projects with mortgages insured by HUD or loans made by HUD.
4. The owner has engaged in drug-related criminal activity.
5. If the owner has committed any violent criminal activity.
6. The owner neglects to collect a tenant's portion as required by the HAP contract, but yet continues to cash HAP payments without certifying that the tenant is still living in the unit.

### **Overpayment to owner**

If AHA determines that the owner is not entitled to the housing assistance payment, AHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 HAP contract).

AHA may also terminate the HAP contract if:

1. AHA terminates assistance to the household.
2. AHA has insufficient funds under the consolidated ACC to continue assistance.
3. If six months (180 days) have passed since the last housing assistance payment to the owner.

### **Notices of Termination**

AHA shall provide the owner with at least thirty (30) day written notice of termination (although payment may be abated prior to the thirty days) of the HAP contract when the HAP Contract is terminated, because the owner fails to address 24-emergency HQS violations. In these instances, AHA shall terminate the HAP contract immediately.

## **Chapter 17 Denial or Termination of Assistance**

[24 CFR § 5.902, 5.903, 5.905, § 982.4, 982.54, 982.552, and 982.553]

### **17.1 Introduction**

AHA will deny or terminate assistance to a household because of the household's action or failure to act. AHA will provide households with a written description of "Obligations of the Household" under the program, the grounds under which AHA will terminate assistance and procedures for requesting an informal hearing. This PART describes when AHA may be required to deny or terminate assistance, including AHA's policies for the denial of a new commitment of assistance and the grounds for termination of assistance under an outstanding HAP contract.

**Administration**

All termination of assistance procedures shall be administered fairly and impartially and in such a way as not to violate an individual's right to privacy or to discriminate on the basis of race, color, nationality, religion, familial status, disability, sex, sexual orientation, or any other legally protected group.

This policy will be posted on AHA's Customer Bulletin Board and copies made readily available to both applicants, participants and the general public upon request.

**17.2 Grounds for Denial/Termination**

[24 CFR § 982.54, 982.552, 982.553]

If denial or termination is based upon behavior resulting from a disability and AHA is aware of the disability, AHA will delay the denial or termination in order to determine if there is an accommodation that would alter the negative behavior resulting from the disability. (NOTE: Per memo from HUD General Council Helen R. Kanovsky dated January 20, 2011 - Subject: Medical Use of Marijuana and Reasonable Accommodation in Federal Public & Assisted Housing "federal and state non-discrimination laws do not require PHA's and owners of other federally assisted housing to accommodate requests by current or prospective tenants with disabilities to use medical marijuana")

**Form of Denial/Termination**

Denial of assistance for an applicant may include any or all of the following:

1. Denial of placement on AHA waiting list;
2. Denial or withdrawal of a Housing Choice Voucher/Project Based Voucher
3. Refusal to enter into a HAP contract or approve a lease; or
4. Refusal to process or provide assistance under portability procedure.

Termination of assistance for a participant may include any or all of the following:

1. Refusal to enter into a HAP contract or approve a lease;
2. Termination of housing assistance payments under an outstanding HAP contract; or
3. Refusal to process or provide assistance under portability procedures.

**Mandatory Termination**

[24 CFR § 982.54(d), § 982.552(b), § 982.553(a)(b)]

Housing Choice Voucher/Project Based Voucher Program rules require AHA to deny admission or terminate assistance to a participating household if:

1. Any member of the household fails to sign and submit consent forms required for obtaining information on household status as part of any re-certification conducted by AHA;
2. Any household member fails to declare U.S. citizenship or provide documentation of eligible U.S. immigration status within the prescribed timeframes and extensions;
3. The household is evicted from housing assisted under the program for serious violation of the lease. Serious violations of the lease include, but are not limited to the following:
  - a. For engaging in drug-related and/or violent criminal activity, abuse of alcohol, or other criminal activity that threatens the health, safety, or right to peaceful enjoyment by other tenants and persons residing in the immediate vicinity of the premises, or

- for acts of fraud, bribery or any other criminal acts in connection with the program as stated in form HUD-52646, Voucher, Part D, Sections 5 and 6;
- b. For violations of non-payment of tenants portion of the rent and where the owner petitions and receives from the Court a Judgment of Restitution for the non-payment of rent; or
  - c. For “property damage” (i.e., other than damage from ordinary wear and tear) caused by a household member or any guest authorized or unauthorized by the household in excess of the Security and Damage Deposit held by the owner of an assisted unit, and where the owner petitions and receives from the court a “Judgment of Restitution” for damages; or
4. The household is under contract and 180 days have elapsed since the last Housing Assistance Payment was made on their behalf.

### **Termination for Household Action or Failure to Act**

[24 CFR § 982.552(c)]

AHA may terminate assistance because of the participating household’s action or failure to act. In addition, AHA may terminate assistance by refusing to enter into a HAP contract or approve a request for tenancy, terminating housing assistance payments under an outstanding HAP contract, or refusing to process or provide assistance under portability procedures.

AHA may terminate assistance for the following reasons:

1. If the household violates any household obligation under the program identified in 24 CFR § 982.551 and 982.552;
2. Any member of the household has committed fraud, bribery, or other corrupt or criminal act related to federal housing programs;
3. Any member of the household has been evicted from federally assisted housing in the last five years;
4. Household currently owes monies to AHA or to another PHA for amounts in connection with the Housing Choice Voucher/Project Based Voucher program or Public Housing assistance program;
5. Household is in breach of a repayment agreement with any PHA including AHA;
6. Household violates AHA’s policy on absence from unit;
7. AHA or any other PHA has terminated assistance under the program for any other member of the household;
8. Household has threatened or engaged in abusive or violent behavior toward AHA personnel; or
9. If a household participating in the FSS program fails to comply, without good cause, with the household’s FSS Contract of Participation.

**NOTE: Abusive or violent behavior towards HA personnel includes verbal as well as physical abuse or other forms of violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that are customarily used to insult or intimidate, may be cause for termination or denial. "Threatening" refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence. Actual physical abuse to an AHA employee will always be cause for termination. Prohibition Against Other Housing Subsidy (Multiple Subsidy) [24 CFR 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **AHA Policy**

AHA will not assist families or allow the addition of household members if AHA determines that any person(s) or family would thereby receive multiple assistance.

### **Hearing Opportunity**

Prior to terminating assistance, however, AHA will give the household the opportunity to request an informal hearing as prescribed in this Plan.

### **17.3 Terminations Due To Ineligible Immigration Status**

[24 CFR § 5.514, 516 and 518]

An applicant or a participating household where ALL household members are neither U.S. Citizens nor eligible alien immigrants are not eligible for assistance and MUST have their assistance terminated. AHA will offer the household the right to a hearing. In any event, assistance MAY NOT be terminated while verification of the participant household's eligible immigration status is pending.

### **False or Incomplete Citizenship/Immigration Alien Status Information**

When AHA has clear and concrete evidence or substantial documentation, such as a permanent tenant card or information from another agency, that contradicts the Declaration of Citizenship made by an applicant or program participant, an investigation will be conducted and the individual will be given an opportunity to present relevant information.

If the individual is unable to verify their citizenship, AHA will provide them with an opportunity to provide a new "Declaration" as an eligible immigrant, or an opportunity to elect not to contend their status.

AHA will then verify eligible status, deny, terminate, or pro-rate as applicable. In either case, AHA will deny or terminate assistance based on the submission of false information or misrepresentation.

### **Procedure for Denial or Termination of Assistance**

If the household (or any household member) claimed eligible immigrant status and the Immigration and Naturalization Service (INS) (now ICE) primary and secondary verifications failed to document the status, the household may elect to appeal to the ICE and request a hearing with AHA either after the ICE appeal or in lieu of the ICE appeal.

Upon AHA making a determination of ineligibility, the household will be notified of the determination and the reasons and will be informed of the option for pro-rated assistance (if applicable).

## **17.4 Household Obligations**

[24 CFR § 982.551]

1. Supply any information that AHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status and information for use in a regularly scheduled re-certification or interim re-certification of household income and composition.
2. Disclose and verify Social Security Numbers (as required under 24 CFR § 5.216) and must sign and submit consent forms for obtaining information in accordance with 24 CFR § 5.230.
3. Supply any information requested by AHA to verify that the household is living in the unit or information related to household absence from the unit.
4. Promptly notify AHA in writing when the household is away from the unit for thirty days or longer.
5. Allow AHA to inspect the unit at reasonable times and after reasonable notice.
6. Notify the owner and AHA before the household moves out of the unit or terminates the lease.
7. Use the assisted unit for residence only by the approved household, and the unit must be the household's only residence.
8. Promptly (within ten days) notify AHA in writing of the birth, adoption, or court-awarded custody of any child.
9. The household must request AHA approval to add any other household member, or person as an occupant of the unit.
10. The household must promptly (within ten days) notify AHA if any household member or person no longer resides in the unit.
11. Give AHA a copy of any owner eviction notice within ten days.
12. Pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.
13. Members of the household may engage in legal profit-making activities in the unit, but only if such activities are approved by the owner and incidental to primary use of the unit as a residence by members of the household.

The Household (including each member) must not:

1. Own or have any interest in the unit (other than a coop, or the owner of a manufactured home leasing a space).

2. Commit any serious or repeated violation of the lease.
3. Commit fraud, bribery or any other corrupt or criminal act in connection with the Housing Choice Voucher/Project Based Voucher Program.
4. Engage in drug-related criminal activity or violent criminal activity. Or, any criminal activity, including alcohol abuse, that threatens the health, safety or right to peaceful enjoyment of other tenants and persons residing in the immediate vicinity of the premises.
5. Sublease or let the unit or assign the lease or transfer the unit.
6. Damage the unit or premises (other than from normal wear and tear) or permit any guest to damage the unit or premises.
7. Rent from a relative (except as a reasonable accommodation for a disabled household).
8. An assisted household, or members of the household, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any other Federal, State or local housing assistance program.

### **Enforcing Household Obligations**

AHA shall enforce "Household Obligation" requirements as required under federal regulations, specifically 24 CFR 982 and the termination of assistance policies provided for in the Rental Assistance Housing Programs Administrative Plan.

### **Explanations and Terms**

The term "Promptly" when used with the Household Obligations means "within 10 days." Denial or termination of assistance is always optional except where this Plan or the program regulations state otherwise.

### **Notification of Eviction**

If the household requests assistance to move and they did not notify AHA of an eviction within 10 days of receiving a landlord's Notice of Lease Termination and/or Eviction Notice, the move will be denied.

### **Business Use Limitations of Dwelling Unit**

Households using portions of the dwelling unit to engage in legal business activities must insure that critical living areas, such as bedrooms, are available for use by household members at all times. The failure to maintain total access to these living areas will be considered a violation of program requirements. If AHA determines that the use of the dwelling unit as a business is not incidental to its use as a dwelling unit, it will be considered a program violation.

If AHA determines that the business activity is an illegal business activity, such activity will be considered a program violation.

### **Occupancy of Owner in Unit**

The owner may not reside in the assisted unit.

### **Fraud**

In each case, AHA will consider which household members were involved in the fraud, what were the circumstances, and any hardship that might be caused to innocent members.

### **Notice of Termination of Assistance**

Once AHA makes a determination to terminate assistance to the household, AHA must give the household written via certified mail notice that states:

- The reason(s) for the proposed termination;
- The effective date of the proposed termination;
- The household's right, if they disagree, to request an informal hearing to be held before termination of assistance; and
- The date by which a request for an informal hearing must be received by AHA.

AHA will simultaneously provide written notice of the contract termination to the owner. The Notice to the owner will not include any details regarding the reason for termination of assistance.

### **17.5 Tenancies with Zero (\$0) HAP**

[24 CFR § 982.455(a)]

The household may remain in the unit at zero -\$0- assistance for up to 180 days after the renewal of the last HAP or the interim rent change that brought about the -\$0- assistance. If the household is still in the unit after 180 days, the HAP assistance will be terminated accordingly. If anytime within the 180 days, an increase in contract rent by the owner or a decrease in Total Tenant Payment causes the household to be eligible once again for housing assistance payments, AHA will then resume the household's assistance payments

After AHA has made a determination of ineligibility, the household will be notified of the determination in writing and the reasons and informed of the option.

### **17.6 AHA Option Not To Terminate For Misrepresentation**

[24 CFR § 982.551, 552(c)]

If the household has misrepresented any facts that caused AHA to overpay assistance, AHA may choose not to terminate and may offer to continue assistance provided the household executes a "Repayment Agreement" and makes restitution in accordance with the terms of the agreement or reimburses AHA in full within 30 calendar days of the overpayment determination.

### **17.7 Misrepresentation in Collusion with Owner**

[24 CFR § 982.551, 552(c)]

If the household intentionally, willfully and knowingly commits fraud or is involved in any other illegal scheme with the owner, AHA will either deny or terminate assistance. In making this determination, AHA will carefully consider the possibility of overt or implied intimidation of the household by the owner and the household's understanding of the events.

### **17.8 Missed Appointments & Deadlines**

[24 CFR § 982.551 & 552(c)]

It is a Household Obligation to supply information, documentation, and certification as needed for AHA to fulfill its responsibilities. AHA schedules appointments and sets deadlines in order to obtain the required information.



The obligations also require that the household allow AHA to inspect the unit and appointments are made for this purpose. An applicant or participant who fails to keep an in-office appointment, or to supply information required by a deadline without notifying AHA may be sent a Notice of Denial or Termination of Assistance for failure to provide required information.

Appointments will be scheduled and time requirements will be imposed for the following events and circumstances:

1. Eligibility for Admissions;
2. Verification Procedures;
3. Housing Choice Voucher/Project Based Voucher Issuance and Briefings;
4. Housing Quality Standards and Inspections;
5. Re-certifications; or
6. Appeals.

Acceptable reasons for missing appointments or failing to provide information by deadlines are:

1. Medical emergency; or
2. Household emergency Admission to a hospital for emergency medical treatment during the timeframe of the scheduled in-office appointment;
3. A household emergency that directly prevents attendance of a scheduled in-office appointment. In either case documentation of the emergency will be required.

#### **Procedure When a Scheduled In-Office Re-Certification Appointment is Missed or Information not Provided**

4. A "NOTICE OF IN-OFFICE RE-CERTIFICATION APPOINTMENT" letter will be mailed to the unit address or secondary address on file at least two weeks prior to the scheduled appointment (Note: A signed written request to send mail to a secondary address must be on file);
5. If the first scheduled appointment is missed and the client has not contacted their Housing Specialist to re-schedule, a "NOTICE OF SECOND IN-OFFICE RE-CERTIFICATION APPOINTMENT" letter will be mailed to the unit address or secondary address on file (cc to landlord);
6. If the second in-office appointment is missed and the client has not contacted their Housing Specialist to re-schedule, certified "NOTICE TO TERMINATE SECTION 8 RENTAL ASSISTANCE" letters will be mailed first class mail return receipt to the unit address or secondary address on file and to the landlord. This notice must include information regarding deadlines for requesting an informal hearing.

When required Information is not provided a letter will be sent certified mail to the tenant that specifies what is required and a deadline for completion, the letter. If the required information is not provided by the deadline, a second letter will be mailed to the unit address or secondary address on file (cc. to the landlord) that includes a termination date at least 30 days from the date of the letter for the Housing Choice Voucher and HAP Contract.

## **Chapter 18 Denial or Termination of Assistance**

### 18.1 Drug-Related & Other Violent Criminal Activity

In our continued efforts to prevent drug related and other criminal activity, as well as other patterns of behavior that pose a threat to the health, safety or right to peaceful enjoyment of the premises by other tenants and as required by 24 CFR 982, Subpart L and 24 CFR Part 5, Subpart J, AHA will endeavor to screen applicants as thoroughly and fairly as possible for drug-related and/or violent criminal behavior, including alcohol abuse resulting in violent criminal activity. AHA will perform a criminal background check on all new applicants and adult household members 18 years of age or older. Applicants or any adult household member(s) for whom there is a preponderance of evidence for the use of or distribution of illegal drugs, or for violent criminal activity, or criminal activity associated with alcohol abuse, the applicant household MAY NOT BE ELIGIBLE FOR ADMISSION FOR A PERIOD OF SEVEN YEARS FROM THE DATE OF CONVICTION. The Household may also not be eligible for CONTINUED PARTICIPATION in the program.

### 18.2 Definitions

The following HUD definitions are hereby incorporated into this policy for clarity purposes:

- Covered person, for purpose of 24 CFR 960 and 982 and this subpart, means an applicant, a tenant, any member of the tenant's household, a guest or another person under the tenant's control.
- Drug-related criminal activity is the illegal manufacture, sale, distribution, use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug. (NOTE: Per memo from HUD General Council Helen R. Kanovsky dated January 20, 2011 - Subject: Medical Use of Marijuana and Reasonable Accommodation in Federal Public & Assisted Housing "federal and state non-discrimination laws do not require PHA's and owners of other federally assisted housing to accommodate requests by current or prospective tenants with disabilities to use medical marijuana")
- Violent criminal activity includes 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.
- Guest, for purposes of this subpart and 24 CFR 5, subpart A and 24 CFR 960 and 982, means a person temporarily staying in an assisted unit with the consent of an assisted tenant or other household member who has express or implied authority to so consent on behalf of the tenant. The requirements of 24 CFR Part 960 and 982 also applies to a guest as so defined.
- Household, for the purposes of 24 CFR 960 and 982 and this policy subpart, means the household and PHA- approved live-in aide.
- Other person under the tenant's control, for the purposes of the definition of covered person and for 24 CFR 5, 960 and 982 and for this subpart, means that the person, although not staying as a guest (as defined above) in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for commercial purposes is not necessarily under the tenant's control.

### 18.3 Screening for Drug-Related or Violent Criminal Activity

AHA will endeavor to screen participants as thoroughly and fairly as possible for drug-related and/or violent criminal activity. Such screening will apply to any adult household member of the household 18 years of age or older.

### 18.4 Termination of Assistance

(Drug-Related and/or Violent Criminal Activity)

[24 CFR 982-553]

AHA will terminate the Housing Assistance where there is a preponderance of evidence for illegally using or distributing a drug or violent criminal behavior or other criminal behavior brought about because of alcohol abuse. AHA will also deny participation to applicants or current program participants for the following reasons:

1. **Manufacturing Methamphetamine** AHA will permanently deny participation in the Section 8 HCV program, if there is a preponderance of evidence that the applicant or any covered person is involved in manufacturing or producing methamphetamine on the premises of any federally assisted housing in violation of any federal, state or local law.
2. **Violent Criminal Activity** Violent criminal activity within the past seven (7) years. This includes a current participant, their household members or guests who have been or were previously involved in criminal activity that has one of these elements, the use, attempted use or threatened use of physical force against another person(s), to include domestic violence, and that there is a preponderance of evidence to support this.
3. **Convicted or Evicted for Drug-Related and/or Violent Criminal Activity** Any current program participants will be terminated if they, or any household member or guests were evicted from a federally assisted housing unit or housing program due to drug-related or violent criminal activity.

**NOTE: After being issued Section 8 Housing Choice Voucher, the household violates the lease with a landlord due to violent criminal activity; AHA will terminate the Housing Choice Voucher. AHA will not deny the applicant/voucher holder, if the criminal activity is related to an act of domestic violence, dating violence, or stalking and the applicant/voucher holder or other household member was the victim of the domestic violence, dating violence, or stalking.**

### 18.5 Denial of Assistance for Sex Offenders

AHA will deny admission/assistance if any member of the household is subject to lifetime registration requirements under a State Sex Offender Registration Program, which includes minors 13 to 17 years of age. In screening applicants, AHA will perform the required “criminal history background checks” to determine whether any household member is subject to the lifetime sex offender registration requirement.

AHA will also deny admission/assistance if any household member is subject to a New Mexico State 10 year or 20 year sex offender registration program.

### 18.6 Notice of Denial & Termination of Assistance

In cases where AHA decides to terminate housing assistance to the household associated with drug-related and/or violent criminal activity, AHA will give the applicant or participating household a written notice that will include the following:

- The reason(s) for the proposed denial or termination;
- The effective date of the proposed termination (participating households only);
- The household's right(s), should they disagree with the denial or termination of assistance determination, to request either an informal or formal hearing to be held before any termination; and
- The date by which a "Request for Hearing" must be received by AHA.

### 18.7 Required Evidence

AHA may pursue fact-finding efforts as needed to obtain credible evidence. But, in any case, AHA will terminate assistance for criminal activity by a head-of-household, household member or guest as described herein, if AHA determines, based on a preponderance of the evidence, that the person has engaged in the activity, regardless of whether or not the household member has been arrested or convicted for such activity.

- **Preponderance of 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. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence may be determined by the greater weight of all evidence.
- **Credible evidence** may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence, can be considered credible evidence. Other credible evidence includes documentation of drug raids or arrest warrants.

### 18.8 Right to Informal Hearing

Applicants denied Section 8 housing assistance based on drug-related, violent or other criminal activity, may dispute the information revealed in the criminal summary history information or the determination made by AHA and request an "informal hearing as provided for in this Plan. The burden of proof as to the accuracy or validity of the disputed criminal summary history information lies with the applicant.

### 18.9 Confidentiality of Criminal Records

AHA will make every effort to ensure that any criminal records or reports received will be maintained confidential, and not misused or improperly disseminated and will be destroyed once the purpose for which it was requested is accomplished. Any misuse of the information contained in any criminal records by an employee of AHA will be grounds for termination of employment.

In the event, the household is determined eligible for initial or continued assistance, any criminal record and/or report(s) will be destroyed or shredded as soon as the information is no longer needed for eligibility or continued assistance determination(s).

In the event, the household's assistance is denied or terminated for reasons stated above; AHA will shred the records in the same manner as stated above. AHA staff will document in the applicant's or participating household's case file the circumstances of the criminal report.

## Chapter 19 Owner Disapproval & Participation Restrictions

[24 CFR § 982.54, § 982.306, and § 982.453]

### 19.1 Introduction

It is the policy of AHA to recruit owners to participate in the program, and to provide owners with prompt, courteous and professional service in order to maintain an adequate supply of available housing throughout the jurisdiction of AHA. The regulations define when AHA must disallow an owner participation in the program, and they provide AHA discretion to disapprove or otherwise restrict the participation of owners in certain categories. This PART describes the criteria for owner disapproval, and the various penalties for owner violations.

### 19.2 Termination/Disapproval of Owner

[24 CFR 982.306. 982.54 (d)(8)]

The owner does not have a right to participate in the program. For purposes of this section, "owner" includes a principal or other interested party.

AHA will disapprove owner participation for the following reason(s):

1. HUD or other agency directly related has informed AHA that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.
2. HUD has informed AHA that the federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements and such actions are pending.
3. HUD has informed AHA that a court or administrative agency has determined that the owner has violated the Fair Housing Act or other federal equal opportunity requirements.
4. The owner has violated obligations under a housing assistance payments contract under Section 8 of the 1937 U.S. Housing Act (42 U.S.C. 1437f).
5. The owner has committed fraud, bribery or any other corrupt act in connection with any federal housing program.
6. The owner has engaged in drug-related or violent criminal activity.
7. The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program.
8. The owner has a history or practice of renting units that fail to meet State or local housing codes.
9. AHA may consider termination if the owner has not paid State or local real estate taxes, fines or assessments.
10. The owner has a history or practice of failing to terminate tenancy of households of units assisted under rental assistance programs, including the Housing Choice Voucher Program,

for activity by the tenant, any household member, a guest or other person(s) under the control of any household member that has:

- a. Threatened the right to peaceful enjoyment of the premises by other tenants;
- b. Threatened the health, safety of other tenants in the immediate vicinity of the premises, of AHA employees, or of the owners employees, or other persons engaged in management of the premises; or
- c. Been arrested or convicted for drug-related and/or violent criminal activity

Once AHA has determined that any one of the above violations has occurred, AHA will give the owner proper written notice of termination of the Housing Assistance Payments Contract and an explanation for the termination. A copy of the notice will be given to the tenant for possible relocation if they wish to continue receiving assistance elsewhere. No appeal rights are available to owners under this Part.

### **19.3 Owner Restrictions & Penalties**

[24 CFR § 982.453]

If an owner has committed fraud or abuse, or is guilty of frequent or serious contract violations, AHA will restrict the owner from future participation in the program for a period of time commensurate with the seriousness of the offense(s). AHA may also terminate some or all contracts with the owner.

Prior to imposing any penalty against an owner, AHA will review all relevant factors pertaining to the case and will consider such factors as the owner's record of compliance and the number of violations.

### **19.4 Other Remedies for Owner Violations**

#### **Overpayments**

AHA will make every effort to recover any overpayments made as a result of landlord fraud or abuse. Payments otherwise due to the owner may be debited in order to reimburse AHA, as applicable.

## **Chapter 20 Owner or Household Debts to AHA**

### **20.1 Introduction**

This Chapter describes AHA's policies for the recovery of monies owed by rental assistance program participants to AHA. It also describes the methods that will be utilized for collection of monies and the guidelines for different types of debts. It is AHA's policy to meet the informational needs of rental assistance program participants and to communicate the program rules in order to avoid program participant debts. Before a debt is assessed against a participant household the file must contain the required documentation to support AHA's claim that the debt is owed. The file must further contain documentation of the method of calculation in a clear format for review by the participant household, AHA management, or other interested parties.



When participant households owe money to AHA, AHA will make every effort to collect it. AHA will use a variety of collection tools to recover debts including, but not limited to:

1. Request 100% repayment;
2. Enter into Repayment Agreements;
3. Abatements or wage garnishments;
4. Debt Collection agencies;
5. Reporting the debt to the major Credit Bureaus;
6. Federal and State Income Tax refund off-set programs; and
7. Civil lawsuits.

## 20.2 Repayment Agreement

The “Repayment Agreement” is a promissory note between the Head-of-Household and AHA, and is the primary instrument used by AHA in its effort to collect monies owed by program participants, specifically under the AHA Rental Assistance Program. It contains more details than the customary promissory note regarding the nature of the debt, the terms of repayment, any special provisions of the agreement, including the remedies available to AHA upon default of the agreement by the household. AHA may also pursue court action, if necessary, to collect any delinquent repayment accounts.

AHA will prescribe the terms of the “repayment agreement”, including determining whether or not to enter into a “repayment agreement” with the household based on the circumstances surrounding the debt to AHA. The Housing Specialist will brief management on the circumstances surrounding the debt and to attain approval for the execution of a Repayment Agreement.

### Household Error/Late Reporting

Households who owe money to AHA due to the household's failure to report increases in household income will receive notice by mail stating the amount owed and setting an in-office appointment where the participant will be required to repay in accordance with the guidelines set forth in this section. The notice will also state the termination date for failure to comply.

**The circumstances under which AHA will not enter into a “repayment agreement” include the following:**

1. If the household already had one “Repayment Agreement” in place;
2. AHA determines based on available information that the household knowingly and willfully committed program fraud; or
3. The debt amount is greater than \$5,000 and the household is unable to buy-down any amount over the \$5,000.

## 20.3 Terms & Conditions

The following defines terms, conditions and limitations associated with any “Repayment Agreements”.

### Maximum Amounts

The maximum amount for which AHA will enter into a “repayment agreement” with a tenant household is \$5,000.00.



### **Indebtedness Greater Than \$5,000**

If the indebtedness is greater than \$5,000, the debt will be automatically referred to the Office of Inspector General (O.I.G.), at the U.S. Department of Housing and Urban Development (HUD), Washington, D.C.20410-5000. The HUD Inspector General will investigate the case for possible federal criminal prosecution and/or civil debt collection or other remedies.

NOTE: Any indebtedness that exceeds \$5,000 will result in termination of the housing assistance voucher and the household's assistance WILL BE terminated. AHA will initiate legal proceeding to collect any unpaid indebtedness. As required, AHA will provide a written 30-day termination notice. The household will have the right to request a formal hearing as provided for under this Administrative Plan.

### **Maximum Term**

Payment Agreements cannot exceed the timeframes indicated below. The maximum term allowed for repayment shall not exceed a maximum of twelve (12) months.

\$50	-	\$5,000	No more than 12 months

### **Initial Payment Amount**

An initial payment of no less than Twenty Five Percent (25%) of the total amount owed under a "Repayment Agreement" will be required, no exceptions. The Deputy Director or Section 8 Program Manager shall have the discretion to waive or lower the 25% initial payment amount in cases where a household claims financial hardship (i.e., medical, death or extenuating circumstances). A household requesting a financial hardship waiver must provide documented evidence of the financial hardship at the time the request is made.

### **Late Payments**

A "repayment agreement" will be considered in arrears if the payment has not been received by the due date and the tenant will then be subject to a 30-Day Notice of Termination for Non-Compliance. If the households "repayment agreement" is in arrears, AHA may:

1. Accelerate the debt due date and require the household to pay the balance owed in full;
2. Pursue civil legal collection of the balance due;
3. Terminate the housing assistance; and/or
4. Grant an extension of up to five additional days in cases of financial hardship.

### **Hardship Extension Approval/Disapproval Related to Repayment Agreements**

In cases of financial hardship, a household must provide concrete evidence and documentation verifying financial hardship. The Section 8 Program Manager shall have the discretion to determine hardship and approve or disapprove extensions. (For example, if a household has recently experienced a death of a household member or a major medical emergency that has put a significant drain on their finances and the household can provide documented evidence to this effect. AHA may consider this to fall under "financial hardship" and may or may not approve an extension to the agreement.)

### **Transfer Requests**

If a household is requesting a transfer from Section 8 to public housing or wanting to port to another PHA jurisdiction, the balance of any "repayment agreement", in force at the time the

request is made, must be PAID-IN-FULL before a transfer will be permitted. At the sole discretion of the Section 8 Program Manager, repayment agreement balances may or may not be transferred.

#### **20.4 Debts Owed for Claims**

If a household owes money to AHA for claims paid to an owner on their behalf, AHA will review the circumstances resulting in the payment of a claim to an owner and decide whether the household must reimburse the full amount owed. AHA may then enter into a “Repayment Agreement” with the household.

#### **20.5 Debts Due to Fraud**

HUD’s definition of program fraud and abuse is a single act or pattern of actions that: constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead, and that results in payment of rental assistance program funds in violation of rental assistance program requirements.

If AHA determines that the household committed fraud, the Housing Assistance Payments Contract will be terminated and the rental assistance will be terminated. AHA will provide the required 30 days’ notice to both the household and the owner. The household will have the right to request a hearing for termination of the rental assistance for fraud, but a repayment agreement (if allowed) will need to be signed and the debt paid separate from the hearing for termination for fraud.

#### **20.6 Owner Debt to the AHA**

If AHA determines that the owner has retained housing assistance payments the owner is not entitled to, AHA may reclaim the amounts from future housing assistance payments owed the owner for any units under contract.

If future housing assistance payments are insufficient to reclaim the amounts owed, AHA will:

1. Require the owner to pay the amount in full within 30 days;
2. Pursue collections through the local court system; and/or
3. Restrict the owner from future participation.

#### **20.7 Debt Write-Offs**

Debts will be written off, only to the extent permitted by federal or local rules and regulations, if:

1. The debtor's whereabouts are unknown and the debt is more than one year old.
2. A determination is made that the debtor is judgment proof.
3. The debtor is deceased.
4. The debtor is confined to an institution indefinitely or for more than one year.
5. The amount is less than \$500.00 and the debtor cannot be located.

## **Chapter 21 Complaints, Appeals & Informal Reviews**

## 21.1 Introduction

The informal hearing requirements defined in HUD regulation are applicable to participating households who disagree with an action, decision, or inaction of AHA. This PART describes the policies, procedures and standards to be used when households disagree with an AHA decision. The procedures and requirements are explained for preference denial meetings, informal reviews and hearings. It is the policy of AHA to ensure that all households have the benefit of all protections due to them under the law.

AHA will provide a copy of the Informal Hearing procedures in the household briefing packet at the time of initial issuance of a Housing Choice Voucher/Project Based Voucher and upon the household's request.

## 21.2 Complaints

AHA will respond promptly to complaints from households, owners, employees, and members of the public. All complaints will be documented. AHA may require that complaints other than HQS violations be put in writing. HQS complaints may be reported by telephone.

### Categories of Complaints

- **Complaints from Households**  
When a household disagrees with an action or the inaction of AHA or owner, these complaints will be referred to the Housing Specialist assigned to their case.
- **Complaints from Owners**  
When an owner disagrees with an action or the inaction of AHA or a household, these complaints will be referred to the Section 8 Housing Specialist.
- **Complaints from the General Public**  
Complaints or referrals received from persons in the community in regards to AHA, an assisted household, or a participating owner will be referred to the Section 8 Housing Specialist. If the complaint cannot be resolved at that level, the complaint will be referred to the Section 8 Program Manager.

## 21.3 Informal Review Procedures for Applicants

[24 CFR § 982.54 (d)(12), and § 982.554]

Reviews are provided for applicants who are denied assistance before the effective date of the HAP Contract.

The exception is that when an applicant is denied assistance for citizen or eligible immigrant status, the applicant is entitled to an informal hearing.

When AHA determines that an applicant is ineligible for the program, the household must be notified of their ineligibility in writing. The notice must contain the following:

1. The reason(s) they are ineligible;
2. The procedure for requesting a review if the applicant does not agree with the decision; and

3. The time limit for requesting a review.

AHA must provide applicants with the opportunity for an Informal Review of decisions denying:

1. Qualification for preference;
2. Placement of applicant on AHA's waiting list;
3. Issuance of a Housing Choice Voucher/Project Based Voucher; and
4. Participation in the program.

Informal Reviews are not required for established policies and procedures and AHA determinations such as:

1. Discretionary administrative determinations by AHA;
2. General policy issues or class grievances;
3. A determination of the household unit size under AHA subsidy standards;
4. Refusal to extend or suspend a Housing Choice Voucher/Project Based Voucher;
5. Determination not to grant approval of a tenancy;
6. Determination that the unit is not in compliance with HQS; and
7. Determination that unit is not in compliance with HQS due to household size or composition.

#### **21.4 Informal Hearing Procedures**

A request for an Informal Review must be received in writing by the close of the business day, no later than 10 days from the date of AHA's notification of denial of assistance. The informal review will be scheduled within 30 days from the date the request was received.

The Informal Review may not be presided over by the individual who made or the person who approved the decision under review, nor a subordinate of that person.

The Informal Review (i.e., meeting) may be presided over by the Section 8 Program Manager and/or his/her designee.

The applicant will be given the option of presenting oral or written objections to the decision. Both the AHA and the household may present evidence and witnesses. The household may use an attorney or other representative to assist them at their own expense.

A Notice of the Informal Review findings will be provided in writing to the applicant within 10 days working days after the review. It shall include the decision of the review officer, and an explanation of the reasons for the decision.

All requests for a review, supporting documentation, and a copy of the final decision will be retained in the household's file.

#### **21.5 Grievance Procedures**

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

Terminations shall comply with HUD federal regulations at [24 CFR § 982.555(c)]. The AHA Section Housing Choice Voucher/Project Based Voucher Participant Grievance Procedures have been incorporated into this document by reference. Refer to AHA Administrative Plan, APPENDIX I - Grievance Procedures.

## Chapter 22 Special Housing Types

### 22.1 Introduction

As part of AHAs ongoing commitment to provide equal access through reasonable accommodations, for the elderly and disabled AHA will permit Housing Choice Voucher's to be used in certain special housing types, specifically, congregate housing, group homes and shared housing. These three special housing types should provide "reasonable accommodations" for the elderly and disabled with special needs. In addition, AHA administers a Section 8 Single Room Occupancy (SRO) Program under an Annual Contributions Contract (ACC) with the U.S. Department of Housing and Urban Development (HUD).

Federal housing quality standards (HQS) will apply to all specialized housing units and, it is understood that each special housing type identified has its own unique HQS requirements as well. These standards will be applied in accordance with state or local building code requirements or any facility state-licensing entity.

AHA shall adhere to the requirements under 24 CFR Subpart M – Special Housing Types in providing specialized housing type opportunities. This includes determination of payments standards for special housing types, any non- standard requirements for determining utility allowances, calculating HAP payment, or determining the reasonableness of the rent.

### 22.2 Congregate Housing

Congregate housing provides elderly persons and/or persons with disabilities with semi-independent living options in facilities with shared central kitchen and dining area, while providing a private living area, i.e., living room, bedroom and bathroom. Food service is usually provided for tenants of congregate housing. If a live-aide is needed in the congregate unit for a person with disabilities or frail elderly, AHA may approve the live-in aide as a reasonable accommodation.

Housing quality standards for the Housing Choice Voucher Program apply to congregate housing. A refrigerator of appropriate size is required in the private living area of each congregate housing tenant. The shared kitchen and dining areas must meet all required HQS requirements as well.

### 22.3 Group Homes

A group home is a state-licensed facility usually intended for occupancy by persons and/or person with disabilities, particularly, persons with mental and/or developmental disabilities. The group home must provide an assisted tenant with a bedroom which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom and other appropriate social, recreational, or community space that are shared by all tenants. No more than 12 persons may reside in the group

home. This includes assisted or unassisted tenants, and any authorized live-in aides. If a live-in aide is needed for an assisted tenant, AHA may approve the live-in aide as a reasonable accommodation.

Housing quality standards for the Housing Choice Voucher Program apply to group homes and must have at least one bathroom with toilet, fixed basin with hot and cold running water and a shower or bathtub with hot and cold running water. No more than four tenants can be required to share a bathroom.

### **22.4 Shared Housing**

AHA shall allow Housing Choice Vouchers to be considered on a case by case basis for use in “shared housing” and only in conjunction with providing reasonable accommodation for the frail elderly and persons with disabilities. Normally, shared housing is a single housing unit, usually a single detached multi-bedroom dwelling and is occupied by an assisted person and another tenant or tenants. The shared unit consists of both common space for use by the occupants of the unit and separate private space for the assisted person. Under no circumstances may the assisted tenant and the unassisted tenant be related by blood or marriage. AHA may approve a live-in aide if needed as a reasonable accommodation to care for a person with disabilities.

### **22.5 Single Room Occupancy (SRO)**

Single-room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant, but requires the occupant to share sanitary and/or food preparation facilities. More than one person may not occupy SRO units. AHA through a contract with Transitional Living Services, Inc. currently provides housing assistance to twelve (12) eligible mentally and/or developmentally disabled individuals under the federal Section 8 SRO Program. This contract is renewable on a year-to-year basis provided funding is available through annual federal appropriations. For the exception of the contract with Transitional Living Services, Inc., there are no other contracted SRO facilities.

## **Chapter 23 Monitoring Program Performance**

### **23.1 Introduction**

AHA will measure the overall performance of administering the Rental Assistance Program(s). AHA will monitor program operations in several areas to identify management capabilities and deficiencies, improve current systems, and effectively identify program success. Through this process, AHA will ensure program integrity and accountability in the administration of Rental Assistance Programs by utilizing the following Section 8 Program Management Assessment Program (SEMAP) performance indicators.

The Section 8 Program Manager is responsible for all Quality Control functions of the Rental Assistance Program(s), and shall have the primary responsibility for conducting performance and program integrity quality control monitoring activities.

The reports, at a minimum, will detail the individual file review and HQS field inspection findings, concerns, and recommended corrective actions and/or staff training needed, that will reduce staff file errors and field inspection HQS deficiencies and errors.

## Chapter 24 Project-Based Vouchers

### 24.1 Introduction

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

#### **General Requirements**

This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

#### **Owner Proposals**

This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

#### **Dwelling Units**

This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

#### **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.

#### **Housing Assistance Payments Contract**

This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

#### **Selection of PBV Program Participants**

This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

#### **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.

#### **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.

### **Payments to Owner**

This part describes the types of payments owners may receive under this program.

## **24.2 General Requirements**

### **Overview**

[24 CFR 983.5]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of de-concentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

### **AHA Policy**

The AHA will operate a project-based voucher program using up to 20 percent of its budget authority for project-based assistance.

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, the PHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6].

### **A. Tenant-Based Vs. Project-Based Voucher Assistance**

[24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

### **AHA Policy**

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the AHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants

### **B. 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 the PHA to ensure the owner complies with these requirements.

### **C. Equal Opportunity Requirements**

[24 CFR 983.8]

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the PHA must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

## **24.3 PBV Owner Proposals**

### **A. Overview**

The PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

### **B. Owner Proposal Selection Procedures**

[24 CFR 983.51(b)]

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods. PHA request for PBV Proposals. The PHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

The PHA may select proposals that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that

requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]**

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

### **AHA Policy**

#### AHA Request for Proposals for Rehabilitated and Newly Constructed Units

When soliciting proposals by using a request for proposals to select on a competitive basis, AHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

In addition, the AHA will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The AHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the AHA estimates that it will be able to assist under the funding the AHA is making available. Proposals will be due in the AHA office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the AHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The AHA 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 the AHA goal of de-concentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the AHA will rate partially assisted

projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

### **AHA Requests for Proposals for Existing Housing Units**

When soliciting proposals by using a request for proposals to select on a competitive basis, AHA will advertise its request for proposals (RFP) for existing housing in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. In addition, the AHA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

The AHA will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the AHA estimates that it will be able to assist under the funding the AHA 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 the AHA goal of de-concentrating poverty and expanding housing and economic opportunities;
- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

### **AHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program**

The AHA 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.

The AHA may periodically advertise that it is accepting proposals.

In addition to, or in place of advertising, the AHA 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. The AHA will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers the AHA goal of de-concentrating poverty and expanding housing and economic opportunities; and
- Extent to which the proposal supports County goals to assist low-income families with disabled family members.

### **PHA-owned Units [24 CFR 983.51(e) and 983.59]**

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

### **AHA Policy**

AHA has no agency-owned units that could potentially use project based vouchers. Should AHA have agency-owned units in the future, AHA may submit a proposal for project-based housing that is owned or controlled by the PHA. If the proposal for PHA-owned housing is selected, the AHA will identify a qualified entity at that time to review the AHA selection and to administer the PBV program. The AHA will obtain HUD approval of the selected entity prior to selecting the proposal for PHA-owned housing.

The PHA may only compensate the independent entity and appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity and appraiser for their services. The PHA, independent entity, and appraiser may not charge resident household any fee for the appraisal or the services provided by the independent entity.

### **PHA Notice of Owner Selection [24 CFR 983.51(d)]**

The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

### **AHA Policy**

Within 10 business days of the AHA making the selection, the AHA will notify the selected owner in writing of the owner's selection for the PBV program. The AHA 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.

In addition, the AHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the AHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program.

The AHA will make available to any interested party its rating and ranking sheets and documents that identify the AHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner

selection. The AHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The AHA will make these documents available for review at the AHA during normal business hours.

### **C. Housing Type**

[24 CFR 983.52]

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

### **D. Prohibition of Assistance for Certain Units**

#### **Ineligible Housing Types** [24 CFR 983.53]

The PHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

#### **Subsidized Housing** [24 CFR 983.54]

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;



- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements.

### **E. Subsidy Layering Requirements**

[24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]

The PHA 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.

The PHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), the PHA may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

### **F. Cap on Number of PBV Units in Each Project 25 Percent per Project Cap**

[24 CFR 983.56(a), FR Notice 11/24/08]

In general, the PHA 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 25 percent of the number of dwelling units (assisted or unassisted) in the project.

#### **Exceptions to 25 Percent per Project Cap** [24 CFR 983.56(b), FR Notice 11/24/08]

Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:

- The units are in a single-family building (one to four units);
- The units are *excepted units* in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).



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. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA administrative plan must state the form and frequency of such monitoring.

#### **AHA Policy**

The AHA WILL require families living in excepted units to receive supportive services. Therefore, excepted units will be limited to the above as well as units in single-family buildings and those made available for disabled families.

#### **Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]**

A PHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially assisted building* is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A PHA 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. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-building cap of less than 25 percent.

#### **AHA Policy**

The AHA will not impose any further cap on the number of PBV units assisted per building.

### **G. Site Selection Standards**

#### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards**

[24 CFR 983.57(b)]

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the PHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

### **AHA Policy**

It is the AHA goal to select sites for PBV housing that provide for de-concentrating poverty and expanding housing and economic opportunities and serve the chronically homeless. In complying with this goal the AHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

The AHA will grant exceptions to the 20 percent standard where the PHA determines that the PBV assistance will complement other local redevelopment activities designed to de-concentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

## H. Environmental Review

[24 CFR 983.58]

The PHA 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.). The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 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.

The PHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

## 24.4 Dwelling Units

### 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.

### B. Housing Quality Standards

[24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

#### **Lead-based Paint** [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

### C. Housing Accessibility for Persons With Disabilities

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 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)

### D. Inspecting Units

#### **Pre-selection Inspection** [24 CFR 983.103(a)]

The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS.

#### **Pre-HAP Contract Inspections** [24 CFR 983.103(b)]

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

**Turnover Inspections** [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

**Annual Inspections** [24 CFR 983.103(d)]

At least annually during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

**Other Inspections** [24 CFR 983.103(e)]

The PHA must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

**Inspecting PHA-owned Units** [24 CFR 983.103(f)]

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

## 24.5 Rehabilitated & Newly Constructed Units

### A. Overview

[24 CFR 983.151]

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.

## B. Agreement to Enter Into Hap Contract

In order to offer PBV assistance in rehabilitated or newly constructed units, the PHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

### **Content of the Agreement** [24 CFR 983.152(c)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.

Any additional requirements for quality, architecture, or design over and above HQS.

### **Execution of the Agreement** [24 CFR 983.153, FR Notice 11/24/08]

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for 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.

### **AHA Policy**

The AHA 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.



### **C. Conduct of Development Work**

#### **Labor Standards** [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

#### **Equal Opportunity** [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

#### **Owner Disclosure** [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

### **D. Completion of Housing**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

#### **Evidence of Completion** [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the PHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

#### **AHA Policy**

The AHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The AHA



will specify any additional documentation requirements in the Agreement to enter into HAP contract.

### **PHA Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, the PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. The PHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **24.6 Housing Assistance Payments Contract (HAP)**

### **A. Overview**

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

### **B. HAP Contract Requirements**

#### **Contract Information [24 CFR 983.203]**

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 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]**

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

**AHA Policy**

For existing housing, the HAP contract will be executed within 10 business days of the AHA determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the AHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

**Term of HAP Contract [FR Notice 11/24/08]**

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years.

**AHA Policy**

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, the PHA may extend the term of the contract for an additional term of up to 15 years if the PHA 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 must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

**AHA Policy**

When determining whether or not to extend an expiring PBV contract, the AHA will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

**Termination by PHA [24 CFR 983.205(c)]**

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

**Termination by Owner [24 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 the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

**Remedies for HQS Violations [24 CFR 983.207(b)]**

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract does not comply with HQS, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

**AHA Policy**

The AHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program.

**C. Amendments to the HAP Contract**

**Substitution of Contract Units [24 CFR 983.206(a)]**

At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

**Addition of Contract Units [24 CFR 983.206(b)]**

At the PHA'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 the PHA'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.

**AHA Policy**

The AHA will consider adding contract units to the HAP contract when the PHA 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.

#### **D. HAP Contract Year, Anniversary & Expiration Dates**

[24 CFR 983.206(c) 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.

#### **E. Owner Responsibilities Under the HAP**

[24 CFR 983.209]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.

#### **F. Additional Hap Requirements**

**Housing Quality and Design Requirements** [24 CFR 983.101(e) and 983.207(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

### **AHA Policy**

The AHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The AHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

### **Vacancy Payments [24 CFR 983.352(b)]**

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

### **AHA Policy**

The AHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

## **24.7 Selection of PBV Program Participants**

### **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.

### **B. Eligibility for PBV Assistance**

[24 CFR 983.251(a) and (b)]

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance. Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR

5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

### **AHA Policy**

The AHA will determine an applicant family's eligibility for the PBV program

#### **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 the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA's waiting list. Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

### **C. Organization of the Waiting List**

[24 CFR 983.251(c)]

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

### **AHA Policy**

The AHA will use a separate waiting lists for both HCV and PBV. A waiting list will be maintained for each PBV project.

### **D. Selection from the Waiting List**

[24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

### **Income Targeting** [24 CFR 983.251(c)(6)]



At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

**Units with Accessibility Features** [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

**Preferences** [24 CFR 983.251(d), FR Notice 11/24/08]

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section XX-VI.B. above.

Although the PHA is prohibited from granting preferences to persons with a specific disability, the PHA 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 must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with 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), the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b)].

**AHA Policy**

The AHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for "excepted units," mobility impaired persons for accessible units).

AHA will also 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.

**E. Offer of PBV Assistance**

**Refusal of Offer** [24 CFR 983.251(e)(3)]



The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

#### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

#### **Acceptance of Offer [24 CFR 983.252]**

##### **Family Briefing**

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

##### **Persons with Disabilities**

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

##### **Persons with Limited English Proficiency**

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

## **F. Owner Selection of Tenants**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

#### **Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

#### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

**AHA Policy**

The owner must notify the PHA in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

The AHA will make every reasonable effort to refer families to the owner within 10 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 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

**AHA Policy**

If any contract units have been vacant for 120 days, the AHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The AHA will provide the notice to the owner within 10 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of the PHA's notice.

**G. Tenant Screening**

[24 CFR 983.255]

**PHA Responsibility**

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

**AHA Policy**

The AHA will not conduct screening to determine a PBV applicant family's suitability for tenancy. The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

The PHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, or stalking except at the written

request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

### **AHA Policy**

The AHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before.

AHA will offer the owner other information the AHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members.

The AHA will provide applicant families a description of the PHA policy on providing information to owners, and the PHA will give the same types of information to all owners.

### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

## **24.8 Occupancy**

### **A. Overview**

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **B. Lease**

[24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

### **Form of Lease** [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required

tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

### **AHA Policy**

The AHA will not review the owner's lease for compliance with state or local law.

### **Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be 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 must state:

- The program tenancy requirements;
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]**

The initial lease term must 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, the PHA must 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 must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The

PHA must 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.

**Non-Compliance with Supportive Services Requirement**

[24 CFR 983.257(c), FR Notice 11/24/08]

If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

**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 PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days.

**Security Deposits** [24 CFR 983.258]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

**AHA Policy**

The AHA will allow the owner to collect a security deposit amount the owner determines is appropriate in accordance with state and local 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. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

## C. Moves

### **Overcrowded, Under-Occupied, and Accessible Units** [24 CFR 983.259]

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

### **AHA Policy**

The AHA 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 10 business days of the PHA's determination. The AHA 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 the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the PHA).

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA.

### **AHA Policy**

When the AHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the AHA will terminate the housing assistance payments at the expiration of this 30-day period.

The AHA 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 983.260]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the

PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

#### **D. Exceptions to the Occupancy Cap**

[24 CFR 983.261, FR Notice 11/24/08]

The PHA may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by the PHA. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

#### **AHA Policy**

The AHA will provide PBV assistance for excepted units

### **24.9 Determining Rent to Owner**

#### **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.

## **B. Rent Limits**

[24 CFR 983.301]

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

### **Certain Tax Credit Units** [24 CFR 983.301(c), FR Notice 11/24/08]

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 PHA-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 must not exceed the lowest of:
  - The tax credit rent minus any utility allowance;
  - The reasonable rent; or
  - The rent requested by the owner.

However, PHAs are 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 must 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, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When re-determining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

### **AHA Policy**

Upon written request by the owner, the AHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The AHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the AHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the AHA determines it is necessary due to AHA budgetary constraints.

### **Redetermination of Rent [24 CFR 983.302]**

The PHA must 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**

If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract. The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

### **AHA Policy**

An owner's request for a rent increase must be submitted to the PHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

### **Rent Decrease**

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment.

### **Notice of Rent Change**

The rent to owner is re-determined by written notice by the PHA to the owner specifying the amount of the re-determined rent. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

### **AHA Policy**

The AHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### **PHA-owned Units [24 CFR 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

## **C. Reasonable Rent**

[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 the PHA.

### **When Rent Reasonable Determinations are Required**

The PHA must 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;
- The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building; or
- There is any other change that may substantially affect the reasonable rent.

### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

### **Comparability Analysis**

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

### **PHA-owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

### **Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

## **D. Effect of Other Subsidy & Rent Control**

### **Other Subsidy [24 CFR 983.304]**

At its discretion, a PHA 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, or federal law.

**24.10 Payments to Owner****A. Housing Assistance Payments**

[24 CFR 983.351]

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

**B. Vacancy Payments**

[24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

**AHA Policy**

If the AHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, the AHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The AHA will require the owner to repay the amount owed in accordance with the policies in this plan.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

### **AHA Policy**

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the AHA of the vacancy in accordance with the policy in this plan regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the AHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the AHA within 10 business days of the AHA's request, no vacancy payments will be made.

### **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 the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance

payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

### **AHA Policy**

The AHA will make utility reimbursements to the utility provider.

## **D. Other Fees & 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.

## **Glossary of Terms**

### **Acronyms Used In Subsidized Housing**

AAF	Annual Adjustment Factor
ACC	Annual Contributions Contract
BR	Bedroom
CDBG	Community Development Block Grant
CFR	Code of Federal Regulations
CPI	Consumer Price Index
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration



FICA	Federal Insurance Contributions Act- SSA
FmHA	Farmers Home Administration
FMR	Fair Market Rent
FY	Fiscal Year
FYE	Fiscal Year End
GAO	Government Accounting Office
GHC	Gross Household Contribution (replace w/TTP)
GR	Gross Rent
HAP	Housing Assistance Payment
HAP Plan	Housing Assistance Plan
HCDA	Housing and Community Development Act
HQS	Housing Quality Standards
HUD	Department of Housing and Urban Development
IG	Inspector General
IGR	Independent Group Residence
IPA	Independent Public Accountant
IRA	Individual Retirement Account
MSA	Metropolitan Statistical Area
PHA	Public Housing Agency
PMSA	Primary Metropolitan Statistical Area
PS	Payment Standard
QC	Quality Control
RFTA	Request For Tenancy Approval
RFP	Request for Proposals
RRP	Rental Rehabilitation Program
SRO	Single Room Occupancy
SSMA	Statistical Metropolitan Area (MSA)
TTP	Total Tenant Payment
TTR	Total Tenant Rent
UA	Utility Allowance
URP	Utility Reimbursement Payment

### Definition of Terms in Subsidized Housing

**ABSORPTION** - In portability, the point at which a receiving HA stops billing the initial HA for assistance on behalf of a portability household. The receiving HA uses funds available under the receiving HA consolidated ACC.

**ACC RESERVE ACCOUNT (FORMERLY "PROJECT RESERVE")** - Account established by HUD from amounts by which the maximum payment to the HA under the consolidated ACC (during a PHA Fiscal Year) exceeds the amount actually approved and paid. This account is used as the source of additional payments for the program.

**ACT (1937)** – Refers to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)

**ADA** – Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) **ADJUSTED INCOME** – Gross annual income less allowable income deductions. **ADMINISTRATIVE FEE** - Fee paid by HUD to the HA for administration of the program.

**ADMINISTRATIVE FEE RESERVE** - (Formerly " Operating reserve")-An account established by a PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes only.

**ADMISSION** - The effective date of the first HAP contract for household (first day of the initial lease term) in a tenant- based program. This is the point when the household becomes a participant in the program.

**ANNUAL BUDGET AUTHORITY** – The maximum annual payments by HUD to a PHA for a particular funding increment.

**ANNUAL CONTRIBUTIONS CONTRACT (ACC)** - A written contract between HUD and a PHA. Under the contract HUD agrees to provide funding for operation of the program, and the PHA agrees to comply with all HUD requirements for the program.

**ANNUAL INCOME** - The anticipated total Annual Income of an eligible household from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

**ANNUAL INCOME AFTER ALLOWANCES** - The Annual Income (described above) less the HUD-approved allowances.

**APPLICANT** - (or applicant household). A household that has applied for admission to the program but is not yet a participant in the program.

**AREA EXCEPTION RENT** – Rent based on a HUD approved “payment standard” amount that is higher than the basic range for a designated part of the Fair Market Rent area or “exception area”.

**"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 Household Assets)

**ASSISTED TENANT** - A tenant who pays less than the market rent as defined in the regulations. Includes tenants receiving rent supplement, Rental Assistance Payments, or Section 8 assistance and all other 236 and 221(d)(3) BMIR tenants, except those paying the .236 market rent or 120% of the BMIR rent, respectively.

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

**CHILD CARE EXPENSES** - Amounts paid by the household for care of minors under 13 years of age where such care is necessary to enable a household member to be employed or for a household member to further his/her education.

**CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT** - (Consolidated ACC) Refer to 24 CFR § 982.151 for a detailed definition

**CONTIGUOUS MSA** - In portability, is defined as 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 Housing Act if the household is already receiving assistance under any 1937 Housing Act program when the household is admitted to the certificate or voucher program.

**CONTRACT** - (See Housing Assistance Payments Contract)

**CONTRACT AUTHORITY** – Refers to the maximum annual payment by HUD to a PHA for a funding increment.

**CONTRACT RENT** - In the Section 8 Certificate program, Contract Rent is the total rent paid to the owner, including the tenant payment and the HAP payment from the PHA.

**DEPENDENT** - A member of the household (excluding foster children) other than the household head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a full-time student 18 years of age or over.

**DISABILITY EXPENSE ALLOWANCE** - Reasonable expenses for aide care and auxiliary apparatus for a disabled member that are necessary to enable a household member to be employed. Expenses cannot be paid to a household member or reimbursed.

**DISABLED HOUSEHOLD** – Refers to a household whose head-of-household, spouse, or sole member is a person with disabilities, or two or more persons with disabilities living together.

**DISABLED PERSON** – A person who is any of the following:

1. A person who has a disability as defined in section 223 of the Social Security Act. (42 U.S.C. § 423).
2. A person who has a physical, mental, or emotional impairment that:
  - a. Is expected to be of long-continued and indefinite duration,
  - b. Substantially impedes his or her ability to live independently, and/ or
  - c. Is of such a nature that ability to live independently could be improved by more suitable housing conditions.
3. A person who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

**DISPLACED PERSON** - 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 under federal disaster relief laws.

**DOMICILE** - The legal residence of the household head or spouse as determine in accordance with State and local law.

**DRUG-RELATED CRIMINAL ACTIVITY** - Term means:

1. Drug-trafficking; or
2. Illegal use, or possession for personal use of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

**ELDERLY HOUSEHOLD** - A household whose head or spouse (or Co-head) or whose sole member is at least 62 years of age.

**ELDERLY PERSON** – Refers to a person who is at least 62 years old.

**ELIGIBILITY HOUSEHOLD** - A Household is defined by the PHA in its Administrative Plan, and has been approved by HUD.

**EXCEPTION RENT** - In the old certificate program an initial rent (contract rent plus any utility allowances) was in excess of the published FMR. In the certificate program the exception rent is approved by HUD, or the PHA under prescribed conditions, and is used in determining the initial contract rent. In the voucher program the HA may adopt a payment standard up to the exception rent limit approved by HUD for the HA certificate program.

**EXCESS MEDICAL EXPENSES** - Any medical expenses incurred by elderly households in excess of 3% of Annual Income that are not reimbursable from any other source.

**FAIR HOUSING ACT** – Title VIII of the Civil Rights Act of 1968, as amended by the Fair housing Amendment Act of 1988 (42 U.S.C. 3601 et esq.).

**FAIR MARKET RENT (FMR)** - The rent including the cost of utilities (except telephone) that would be required to be paid in the housing market area to obtain privately owned existing decent, safe and sanitary rental housing are established by HUD for housing units of varying sizes (number of bedrooms) and are published in the Federal Register.

**HOUSEHOLD** - The applicant must qualify as a household as defined by the PHA in this Plan.

**HOUSEHOLD RENT TO OWNER** – In the Housing Choice Voucher/Project Based Voucher Program, the portion of the total contract rent that is paid by the household directly to the owner. Also known as the Household Share.

**FAMILY SELF-SUFFICIENCY PROGRAM (FSS PROGRAM)** - The program established by a PHA to promote self-sufficiency of assisted households, establish individual escrow account as incentives to households to succeed in attaining self-sufficiency, including the provision of other supportive services.

**HOUSEHOLD UNIT SIZE** – The bedroom size assigned to a particular Housing Choice Voucher/Project Based Voucher and issued to a qualifying household based on the “subsidy standards” established by the PHA.

**FMR/EXCEPTION RENT LIMIT** - The Fair Market Rent published by HUD at least annually or any HUD approved exception rent. In the pre-merger certificate program the initial contract rent for a dwelling unit plus any utility allowance may not exceed the FMR/exception rent limit (for the dwelling unit or for the household unit size). In the Housing Choice Voucher/Project Based Voucher Program the PHA may adopt a Payment Standard up to 90% to 110% of the established FMR rent limits. Exception rents are rents approved by HUD that are below 90% of FMR or above 110% of FMR.

**FOSTER CHILD CARE PAYMENTS** - Payment to eligible households by state, local or private service providers for the care of foster children.

**FULL-TIME STUDENT** - A person who is carrying a minimum of 12 credit hours is considered a full-time student under the standards and practices of the educational institution attended. An educational institution includes a college, university or vocational school with a degree, diploma or certificate program.

**FUNDING INCREMENT** – Refers to each commitment of budget authority by HUD to a PHA under a consolidated Annual Contributions Contract (ACC) for the PHA program.

**GROSS HOUSEHOLD CONTRIBUTION** – Replaced with the term Total Tenant Payment.

**GROSS RENT** – Refers to the sum of the Contract Rent and the utility allowance. If there is no utility allowance, Contract Rent equals Gross Rent.

**GROUP HOME** – Refers to a dwelling unit that is licensed by the State as a group home facility for exclusive residential use by two or more persons who are elderly or persons with disabilities (including any live-in aides).

**HAP CONTRACT** - (See Housing Assistance Payments Contract below)

**HEAD-OF-HOUSEHOLD** - The head-of-household is the person who assumes legal and financial responsibility for the household and is listed on the application as head.

**HOUSING AGENCY** - A state, country, municipality or other governmental entity or public body authorized to administer housing programs. The term "HA" includes an Indian housing authority (IHA). ("PHA" and "HA" are interchangeable and mean the same thing.)

**HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974** - Act in which the U.S. Housing Act of 1937 (sometimes referred to as the ACT) was re-codified, and that added the current Section 8 Programs.

**HOUSING ASSISTANCE PAYMENT** – Is the monthly assistance payment by a PHA. The payment consists of the following: A payment to the owner for rent under the household's lease.

**HOUSING ASSISTANCE PAYMENTS CONTRACT** - (or HAP contract) executed contract between the PHA and an owner in the form prescribed by HUD, in which the PHA agrees to make housing assistance payments to the owner on behalf of an eligible participating household.

**HOUSING QUALITY STANDARDS (HQS)** - The HUD minimum quality standards for housing assisted under the tenant-based programs.

**HUD** – The U. S. Department of Housing and Urban Development

**HUD REQUIREMENTS** - The HUD program regulations associated with the Section 8 Rental Assistance Programs and that are issued by HUD headquarters as regulations in Federal Register notices or as PIH Notices as binding program directives.

**IMPUTED ASSETS** - Asset disposed of for less than Fair Market Value during two years preceding examination or re-certification.

**IMPUTED INCOME** – Is the HUD passbook savings account interest rate (x) total cash value of assets. Calculation used when assets exceed \$5,000.

**IMPUTED WELFARE INCOME** – Is an amount of annual income that is not actually received by a household as a result of a specified welfare benefit reduction, but is included in the household's annual income and therefore reflected in the household's rent contribution.

**INCOME** - Income from all sources (cash or contribution) of each member of the household as determined in accordance with criteria established by HUD.

**INCOME FOR ELIGIBILITY**- Annual Income (cash or contribution)

**INITIAL PHA** – For purpose of “portability” the term refers to:

- A PHA that originally selected a household that later decides to move out of the jurisdiction of the selecting PHA; and
- A PHA that absorbed a household that later decides to move out of the jurisdiction of the absorbing PHA.

**INTEREST REDUCTION SUBSIDIES** - The monthly payments or discounts provided by HUD to reduce debt service payments, and hence, rents required on Section 236 and 221 (d) (3) BMIR projects. This includes monthly interest reduction payments made to mortgage holders of Section 236 projects and front-end loan discounts paid on BMIR projects.

**JURISDICTION** – The area in which the PHA has authority under State and local law to administer certain programs.

**LANDLORD** - This term means either the owner of the property, his representative, or the managing property agent, or his/her representative as designated by the owner.

**LEASE** - A written agreement between an owner and an eligible household for the leasing of a housing unit.

**LEASE ADDENDUM** – Refer to Tenancy Addendum.

**LIVE-IN AIDE** - A person who resides with an elderly person or disabled person and who:

1. Is determined to be essential to the care and wellbeing of the assisted tenant.
2. Is not obligated for the support of the person.
3. Would not be living in the unit except to provide necessary supportive services.

**LOCAL PREFERENCES** – Refers to Preference criteria usually used by the PHA to select applicant's households from the Waiting List.

**LOW-INCOME HOUSEHOLD** – Refers to a household whose annual income does not exceed 80 percent of the area median income for the area, as determined by HUD, with adjustments for smaller and larger households. For admission to the certificate program, HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low household incomes.

**MANUFACTURED HOME** – A manufactured structure that is built on a permanent chassis, and is designed for use as a principal place of residence, and meets the HQS. See 24 CFR § 982.620 and 982.621.

**MANUFACTURED HOME SPACE** – In manufactured home space rental: A space leased by an owner to a household. A manufactured home owned and occupied by the household is located on the space. See 24 CFR § 982.622 and 982.624

**MARKET RENT** - The rent HUD authorizes the owner of the FHA insured/subsidized multi-household housing to collect from households ineligible for assistance. It refers directly to unsubsidized units in an FHA-insured multi-household project in which a portion of the total units receive project-based rental assistance under the Rental Supplement or Section 202. Section 8 Certificate Holder. For BMIR units, Market Rent varies by whether the project is a rental or cooperative.

**MEDICAL EXPENSES** – Refers to total 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. These medical expenses are deductions available to Elderly or Disabled households only. These allowances are given when calculating adjusted income for medical expenses in excess of 3% of Annual Income.

**MINOR** - A member of the household (excluding foster children) other than the household head or spouse who is under 18 years of age.

**MIXED HOUSEHOLD** – A household with citizens and eligible immigration status and without citizens and immigration status as defined in 24 CFR § 5.504(b)(3)

**MONTHLY ADJUSTED INCOME** – Is considered as One-twelfth (1/12) of the Annual Income after Allowances or Adjusted Income.

**MONTHLY INCOME** – Is considered as One-twelfth of the Annual Income.



**NET HOUSEHOLD ASSETS** - Value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds, and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles is excluded from the definition.

**NET HOUSEHOLD CONTRIBUTION** - Former term for Tenant Rent Contribution.

**OCCUPANCY STANDARDS** - Now referred to as Subsidy Standards-Standards established by a HA to determine the appropriate number of bedrooms for households of different sizes and compositions.

**OWNER** - Any persons or entity having the legal right to lease or sublease a housing unit to a program participant.

**PARTICIPANT** - A household that has been admitted to the Housing Choice Voucher/Project Based Voucher Program. The household becomes a participant on the effective date of the first HAP contract executed by the PHA on behalf of the participant household, usually the first day of initial lease term.

**PAYMENT STANDARD** - The amount used to calculate the housing assistance a household will receive in the Housing Choice Voucher/Project Based Voucher Program.

**PHA PLAN** – Consists of a five year and corresponding annual plan as adopted by the PHA and reviewed and approved by HUD in accordance with Part 301 of this Plan.

**PORTABILITY** – Is the ability of a household to utilize their housing voucher assistance outside the jurisdiction of the initial PHA who originally issued the voucher to the household. The PHA in the receiving jurisdiction may either elect to absorb or administer the voucher on behalf of the initiating PHA.

**PREMISES** – A building attached or detached from the subject dwelling unit including common areas and grounds of a multi-household apartment complex.

**PROGRAM** – The Section 8 Rental Assistance Program commonly referred to as the Housing Choice Voucher Program.

**PUBLIC ASSISTANCE** - Welfare or other payments (currently referred to as Temporary Assistance to Needy Families or TANF) to households or individuals, based on need that are made under programs funded, separately or jointly, by Federal, state, or local governments.

**PUBLIC HOUSING AGENCY (PHA)** – Includes any state, county, municipality, other governmental entity, or public body including a tribal government authorized to administer the program (or agency or instrumentality of such an entity), or any of the following:

- A consortia of housing agencies, each of which individually meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortia members);

- Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract administrator of such program (HUD or a PHA) on October 21, 1998; or
- For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or other governmental entity or public body that would otherwise lack jurisdiction to administer the program in that jurisdiction.

**RANKING PREFERENCE** - Used by the PHA to rank and select among applicant households that qualify for a particular local preference.

**REASONABLE RENT** – A rent to owner under the program that is not more than rent charged for comparable units in the private unassisted rental market, and not more than the rent charged for other comparable unassisted units in the premises.

**RECEIVING PHA** – In portability, “receiving PHA” is defined as the PHA that the household has selected for purposes of transferring their housing assistance to another PHA’s jurisdiction. The “receiving PHA” issues a Housing Choice Voucher to the incoming household and provides program assistance to the household directly.

**RECERTIFICATION** - The process of securing documentation of total household income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported. There are annual and interim re-certifications.

**REMAINING MEMBER OF TENANT HOUSEHOLD** - Person left in assisted housing after other household members have left and become unassisted.

**RENT TO OWNER** - This is called Contract Rent in the Certificate Program and Rent to Owner in the Voucher Program. It is the total amount of rent payable to the owner by the household and the PHA per month for an assisted unit.

**RESIDENCY PREFERENCE** – Requires new applicants who apply for the program to provide documented evidence of domicile (one year residency in the PHA’s jurisdiction), if the applicant household plan to exercise portability at the time the initial housing voucher is first issued by the PHA.

**SECRETARY** – Is the Secretary of the U.S. Department of Housing and Urban Development.

**SECTION 8 PROGRAM** – Section 8 refers to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437F).

**SECURITY DEPOSIT** - A dollar amount that can be applied by an owner to cover any claims of unpaid rent, damages or other amounts due to the owner under the terms of lease.

**SERVICE PERSON** – Is a person in the active military or naval service (including the active reserve) of the United States.

**SINGLE PERSON** – Is a person living alone or intending to live alone.

**SPECIAL ADMISSION** – Refers to the admission of an applicant that is not on the PHA waiting list or without consideration of the applicant’s position on the waiting list.

**SPECIAL HOUSING TYPE** – Refer to Subpart M of 24 CFR 982. This subpart describes 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).

**SPOUSE** - The husband or wife of the head-of-household.

**SUBSIDIZED PROJECT** - A multi-household housing project (with the exception of a project owned by a cooperative housing Mortgage Corporation or association) that receives the benefit of subsidy in the form of:

1. Below-market interest rates pursuant to Section 221(d)(3) and (5) or interest reduction payments pursuant to Section 236 of the National Housing Act;
2. Rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965;
3. Direct loans pursuant to Section 202 of the Housing Act of 1959;
4. Payments under the Section 23 Housing Assistance Payments Program pursuant to Section 23 of the United States Housing Act of 1937 prior to amendment by the Housing and Community Development Act of 1974;
5. Payments under the Section 8 Housing Assistance Payments Program pursuant to Section 8 of the United States Housing Act after amendment by the Housing and Community Development Act unless the project is owned by a Public Housing agency, or
6. A Public Housing Project.

**SUBSIDY STANDARDS** – Standards established by the PHA to determine the appropriate number of bedrooms and amount of subsidy for households of different sizes and compositions.

**TENANCY ADDENDUM** – For purposes of the Section 8 programs, “tenancy addendum” refers to special language required by HUD in conjunction with the lease between the owner and the assisted tenant.

**TENANT** – Refers to a person or persons (other than a PHA authorized live-in aide) that executes a lease as the lessee of a particular assisted dwelling unit.

**TENANT RENT** – The amount payable monthly by the household as rent to the unit owner.

**TOTAL TENANT PAYMENT (TTP)** - The total amount that the HUD calculation rent formula requires the tenant to pay toward rent and utilities.

**UNIT** – Refers to residential space for the private use of a household.

**UTILITIES** - Utilities means water, electric, gas, other heating, refrigeration, cooking fuels, trash collection and sewage services. Telephone service is not included as a utility.

**UTILITY ALLOWANCE** - If the cost of utilities (except telephone) including range and refrigerator and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the household occupying unit, an amount equal to the estimate made or approved by the PHA or HUD 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 healthy living environment.

**UTILITY REIMBURSEMENT PAYMENT** – Is the amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the household occupying the unit.

**VACANCY LOSS PAYMENTS** - (For contracts effective prior to 10/2/95) - When a household 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, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

**VERY LOW-INCOME HOUSEHOLD** - A Lower-Income Household who's Annual Income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger households. HUD may establish income limits higher or lower than 50% of median income for the area on the basis of its finding that such variations are necessary because of unusually high or low household incomes. This is income limit is for the purposes of the Housing Choice Voucher/Project Based Voucher Program Section 8 Moderate Rehabilitation and SRO programs.

**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 there from under conditions other than dishonorable.

**VIOLENT CRIMINAL ACTIVITY** – Refers to any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or persons or towards the property of another.

**VOUCHER** – Refers to the Housing Choice Voucher/Project Based Voucher and is issued to eligible applicants for admission and to current program participants when they wish to move/relocate and describes the “Household Obligations” the assisted household must comply with as a condition for receiving assistance.

**VOUCHER HOLDER** – A household holding a voucher with an un-expired term currently being assisted under the program.

**VOUCHER PROGRAM** – Refers to the Housing Choice Voucher/Project Based Voucher Programs.

**WAITING LIST ADMISSION** – An eligible applicant admitted from the PHA “Waiting List”.

**WAITING LIST** – Refers to a list of households organizes according to HUD regulations and PHA admission policies who are waiting for rental housing assistance when it becomes available.

**WELFARE ASSISTANCE** - Refer to the definition under “public assistance” above.

**WELFARE to WORK (WtW)** – Refers to households assisted by AHA with special funding awarded to AHA by HUD under the Welfare to Work Housing Voucher Program. This includes any renewal of such WtW vouchers funding for the same purpose.

### Glossary of Terms Used In the Noncitizen Rule

**CHILD** – Refers to a member of the household other than the household head or spouse who is under 18 years of age.

**CITIZEN** – Refers to a Citizen or National of the United States. (Although all U.S. citizens are also U.S. nationals, the reverse is not true. As specified in 8 U.S.C. § 1408, a person whose only connection to the U.S.A is through birth in an outlying possession of the U.S.A. (which as of 2005 is limited to: Swains Island, American Samoa, and the unincorporated U.S. Minor Outlying Islands), or through descent from a person so born, acquires U.S. nationality but not U.S. citizenship. However, all persons born in the 50 United States of America (including Alaska and Hawaii), plus persons born in Guam (GU), Puerto Rico (PR), U.S. Virgin Islands (USVI), and Commonwealth of the Northern Mariana Islands (CNMI) are all classified as U.S. Citizens (8 U.S.C. § 1402 et seq.). U.S. Nationals have a legal right to reside and work in the U.S.A. freely without any restrictions. Since U.S. Nationals are not Citizens, they lack the right to vote in elections or to serve in elected office. Nationals may participate in AHA programs.)

**EVIDENCE** – Refers to evidence of citizenship or eligible immigration status means the documents that must be submitted to show evidence of U.S. citizenship or eligible immigration status.

**HA** – Refers to a Housing Authority, a public housing agency or Indian housing authority or both.

**HEAD OF HOUSEHOLD** – Is the adult member of the household who is the head of the household for purpose of determining income eligibility and rent and who will be held responsible for the actions or inaction of other household members.

**HUD** – Refers to the U. S. Department of Housing and Urban Development.

**ICE** – U.S. Immigration and Customs Enforcement

**MIXED HOUSEHOLD** – Is a household whose members include those with U.S. citizenship or eligible U.S. immigration status and those without U.S. citizenship or eligible immigration status.

**SECTION 214** – Section 214 restricts HUD from making financial assistance available to non-U.S. citizens unless they meet one of the categories of eligible immigration status specified in Section 214 of federal law.

## Grievance Procedures

### Informal Hearing Procedures

[24 CFR § 982.555 (a-f), § 982.54 (d)(13)]

When AHA makes a decision regarding the eligibility and/or the amount of assistance, applicants and current participants must be notified in writing. AHA will give the household prompt notice of such determinations, which will include:

1. The proposed action or decision determination by AHA;
2. The date the proposed action or decision will take place;
3. The household's right to an explanation of the basis for AHA's decision;
4. The procedures for requesting an informal hearing, if the household disputes the action or decision;
5. Time limit for requesting the hearing;
6. To whom the request for hearing should be addressed; and
7. That the tenant has the right to review relevant documents.

AHA must provide participants with the opportunity to request in writing an informal hearing for decisions related to any of the following AHA determinations:

1. Determination of the household's annual or adjusted income and the computation of the housing assistance payment;
2. Appropriate utility allowance used from schedule;
3. Household unit size determination under AHA subsidy standards;
4. Determination to terminate assistance for any reason; or
5. AHA decision to terminate a household's FSS Contract or withhold supportive services, or propose forfeiture of the household's escrow account.

Informal hearings are **not** required for established policies and procedures and AHA determinations such as:

1. Discretionary administrative determinations by AHA;
2. General policy issues or class grievances;
3. Establishment of AHA schedule of utility allowances for households in the program;
4. AHA determination not to approve an extension or suspension of the voucher term;
5. AHA determination not to approve a unit or lease;
6. AHA determination that an assisted unit is not in compliance with HQS (AHA must provide an opportunity for an informal hearing for household breach of HQS because that is a household obligation determination);
7. AHA determination that the unit is not in accordance with HQS requirement due to the household size; or
8. AHA decision to exercise or not to exercise any right or remedy against the owner under a HAP contract.

### Notification of Hearing

It is the objective of AHA to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. However, if this is not possible, AHA will ensure that applicants and participants will receive all of the protections and rights afforded by law and by the regulations.



If AHA receives a request for an informal hearing, the request will be forwarded to the AHA staff attorney. Informal hearings will be conducted by a person or persons approved by AHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision. The staff attorney will then request a hearing date from an approved designee.

### **PHA Policy**

AHA has designated the following to serve as hearing officers:

- City of Albuquerque

At a minimum the notification of hearing from the Hearing Officer will include:

1. The date and time of the hearing;
2. The location where the hearing will be held;
3. The household's right to bring evidence, witnesses, legal or other representation at the household's expense;
4. The household's right to view any documents or evidence in the possession of AHA upon which AHA based the proposed action;
5. The household's right to obtain and make copies of the subject documents at their own expense. Any requests to make copies of subject documents must be received no later than five days prior to the hearing date; and
6. Notice to the household that AHA may also request a copy of any documents or evidence the household proposes to use at the hearing and, that it must be received no later than 5 days before the hearing date by the household or their legal representative.

### **Hearing Scheduling and "No Show" Rescheduling Procedures**

After a hearing date and time is agreed to by the parties and scheduled, the household may request to reschedule only upon showing "good cause," which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the household. The Section 8 Rental Housing Program Supervisor may approve or disapprove the rescheduling of the hearing based on the "good cause" evidence provided by the household.

### **Household Informal Hearing Rights**

During the informal hearing, the household will have the right to:

1. Present written or oral objections to AHA's determination;
2. Examine the documents in the file that are the basis for AHA's action, and all documents submitted to the Hearing Officer;
3. Copy any relevant documents at their expense;
4. Present any information or witnesses pertinent to the issue of the hearing;
5. Request that AHA staff be available or present at the hearing to answer questions pertinent to the case; and
6. Be represented by legal counsel, advocate, or other designated representation, at their own expense.

If the household requests copies of documents relevant to the hearing, AHA will make copies for the household. Under no circumstance will the household or their designated representative be permitted to remove the application or tenant file from AHA's offices.



In addition to other rights contained in this PART, AHA has a right to:

1. Present evidence and any information pertinent to the issue of the hearing;
2. Be notified if the household intends to be represented by legal counsel, advocate, or another party;
3. Examine and copy any documents to be used by the household prior to the hearing;
4. Be represented by its legal representative; and
5. Have staff persons and other witnesses familiar with the case present.

### **Focus of the Informal Hearing**

At a minimum, the Informal Hearing shall focus on the following criteria:

- The hearing shall concern only the issues for which the household has received the opportunity for hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- No documents may be presented which have not been provided to the other party before the hearing if requested by the other party. "Documents" include records and regulations.
- The Hearing Officer may ask the household for additional information and/or might adjourn the Hearing in order to reconvene at a later date, before reaching a decision.
- The Hearing Officer will determine whether the action, inaction or decision of AHA is legal in accordance with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the household will be based on a preponderance of the evidence presented at the hearing.

A notice of the Hearing Findings shall be provided in writing to AHA and the household within 15 days and shall include:

1. A clear summary of the decision and reasons for the decision;
2. If the decision involves money owed, the amount owed; and
3. The date the decision goes into effect.

AHA is not bound by hearing decisions:

1. Concerning matters in which AHA is not required to provide an opportunity for a hearing;
2. That conflict with or contradict HUD regulations or requirements;
3. That conflict with or contradict Federal, State, or local laws; or
4. That exceeds the authority of the person conducting the hearing.

All requests for a hearing, supporting documentation, and a copy of the final decision will be retained in the case file.

### **Hearing & Appeal Provisions for "Restrictions on Assistance to Non-Citizens"**

[24 CFR Parts 5, Subpart E]

Assistance to the household may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the Immigration and Customs Enforcement (ICE) appeal.

Assistance to a household may not be terminated or denied while the AHA hearing is pending but assistance to an applicant may be delayed pending the AHA hearing.

### **ICE Determination of Ineligibility**

If a household member claims to be an eligible immigrant and the ICE SAVE system and a manual search does not verify the claim, AHA will notify the applicant or participant within 10 days of their right to appeal to the INS within 30 days or to request an informal hearing with AHA, either in lieu of, or subsequent to the ICE appeal.

If the household appeals to the ICE, they must give AHA a copy of the appeal and proof of mailing or AHA may proceed to deny or terminate. The time period to request an appeal may be extended by AHA for good cause.

The request for an AHA hearing must be made within ten business days of receipt of the notice offering the hearing or, if an appeal was made to the ICE, within ten business days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in this Part for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible household members AHA will deny the applicant household.

If there are eligible members in the household, AHA will offer to prorate assistance. All other complaints related to eligible citizen/alien immigrant status:

1. If any household member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all household members fail to provide the required documentation, then all household members will be denied or terminated for failure to provide documentation.
2. Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing regarding determinations of tenant rent.
3. Households denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any type of fraud.

### **Mitigating Circumstances for Applicants & Participants with Disabilities**

When applicants are denied placement on the waiting list, or AHA is terminating assistance, the household will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

### **Appendix I Violence Against Women Act (VAWA) Policy**

The AHA Violence Against Women Act (VAWA) Policy is **incorporated into this document as Appendix I.**

**Appendix V Enterprise Income Verification (EIV) Security and Procedure Policy**

The Enterprise Income Verification (EIV) Security and Procedure Policy have been incorporated into this document as Appendix V.

**Appendix VI Limited English Proficiency Policy**

The Limited English Proficiency Policy has been incorporated into this document as Appendix VI.

**Appendix VII Deconcentration Rule**

The Deconcentration Rule has been incorporated into this document as Appendix VII.