



**ADMISSIONS AND CONTINUED  
OCCUPANCY POLICY**

FOR THE

**PUBLIC HOUSING PROGRAM**

OF

**SALEM HOUSING AUTHORITY**

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## Chapter 1: OVERVIEW OF THE PROGRAM AND PLAN

### INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA): a description of SHA, its jurisdiction, programs, mission, and intent.

Part II: The Public Housing Program: information about public housing operation, roles and responsibilities, and partnerships.

Part III: The Admissions and Continued Occupancy (ACOP): a discussion of the purpose and organization of the plan and its revision requirements.

### PART I: THE PHA

#### 1-I.A. OVERVIEW

This section describes SHA's creation and authorization, the general structure of the organization, and the relationship between SHA Board and staff.

#### 1-I.B. ORGANIZATION AND STRUCTURE OF SHA

Public housing is funded by the federal government and administered by the Housing Authority of the City of Salem (SHA). **SHA's jurisdiction is the Urban Growth Boundary, including the cities of Keizer and Salem.** A board of officials that are called "commissioners" governs SHA. Although some PHAs may use a different title for their officials, this document will refer to the "board of commissioners" or the "board" when discussing the board of governing officials. Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation.

Formal actions of SHA are taken through written resolutions, adopted by the board, and entered into the official records of SHA.

The principal staff member of SHA is the Housing Administrator. The Housing Administrator oversees the daily operations of the PHA and is directly responsible for carrying out the policies established by the commissioners. The Housing Administrator's duties include hiring, training, and supervising SHA's staff, as well as budgeting and financial planning for the agency. Additionally, the Housing Administrator is charged with ensuring compliance with federal and state laws, and program mandates. In some PHAs, the Housing Administrator is known by another title, such as chief executive officer or president.

#### 1-I.C. SHA MISSION

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides the basis for strategy development, identification of critical success factors, resource allocation decisions, as well as ensuring client and stakeholder satisfaction.

*Salem Housing Authority's mission is to assist low and moderate income families to achieve self-sufficiency by providing stable housing, economic opportunity, and community investment through coordination with social service providers.*

#### 1-I.D. SHA'S COMMITMENT TO ETHICS AND SERVICE

As a public service agency, SHA is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, SHA resolves to:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing in good repair – in compliance with program uniform physical condition standards – for extremely low, very low, and low-income families.
- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socioeconomic, recreational, and other human services needs.
- Promote fair housing and the opportunity for extremely low, very low, and low-income families regardless of disability; race; color; religion; sex; source of income; familial status; national origin; or actual or perceived sexual orientation, gender identity, marital status, and/or

domestic partnership.<sup>1</sup>

- Create positive public awareness and expand the level of family and community support in accomplishing SHA's mission.
- Attain and maintain high standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of SHA's support systems and commitment to our employees and their development.

SHA will make every effort to keep residents informed of program rules and regulations, and advise participants of how program rules affect them.

## **PART II: THE PUBLIC HOUSING PROGRAM**

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

The intent of this section is to provide the public and staff an overview of the history and operation of public housing.

The United States Housing Act of 1937 (the "Act") is responsible for the birth of federal housing program initiatives known as public housing. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance, and the development of affordable housing for low-income residents. There have been many changes to the program since its inception in 1937.

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

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

In 1998, the Quality Housing and Work Responsibility Act (QHWRRA), also known as the Public Housing Reform Act or Housing Act of 1998, became law. Its purpose was to provide more private sector management guidelines to the public housing program and to provide residents with greater choices. It also allowed SHA more remedies to replace or revitalize severely distressed public housing developments. Highlights of the Reform Act include: the establishment of flat rents; the requirement for SHA to develop five-year and annual plans; income targeting, a requirement that 40% of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and resident self-sufficiency incentives.

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<sup>1</sup> Fair Housing policy is derived from the City of Salem Revised Code, Oregon Revised Statutes, and the Code of Federal Regulations. See Chapter 2, Part I for SHA's complete non-discrimination statement.

## 1-II.B. PUBLIC HOUSING PROGRAM BASICS

HUD writes and publishes regulations in order to implement public housing laws enacted by Congress. HUD contracts with SHA to administer programs in accordance with HUD regulations and provides an operating subsidy to SHA. SHA must create written policies that are consistent with HUD regulations. Among these policies is SHA's Admissions and Continued Occupancy Policy (ACOP). The board of commissioners must approve the ACOP.

SHA's job, pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. SHA screens applicants for public housing, and, if they are found eligible and accepted, SHA offers the applicant a unit. If the applicant accepts the offer, SHA will enter into a contract with the applicant or lessee. At this point, the applicant becomes a tenant of the public housing program.

In the context of the public housing program, a tenant is defined as the adult person(s) (other than a live-in aide) who (1) executed the lease with SHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.<sup>2</sup> The Public Housing Occupancy Guidebook refers to tenants as "residents." The terms "tenant" and "resident" are used interchangeably in this policy. Additionally, this policy uses the term "family" or "families" for residents or applicants, depending on context.

Since SHA owns the public housing development, SHA is the landlord. SHA must comply with all of the legal and management responsibilities of a landlord in addition to administering the program in accordance with HUD regulations and SHA policy.

## 1-II.C. PUBLIC HOUSING PARTNERSHIPS

Relationships between the important parties are defined by federal regulations and by contract. To administer the public housing program, SHA enters into a contractual relationship with HUD through the ACC. SHA also enters into a contractual relationship with the tenant through the public housing lease. These contracts outline the roles and responsibilities of each party.

Federal regulations further identify the important roles of the parties involved. For the program to work and be successful, all parties involved—HUD, SHA, and the tenant—must play their important parts.

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

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<sup>2</sup> 24 CFR 966.53

## The Public Housing Relationships



### What does HUD do?

Federal law is the source of HUD responsibilities. HUD has the following major responsibilities:

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

### What does the PHA (SHA) do?

SHA's responsibilities originate in federal regulations and the ACC. SHA owns and manages public housing developments, administers the program under contract with HUD and has the following major responsibilities:

- Establish local policies;
- Review applications from interested applicant families to determine whether applicants are eligible for the program;
- Maintain waiting list and select families for admission;
- Maintain housing units by making any necessary repairs in a timely manner;
- Screen families who apply for tenancy, to determine if they will be good renters;
- Offer units to families (minimize vacancies without overcrowding);
- Maintain properties to the standard of decent, safe, sanitary, and in good repair (including assuring compliance with uniform physical conditions standards);
- Make sure SHA has adequate financial resources to maintain its housing stock;
- Ensure that families continue to qualify under the program;
- Collect rent due from the assisted family and comply with and enforce provisions of the lease;
- Ensure that families comply with program rules;
- Provide families with prompt and professional service; and
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, SHA's ACOP, and other applicable federal, state and local laws.

## **What does the Tenant do?**

The tenant's responsibilities are articulated in the public housing lease. The tenant has the following broad responsibilities:

- Comply with the terms of the lease;
- Provide SHA with complete and accurate information, determined by SHA to be necessary for administration of the program;
- Cooperate in attending all appointments scheduled by SHA;
- Allow SHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of uniform physical condition standards caused by the family;
- Not engage in drug-related or violent criminal activity;
- Notify SHA before moving or termination of the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit or assign the lease;
- Promptly notify SHA of any changes in family composition; and
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled in an effective manner.

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

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 902: Public Housing Assessment System
- 24 CFR Part 903: Public Housing Agency Plans
- 24 CFR Part 945: Designated Housing
- 24 CFR Part 960: Admission and Occupancy Policies
- 24 CFR Part 965: PHA-Owned or Leased Projects – General Provisions
- 24 CFR Part 966: Lease and Grievance Procedures

## **PART III: THE ADMISSIONS AND CONTINUED OCCUPANCY POLICIES**

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

The ACOP is SHA's written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements. The ACOP is required by HUD and it must be available for public review.<sup>3</sup> The ACOP also contains policies that support the objectives contained in SHA's Agency Plan.

All issues related to public housing not addressed in this ACOP are governed by federal regulations, HUD handbooks and guidebooks, notices and applicable state and local laws. The policies in this ACOP have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding. SHA is responsible for complying with all changes in HUD regulations pertaining to public housing. If such changes conflict with this plan, HUD regulations will have precedence.

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

Unlike the housing choice voucher program, HUD regulations for public housing do not contain a list of what must be included in the ACOP. However, individual regulations contain requirements of inclusion in SHA's written policy. At a minimum, the ACOP plan should cover SHA policies on these subjects:

- The organization of the waiting list and how families are selected and offered available units, including any SHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening SHA waiting lists (Chapters 4 and 5)
- Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter 12)

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<sup>3</sup> CFR 24 Part 903

- Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters 3 and 5)
- Procedures for verifying the information the family has provided (Chapter 7)
- The method for achieving deconcentration of poverty and income-mixing of public housing developments (Chapter 4)
- Grievance procedures (Chapter 14)
- Policies concerning payment by a family to SHA of amounts the family owes SHA (Chapter 15 and 16)
- Interim redeterminations of family income and composition (Chapter 9)
- Policies regarding community service requirements (Chapter 11)
- Policies and rules about safety and ownership of pets in public housing (Chapter 10)

## **New Approach to Policy Development**

HUD has developed an approach to monitoring policy that emphasizes the importance of consistency. The ACOP supports that goal by clearly defining SHA policy for SHA management and staff.

A primary focus of programs like HUD's Rental Integrity Monitoring (RIM) program has been consistency in how SHA conducts their business and in how HUD monitors SHA activities. HUD has made it clear that consistency in SHA conduct is important. Referring to and following the ACOP is essential to maintaining consistency in applying SHA policy.

HUD makes a distinction between:

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

HUD expects SHA to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies SHA has adopted. SHA's Admissions and Continued Occupancy Policy is the document that contains and clarifies SHA policy. HUD's new direction adds additional emphasis to the need for a clearly written and comprehensive ACOP to guide staff in the clear and consistent application of policy.

HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. Therefore, following HUD guidance in the preparation of SHA policy, even though it is not mandatory, provides SHA with a "safe harbor." If SHA adopts its own optional policy, it must make its own determination that such policy is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than that suggested by HUD, but SHA should carefully think through those decisions and be able to articulate how their policy is consistent with federal laws, regulations and mandatory policy.

## **1-III.C. UPDATING AND REVISING THE POLICY**

SHA will revise this ACOP as needed to comply with changes in HUD regulations. The original policy and any changes must be approved by SHA's board of commissioners, the pertinent sections included in the Agency Plan, and a copy provided to HUD if requested.

*SHA Policy*

*SHA will review and update the ACOP as needed to reflect changes in regulations, SHA operations, or when needed to ensure staff consistency in operation.*

## **Chapter 2: FAIR HOUSING AND EQUAL OPPORTUNITY**

### **INTRODUCTION**

This chapter explains the laws and HUD regulations requiring SHA to uphold civil rights and fair housing in all federally assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to promote nondiscrimination pertains to all areas of SHA's public housing operations.

This chapter describes HUD regulations and SHA policies related to these topics in three parts:

**Part I: Nondiscrimination.** Presents the body of laws and regulations governing the responsibilities of SHA regarding nondiscrimination.

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

**Part III: Prohibition of Discrimination Against Limited English Proficiency Persons.** Describes the obligations of SHA to ensure meaningful access to the public housing program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD's Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003, in the Federal Register ("Notice of Guidance").

### **PART I: NONDISCRIMINATION**

#### 2-I.A. OVERVIEW

Federal laws require SHA to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. SHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

When more than one civil rights law applies to a situation, the laws will be read and applied together.

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

The Housing Authority of the City of Salem does not discriminate against any person due to disability; race; color; religion; sex; source of income; familial status;<sup>4</sup> national origin; or actual or perceived sexual orientation, gender identity, marital status and/or domestic partnership in accessing, applying for or receiving assistance, or in treatment or employment in any of its programs and activities.

SHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the public housing program;
- Provide housing that is different from that provided to others;
- Subject anyone to segregation or disparate treatment;
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program;
- Treat a person differently in determining eligibility or other requirements for admission;
- Steer an applicant or tenant toward or away from a particular area based on any of these factors;
- Deny anyone access to the same level of services;
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program;
- Discriminate in the provision of residential real estate transactions;
- Discriminate against someone because they are related to or associated with a member of a protected class; and
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

All public meetings are held in accessible locations. Appropriate aids (assistive listening device, interpreters, readers, assistance filling out forms, etc.) will be provided upon request. Complaints regarding accessibility of the Authority's programs to individuals with disabilities should be submitted in writing to Dominique Donaho, Salem Housing Authority, 360 Church St SE, Salem OR 97301-3707, [ddonaho@cityofsalem.net](mailto:ddonaho@cityofsalem.net). Questions or comments may be made by phone at 503-587-4815, or TDD Users dial 711. Requests for aid may also be directed to a SHA representative or other appropriate employee.

The Fair Housing Act prohibits discrimination in the sale, rental or financing of housing on the basis of race, color, religion, sex, disability, familial status, national origin, lesbian, gay, bi-sexual and transgender individuals. Federal law also prohibits discrimination on the basis of age.

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<sup>4</sup> Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

Complaints of discrimination may be forwarded to the Administrator, Office of Fair Housing and Equal Opportunity, U.S. Department of HUD, Washington, D.C. 20410.

## **Providing Information to Families**

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

## **Discrimination Complaints**

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

### **SHA Policy**

*Applicant or tenant families who believe that they have been subject to unlawful discrimination should notify Dominique Donaho either orally or in writing via ddonaho@cityofsalem.net or by mail or in person or written statement sent to 360 Church St SE, Salem, Oregon 97301-3707. SHA will attempt to remedy discrimination complaints. SHA will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).*

## **PART II: PERSONS WITH DISABILITIES**

### **2-II.A. OVERVIEW**

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.<sup>5</sup>

SHA must ensure that persons with disabilities have full access to SHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program.<sup>5</sup>

SHA must inform tenants that they may at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.<sup>6</sup>

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<sup>5</sup> 24 CFR 8

<sup>6</sup> 24 CFR 966.7(b)

### SHA Policy

*SHA will ask all applicant and tenant families if they require any type of accommodations during the intake application process or annual and/or interim reexamination process, as well as when notices of adverse action are being taken by SHA. Correspondence associated with the above processes will include language such as:*

*"If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact Salem Housing Authority."*

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

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies practices and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.<sup>7</sup>

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

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

##### Reasonable Accommodation - Property Operations

SHA will make reasonable adjustments to rules, policies, practices, and procedures in order to enable an applicant or tenant with a disability to have an equal opportunity to use and enjoy the unit and the common areas of a dwelling, or to participate in or have access to other activities conducted or sponsored by SHA.

##### Reasonable Accommodation - Physical Alterations

1. Generally, SHA will make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation based on a request by a tenant or applicant with a disability.
2. If SHA provides a reasonable accommodation by making a requested structural modification to a unit, it does not automatically count as a fully accessible unit, unless the modifications meet UFAS standard for an accessible unit.

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<sup>7</sup> Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations Under the Fair Housing Act, 2004.

### Limits on Obligations to Provide Reasonable Accommodation

1. Fundamental alteration. SHA is not required to take any action that would result in a fundamental alteration in the nature of the program. A fundamental alteration is a change so significant that it alters the essential nature of SHA's operation.
2. Undue Financial and Administrative Burden. The determination of undue financial and administrative burden will be made on a case-by-case basis, involving various factors, such as the cost of the reasonable accommodation, the financial resources of the provider, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requesters disability related needed.
3. SHA is not required to make structural changes that would impose an undue financial and administrative burden, even if alternatives to making housing programs or activities readily accessible to and usable by persons with disabilities are not effective.
4. When a request for a reasonable accommodation will result in an undue financial and administrative burden, SHA must provide all other needed accommodations up to the point at which further accommodations would result in an undue financial and administrative burden.

### Assistance Animals as a Reasonable Accommodation

1. Assistance animals are not pets. They are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals - often referred to as "service animals", "assistance animals", "support animals," or "therapy animals" perform many disability-related functions, including but not limited to guiding individuals who are blind or have low visions, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability related need for such support.
2. SHA will not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Others are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the disability-related assistance or provides the disability-related benefit by the person with the disability.
3. SHA's refusal to permit a person with a disability to use and live with an assistance animal would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless:
  - a. The animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation,
  - b. The animal would cause substantial physical damage to the property of others,
  - c. The presence of the assistance animal would pose an undue financial and administrative burden to SHA, or
  - d. The presence of the assistance animal would fundamentally alter the nature of SHA's services.

4. The fact that a person has a disability does not automatically entitle him or her to an assistance animal. There must be a relationship between the person's disability and his or her need for the animal.

5. SHA will not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal. However, if the individual's assistance animal causes damage to the appellant's unit or the common areas of the dwelling, at that time, SHA may charge the individual for the cost of repairing the damage.

6. For more information, see Chapter 10, Exhibit 10-1, Assistance Animal Guideline for Tenants.

#### SHA and Tenant Responsibilities when Tenant Modifies Unit in Accordance with the Fair Housing Act

1. SHA will permit the modifications if they are reasonable and may be necessary to afford a person with a disability full enjoyment of the premises.

2. SHA may require the tenant to restore the interior of the premises to the state that existed before the modification, reasonable wear and tear excepted unless it is determined that the modification benefits the property or is needed by another tenant. The decision to require that the tenant restore the unit; or allow modifications to remain will be determined on a case-by-case basis solely at the discretion of SHA.

3. SHA will not require any increased security deposits for persons with disabilities. However, where it is necessary in order to ensure that funds will be available to pay for restorations at the end of tenancy, SHA may negotiate as part of a restoration agreement, a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest of such an account will accrue to the benefit of the tenant.

4. SHA may condition permission for a modification on the tenant providing reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

#### Examples of reasonable accommodations include but are not limited to:

- Permitting all or part of the application and/or reexamination(s) process to be completed by mail.
- Decision to allow all or part of the process[es] to be completed by mail will be determined at SHA's discretion
- Conducting home visits
- Permitting a higher utility allowance for the unit if a person with disabilities requires the use of specialized equipment related to the disability
- Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability
- Installing a ramp into a dwelling or building
- Installing grab bars in a bathroom
- Installing visual fire alarms for hearing impaired persons
- Allowing a SHA-approved live-in aide to reside in the unit if that person is determined to be

essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities, and would not be otherwise living in the unit.

- Providing a designated handicapped-accessible parking space
- Allowing an assistance animal
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with SHA staff
- Displaying posters and other housing information in locations throughout SHA's office in such a manner as to be easily readable from a wheelchair

### **2-II.C. REQUEST FOR AN ACCOMMODATION**

If an applicant or tenant family indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that SHA treat the information as a request for a reasonable accommodation, even if no formal request is made.<sup>8</sup>

The family must explain what type of accommodation is needed to provide the person with the disability full access to SHA's programs and services. If the need for the accommodation is not readily apparent or known to SHA, the family must explain the relationship between the requested accommodation and the disability.

#### **SHA Policy**

*SHA will encourage the family to make a formal request in writing using a reasonable accommodation request form provided by SHA; however, SHA will consider any form of request for accommodation when the family indicates that an accommodation is needed.*

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

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

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

If a person's disability is obvious or otherwise known to SHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required.<sup>9</sup>

If a family indicates that an accommodation is required for a disability that is not obvious or

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<sup>8</sup> Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations Under the Fair Housing Act, 2004.

<sup>9</sup> Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations Under the Fair Housing Act, 2004.

otherwise known to SHA, SHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, SHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16 (Program Administration).

In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability<sup>10</sup>
- The SHA must request only information that is necessary to evaluate the disability-related need for the accommodation. SHA may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

## 2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION<sup>11</sup>

SHA must approve a request for an accommodation if the following three conditions are met.

1. The request was made by or on behalf of a person with a disability.
2. There is a disability-related need for the accommodation.
3. The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on SHA, or fundamentally alter the nature of the SHA's operations.

Requests for accommodations must be assessed on a case-by-case basis. The determination of undue financial and administrative burden must be made by examining various factors such as the cost of the requested accommodation, the financial resources of SHA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs. Before making a determination about whether to approve the request, SHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that SHA may verify the need for the requested accommodation.

### SHA Policy

*After a receiving a request for accommodation, SHA will respond in writing within 30 calendar*

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

*days about whether the request was approved or denied.*

*If SHA denies a request for an accommodation because there is no relationship found between the disability and the requested accommodation, or if the request is denied because it is not reasonable (i.e. it would impose an undue financial and/or administrative burden on SHA or fundamentally alter the nature of SHA's programs), SHA may discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs, prior to notifying the family in writing of the final decision.*

*For all denials, SHA will notify the family in writing of its determination within 30 calendar days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal SHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).*

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

HUD regulations require SHA to take reasonable steps to ensure that persons with disabilities related to hearing and vision have reasonable access to SHA's programs and services.<sup>12</sup>

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

### **SHA Policy**

*To meet the needs of persons with hearing impairments, applicants/tenants will be instructed to dial 711 to access the Oregon Relay Service.*

*To meet the needs of persons with vision impairments, large-print versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with SHA staff, one-on-one assistance will be provided upon request.*

*Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret, and explain housing materials and be present at all meetings.*

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

SHA must comply with a variety of regulations pertaining to physical accessibility, including the following.

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<sup>12</sup> 24 CFR 8.6

- PIH 2002-01 (HA), Accessibility Notice
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

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

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern SHA's responsibilities with regard to physical accessibility.
- Notice PIH 2002-01(HA) Accessibility Notice (which must be posted in the public housing offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- SHA Plan provides information about self-evaluation, needs assessment, and transition plans.

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

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

SHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation.<sup>13</sup> When applicants with disabilities are denied assistance, the notice of denial must inform them of their right to request an informal hearing.<sup>14</sup>

When a family's lease is terminated, the notice of termination must inform the family of their right to request a hearing in accordance with SHA's grievance process.<sup>15</sup> When reviewing reasonable accommodation requests, SHA must consider whether reasonable accommodation will allow the family to overcome the problem that led to SHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, SHA must make the accommodation.<sup>16</sup>

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<sup>13</sup> 24 CFR 966.7

<sup>14</sup> 24 CFR 960.208(a)

<sup>15</sup> 24 CFR 966.4(1)(3)(ii)

<sup>16</sup> 24 CFR 966.7

In addition, SHA must provide reasonable accommodation for persons with disabilities to participate in the hearing process.<sup>17</sup>

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

### **2-III.A. OVERVIEW**

Language for Limited English Proficiency (LEP) persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the public housing program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the Federal Register, as well as the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; published January 22, 2007 in the Federal Register.

SHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as persons with Limited English Proficiency (LEP).

LEP persons are defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. For the purposes of this Admissions and Continued Occupancy Policy, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families.

In order to determine the level of access needed by LEP persons, SHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the public housing program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to SHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on SHA.

### **2-III.B. ORAL INTERPRETATION**

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, SHA will generally offer, or ensure that the family is offered through other sources, competent interpretation services free of charge to the LEP person.

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<sup>17</sup> 24 CFR 966.56(h)

#### SHA Policy

*SHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken to accommodate the need. Reasonableness determination includes a cost-benefit analysis. Where feasible, SHA may train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and standardize documents.*

*LEP persons may be permitted to use an interpreter of their own choosing, including a family member, friend, or any other interpreter in place of or as a supplement to the free language services offered by SHA; however if there is any charge involved for interpreting services for an interpreter provided by the LEP person, it will be at the LEP person's own expense.*

*SHA has the discretion to disapprove an interpreter provided by the LEP person, who may or may not be a family member or friend, if history indicates that the interpreter provided by the LEP person demonstrated conduct that gave the appearance of advocacy or bias, or if the information needing to be translated is of a legal nature, such as in an eviction conference.*

#### 2-III.C. WRITTEN TRANSLATION

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

#### SHA Policy

*In order to comply with written-translation obligations, SHA may take the following steps: SHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or*

*If there are fewer than 50 persons/households in a language group that reaches the 5 percent level, SHA may not elect to translate vital written materials, but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.*

#### 2-III.D. IMPLEMENTATION PLAN

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

If SHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not eliminate the underlying obligation to ensure meaningful access by LEP

persons to SHA's public housing program and services.

*SHA Policy*

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

*If SHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.*

**EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS<sup>18</sup>**

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

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

The phrase "physical or mental impairment" includes:

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

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

"Has a record of such impairment" means has a history of, or has been misclassified as having, a

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<sup>18</sup> 24 CFR 8.3 & 24 CFR 100.201

mental or physical impairment that substantially limits one or more major life activities.

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

The definition of a person with disabilities does not include:

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

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

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

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

## Chapter 3: ELIGIBILITY

### INTRODUCTION

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

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

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

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

This chapter explains SHA's eligibility policy, based on HUD regulations, HUD guidance, and SHA policy decisions, in three parts:

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

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

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

#### 3-I.A. OVERVIEW

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

### 3-I.B. FAMILY AND HOUSEHOLD<sup>19</sup>

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

#### **Family**

To be eligible for admission, an applicant must qualify as a family. A family may be a single person or a group of persons, regardless of actual or perceived sexual orientation, gender identity, or marital status. *Family* as defined by HUD includes a family with a child or children, two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides, or a single person. The PHA has the discretion to determine if any other group of persons qualifies as a family.

#### *SHA Policy*

*A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law, but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.*

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

#### **Household**

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

#### **Remaining Member of a Tenant Family<sup>20</sup>**

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit.<sup>21</sup> Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6- I.B for the policy on "Caretakers for a Child."

### 3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY

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<sup>19</sup> 24 CFR 5.403 and HUD-50058 IB, p. 13.

<sup>20</sup> 24 CFR 5.403

<sup>21</sup> PH Occ. GB, p. 26

## **Family Break-up**

### SHA Policy

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

*If a family breaks up into two otherwise eligible families while living in public housing, only one of the new families will continue to be assisted.*

*If a court determines the disposition of property between members of the applicant or resident family in a divorce or separation decree, the SHA will abide by the court's determination.*

*In the absence of a judicial decision or an agreement among the original family members, SHA will determine which family retains their placement on the waiting list or will continue in occupancy taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence, dating violence, sexual assault, stalking, or criminal activity, and (4) the recommendations of social service professionals.*

## **Remaining Member of a Tenant Family<sup>22</sup>**

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

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6- I.B, for the policy on “Caretakers for a Child.”

## 3-I.D. HEAD OF HOUSEHOLD<sup>23</sup>

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

### SHA Policy

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

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<sup>22</sup> 24 CFR 5.403

<sup>23</sup> 24 CFR 5.504(b)

*who is emancipated under state law may be designated as head of household.*

### **3-I.E. SPOUSE, COHEAD, AND OTHER ADULT**

A family may have a spouse or co-head, but not both.<sup>24</sup> *Spouse* means the marriage partner of the head of household.

#### **SHA Policy**

*The term “spouse” does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.*

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

#### **SHA Policy**

*Minors who are emancipated under state law may be designated as a co-head. “Other adult” means a family member, other than the head, spouse, or co-head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.<sup>25</sup>*

### **3-I.F. DEPENDENT<sup>26</sup>**

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

Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

### **Joint Custody of Dependents**

#### **SHA Policy**

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

*When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about*

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<sup>24</sup> HUD 50058 IB, p.13

<sup>25</sup> HUD 50058 IB, p.14

<sup>26</sup> 24 CFR 5.603

*which family should claim them, the SHA will make the determination based on available documents such as court orders or an IRS return showing which family has claimed the child for income tax purposes.*

### 3-I.G. FULL-TIME STUDENT<sup>27</sup>

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

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

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

#### **Elderly Persons**

An *elderly person* is a person who is at least 62 years of age.<sup>28</sup>

#### **Near-Elderly Persons**

A *near-elderly person* is a person who is at least 50 years of age but below the age of 62.<sup>29</sup>

#### **Elderly Family**

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person.<sup>30</sup> Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

### 3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY<sup>31</sup>

#### **Persons with Disabilities**

Under the public housing program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of *individuals with handicaps* and *persons with disabilities* are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons

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<sup>27</sup> 24 CFR 5.603

<sup>28</sup> 24 CFR 5.100

<sup>29</sup> 24 CFR 945.105

<sup>30</sup> 24 CFR 5.403

<sup>31</sup> 24 CFR 5.403

with disabilities are not discriminated against based upon disability.

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

## **Disabled Family**

A *disabled family* is one in which the head, spouse, or co-head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the PHA from denying admission for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from enforcing the lease following the policies in Chapter 13 of the ACOP Handbook.

## 3-I.J. GUESTS<sup>32</sup>

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

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests.<sup>33</sup> The head of household is responsible for the conduct of visitors and guests inside the unit as well as anywhere on or near PHA premises.<sup>34</sup>

### SHA Policy

*The Resident has the right to have any particular guest in their unit for no more than fourteen (14) overnights per year. The 14 overnights are cumulative of all overnight visits by guests during a yearly lease period; they are not calculated on a per guest basis.*

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

*Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, and who are not included as a family member because they live outside of the public*

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<sup>32</sup> 24 CFR 5.100

<sup>33</sup> 24 CFR 966.4(d)

<sup>34</sup> 24 CFR 966.4(f)

*housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.*

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

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

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

*Foster adults* are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone.<sup>35</sup>

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

Foster children and foster adults living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction.<sup>36</sup>

#### **SHA Policy**

*A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.*

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

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

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

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

#### **SHA Policy**

*Generally an individual who is or is expected to be absent from the public housing unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the public housing unit*

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<sup>35</sup> 24 CFR 5.609(c)(2)

<sup>36</sup> 24 CFR 5.603 and HUD 50058 IB, pp 13-14.

*for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.*

## **Absent Students**

### **SHA Policy**

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

## **Absences Due to Placement in Foster Care<sup>37</sup>**

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

### **SHA Policy**

*If a child has been placed in foster care, SHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.*

## **Absent Head, Spouse, or Co-head**

### **SHA Policy**

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

## **Individuals Confined for Medical Reasons**

### **SHA Policy**

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

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

## **Return of Permanently Absent Family Members**

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<sup>37</sup> 24 CFR 5.403

### SHA Policy

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

#### 3-I.M. LIVE-IN AIDE

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services.<sup>38</sup>

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

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations.<sup>39</sup> Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

### SHA Policy

*A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional of the family's choosing, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.*

*In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide (1) is not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.*

*SHA will not approve a particular person as a live-in aide, and may withdraw such approval if:<sup>40</sup>*

- *The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;*
- *The person has a history of drug-related criminal activity or violent criminal activity; or*
- *The person currently owes rent or other amounts to the SHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.*

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<sup>38</sup> 24 CFR 5.403

<sup>39</sup> 24 CFR 5.609(c)(5)

<sup>40</sup> 24 CFR 966.4(d)(3)(i)

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, SHA will notify the family of its decision in writing.

## **PART II: BASIC ELIGIBILITY CRITERIA**

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

#### **Income Limits**

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

#### **Types of Low-Income Families<sup>41</sup>**

*Low-income family*: a family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

*Very low-income family*: a family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

*Extremely low-income family*: a family whose annual income does not exceed the higher of the federal poverty level or 30 percent of the median income for the area, adjusted for family size.

HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

#### **Using Income Limits for Eligibility<sup>42</sup>**

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

#### **Using Income Limits for Targeting<sup>43</sup>**

At least 40 percent of the families admitted to SHA's public housing program during a SHA fiscal year from the SHA waiting list must be *extremely low-income* families. This is called the "basic targeting requirement".

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<sup>41</sup> 24 CFR 5.603(b)

<sup>42</sup> 24 CFR 960.201

<sup>43</sup> 24 CFR 960.202(b)

For discussion of how income targeting is used in tenant selection, see Chapter 4.

### 3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS<sup>44</sup>

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

#### **Declaration<sup>45</sup>**

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

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

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit SHA to request additional documentation of their status, such as a passport.

##### SHA Policy

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

#### **Eligible Noncitizens**

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with SHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under

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<sup>44</sup> 24 CFR 5, Suppart E

<sup>45</sup> 24 CFR 5.508

which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS.<sup>46</sup>

## **VAWA Self-Petitioners**

VAWA self-petitioners are those who claim to be victims of "battery or extreme cruelty." Prior to VAWA, non-citizen victims of covered crimes were dependent on the good will of their abusers to obtain the authorized immigration status necessary to receive assisted housing. Section 214 of the Housing and Community Development Act of 1980 states that HUD may not allow financial assistance to ineligible non-citizens, but assistance must not be denied while verifying immigration status. HUD has determined that self-petitioners can indicate that they are in "satisfactory immigration status" when applying for assistance or continued assistance. "Satisfactory immigration status" means an immigration status which does not make the individual ineligible for financial assistance. After verifying such immigration status in the Department of Homeland Security Systematic Alien Verification for Entitlements (SAVE) System, SHA will make a final determination as to the self-petitioner's eligibility for assistance.

Not every noncitizen victim who has been subjected to battery or extreme cruelty will qualify under these procedures. In order to qualify, the noncitizen victim must have been battered or subjected to extreme cruelty by their spouse or parent, who is a U.S. citizen or LPR.

SHA will follow [PIH Notice 2017-02](#) for VAWA Self-Petitioner Verification Procedures.

## **Ineligible Noncitizens**

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

Providing housing assistance to noncitizen students is prohibited.<sup>47</sup> This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

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<sup>46</sup> Public Law 106-504

<sup>47</sup> 24 CFR 5.522

## **Mixed Families**

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 14 for a discussion of informal hearing procedures.

## **Ineligible Families<sup>48</sup>**

No individual or family may be assisted prior to the affirmative establishment by SHA that the individual or at least one family member is eligible.<sup>49</sup>

### *SHA Policy*

*SHA will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible noncitizen.*

*When SHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 30 calendar days of the determination.*

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

*Informal hearing procedures are described in Chapter 14.*

## **Timeframe for Determination of Citizenship Status<sup>50</sup>**

For new occupants joining the resident family, SHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first. If an individual qualifies for a time extension for the submission of required documents, SHA must grant such an extension for no more than 30 days.<sup>51</sup> Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

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<sup>48</sup> 24 CFR 5.514(d)-(f)

<sup>49</sup> 24 CFR 5.512(a)

<sup>50</sup> 24 CFR 5.508(g)

<sup>51</sup> 24 CFR 5.508(h)

## SHA Policy

*SHA will verify the status of applicants at the time other eligibility factors are determined. For mixed families, those family members who elected to declare non-status will be asked to declare status at each subsequent annual and/or interim recertification.*

### 3-II.C. SOCIAL SECURITY NUMBERS<sup>52</sup>

#### **Social Security Number Disclosure**

All family members must disclose and provide verification of the complete and accurate SSN assigned to them by the Social Security Administration, regardless of age, excluding tenants age 62 and older as of January 31, 2010, whose initial determination of eligibility was begun prior to January 31, 2010, and those individuals who do not contend eligible immigration status.

Applicants who are otherwise eligible but without a SSN may retain their place on the waiting list until obtaining a SSN.<sup>53</sup>

Children less than 6 years of age may become participants without a SSN, as long as documentation of a SSN is received within 90 days; SHA *must* grant one 90-day extension for extenuating circumstances.<sup>54</sup>

#### **Exceptions to Disclosure of SSN**

The SSN requirements do not apply to:

1. Individuals who do not contend eligible immigration status.
2. Mixed Families: Individuals who do not contend eligible immigration status are not subject to the requirement to disclose and provide verification of a SSN. SHA may not deny assistance to mixed families due to nondisclosure of a SSN by an individual who does not contend eligible immigration status. HUD regulations do not prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract.
3. Individuals age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010. The eligibility determination is based on participation in either a Public or Indian Housing or Multifamily HUD assisted program. The eligibility date is based on the initial effective date of the form HUD-50059 or for HUD-50058, whichever is applicable.

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<sup>52</sup> 24 CFR 5.216 & 24 CFR 5.218

<sup>53</sup> PIH Notice 2016-05

<sup>54</sup> PIH Notice 2016-05

4. Existing tenants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined their SSN to be valid by viewing the household's Summary Report or the Identity Verification Report in the EIV system.

5. The exception status for these individuals is retained if the individual moves to a new assisted unit under any HUD assisted program or if there is a break in his or his participation in a HUD assisted program.

When determining the eligibility of an individual who meets the exception requirements for SSN disclosure and verification, documentation must be obtained from the owner/PHA of the property where the initial determination of eligibility/exemption status was made prior to January 31, 2010. This document must be retained in the tenant file. SHA may not accept a certification from the applicant stating they qualify for the exemption.

**Example:** Mary Smith does not have a SSN. Mary does not have to disclose or provide verification of a SSN because she was 73 years old as of January 31, 2010, and her initial eligibility for HUD's rental assistance program was determined when she moved into Hillside Apartments on February 1, 2009. Therefore, her initial eligibility was determined prior to January 31, 2010.

Mary moved out of Hillside Apartments on April 10, 2010 and moved in with her daughter, who was not receiving HUD's rental assistance. Mary then applied to live at Englewood East, another HUD-subsidized apartment complex, on November 5, 2010. Because Mary's initial eligibility was established prior to January 31, 2010 (February 1, 2009), Mary is not required to meet the SSN disclosure and verification requirements as long as SHA can verify Mary's initial eligibility date at Hillside Apartments was established prior to January 31, 2010.

#### SHA Policy

*Applicants: If an applicant household is unable to disclose and/or provide documentation of a SSN for one or more family members at the time program eligibility is verified/document, SHA will offer the available unit to the next eligible applicant family on the waiting list. The denied household will be notified of denial and their ability to reapply to the waiting list.*

*Tenants: If a participant household is unable to disclose and/or provide documentation of a SSN for one or more non-exempt family members at the time eligibility for continued assistance is verified/document, SHA will take steps to terminate tenancy of the entire family.*

#### **Timeframe for Providing Social Security Numbers**

##### Applicants

Applicants currently on the waiting list do not need to disclose or provide verification of a SSN for all non-exempt household members at the time of application or for placement on the waiting list. However, applicants must disclose and provide verification of a SSN for all non- exempt

household members before they can be housed.

If all non-exempt household members have not disclosed and/or provided verification of their SSNs at the time a unit becomes available, the next eligible applicant must be offered the available unit.

The applicant who has not disclosed and/or provided verification of SSNs for all non-exempt household members has 90 days from the date they are first offered an available unit to disclose and/or verify the SSNs. During this 90 day period the applicant may, at its discretion, retain its place on the waiting list. If after 90 days the applicant is unable to disclose and/or verify the SSNs of all non-exempt household members, the applicant will be determined ineligible and removed from the waiting list.

### Tenants

All tenants, except those individuals age 62 or older as of January 31, 2010, whose initial determination of eligibility was established before January 1, 2010 (based on the effective date of the form HUD-50059 or form HUD-50058, whichever is applicable), and except those individuals who do not have eligible immigration status, must disclose and provide verification of their SSN at the time of their next interim or annual recertification if they:

- have not previously disclosed a SSN;
- previously disclosed a SSN that HUD or the SSA determined was invalid; or
- have been issued a new SSN.

### **Additional Disclosure Requirements**

If a tenant fails to provide a valid and verified SSN, the household is subject to termination of tenancy in accordance with 24 CFR 5.21. The head of household must bring SSN verification per Chapter 7 to the recertification meeting for any household member who has not disclosed and provided verification of their SSN. The head of household will be notified when EIV prescreening or the SSA validation determines that a household member has provided an invalid SSN.

### Assignment of a New SSN

If a tenant or any member of a tenant's household is or has been assigned a new SSN, the tenant must provide the SSN and following documentation to verify the SSN per Chapter 7:

- The time of receipt of the new SSN; or
- The next interim or regularly scheduled recertification.

### Adding a Household Member

*Age Six or Older:* When a tenant requests to add a household member who is age six or older, the documentation of the SSN must be provided to SHA at the time of the request or at the time the recertification that includes the new household member is processed. SHA cannot add the new household member until such time as documentation is provided.

*Child Under the Age of Six With a SSN:* When adding a household member who is a child under the age of six with a SSN, the child's SSN must be disclosed and verification must be provided within 90 days of the child being added to the household.

*Child Under the Age of Six Without a SSN:* If the child does not have a SSN, SHA must give the household 90 days in which to provide documentation of a SSN for the child. An additional 90-day period will be granted by SHA if the failure to provide documentation of a SSN is due to circumstances that are outside of the control of the tenant. Examples include but are not limited to: delayed processing of SSN application by the SSA, natural disaster, fire, death in family. During this time period, the child will be included as part of the household and will receive all of the benefits of the program in which the tenant is involved, including the dependent deduction.

At the time of the disclosure of the SSN, an interim recertification will be processed. If the SSN is not provided, the household is subject to penalties per this Chapter.

### Applying for a SSN

An individual who has never been issued a SSN card or who has lost their SSN card may completed SSA form SS-5 - Application for a Social Security Card to request an original or replacement SSN card, or to change information on his/her SSA record. This form is available online at [www.ssa.gov](http://www.ssa.gov) and can be obtained at the local SSA office. SHA will provide assistance in applying for a SSN to any applicant or tenant who requests it.

### **Verification of Social Security Numbers**

SHA will verify and document each disclosed SSN by obtaining the documentation listed under "Acceptable Verification Documents" from each family member of the applicant's or tenant's household who does not meet an exemption.

SHA will make a copy of the original documentation submitted, returning the original to the individual and retaining the copy in the file folder.

SHA will record the SSN(s) on form HUD 50058 and transmit the data to PIC in a timely manner.

### **Acceptable Verification Documents**

Most individuals should be able to verify all SSNs with social security cards. However, if the applicant or tenant cannot provide the social security card for any or all non-exempt household members, other documents showing the household member's SSN may be used for verification. He or she may be required to provide one or more of the following alternative documents to verify his or her SSN:

- Original document issued by a federal or state government agency which contains the name, SSN, and other identifying information of the individual
- Driver's license with SSN

- Form 1099
- SSA benefit award letter
- Retirement benefit letter

### **Rejection of Documentation**

SHA must reject a document for any of the following reasons:

- Document is not an original
- Document is an original but has been altered, mutilated, or is not legible
- Document appears to be forged or does not appear to be authentic

SHA will explain to the applicant or tenant the reason(s) why the document(s) is(are) not acceptable and request the individual to obtain acceptable documentation of the SSN and submit it to SHA within a reasonable time frame designated by SHA.

### **3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION<sup>55</sup>**

HUD requires each adult family member and the head of household, spouse, or co-head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information, Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

SHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow SHA to obtain information that SHA has determined is necessary in administration of the public housing program.<sup>56</sup>

## **PART III: DENYING ADMISSION**

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

A family that does not meet the eligibility criteria discussed in Parts I and II must be denied admission.

In addition, HUD requires or permits SHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. SHA's authority in this area is limited by the Violence against Women Reauthorization Act of 2005 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking.

This part covers the following topics:

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<sup>55</sup> 24 CFR 5.230

<sup>56</sup> 24 CFR 960.259(a)-(b)

- Required denial of admission
- Other permitted reasons for denial of admission
- Screening
- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, or stalking
- Notice of eligibility or denial

### 3-III.B. REQUIRED DENIAL OF ADMISSION<sup>57</sup>

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

Where the statute requires that SHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, SHA may choose to continue that prohibition for a longer period of time.<sup>58</sup>

HUD requires that SHA deny assistance under the following circumstances:

- When any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity (use/possession). HUD permits but does not require SHA to admit an otherwise-eligible family if the household member has completed a SHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

#### SHA Policy

*SHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity (use/possession), if SHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by SHA, or the person who committed the crime is no longer living in the household.*

- When SHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the

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<sup>57</sup> 24 CFR 960.204

<sup>58</sup> 24 CFR 960.203(c)(3)(ii)

Controlled Substances Act.<sup>59</sup> *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.<sup>60</sup>

*SHA Policy*

*Currently engaged in is defined as any use or possession of illegal drugs during the previous eighteen (18) months.*

*Applicants who have used or possessed illegal drugs in the previous eighteen (18) months and who provide documentation that they have successfully completed a drug-treatment/rehabilitation program will be allowed to continue the eligibility process.*

*Applicants who have used or possessed illegal drugs in the previous eighteen (18) months and who have not graduated from a drug-rehabilitation program will be determined ineligible and denied eligibility.*

- When SHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

*SHA Policy*

*In determining reasonable cause, SHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. SHA will also consider evidence from treatment providers or community-based organizations providing services to household members.*

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing (life time denial; see Violation Chart below).

*SHA Policy*

*Any household member who has ever been convicted of the manufacture or production of methamphetamine will be ineligible for life. Family members who have been convicted of distribution only may be considered; however SHA will require documentation from a reliable source that the family member has never been convicted of manufacturing or producing methamphetamine.*

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<sup>59</sup> 21 USC 802

<sup>60</sup> 24 CFR 960.205(b)(1)

*In determining reasonable cause, SHA will consider all credible evidence including but not limited to any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. SHA may consider evidence from treatment providers or community-based organizations providing services to household member(s), such as an individual who is participating in “Drug Court” or in the “Home for Good” program(s).*

- Any household member who is subject to a lifetime registration requirement under a state sex offender registration program, **as well as any individual who is subjected to a state sex offender registration program** (life time denial; see Violation Chart below).
- Any household member with a pattern of violent and/or drug related criminal activity (i.e. career criminal). Example: Household member(s) who are outside the window of the denial periods for violations listed in the Violation Chart that commit a new crime each time they are released from a penal institution.
- Any household member who does not disclose and verify a social security number if assigned by the Social Security Administration.
- Any household member who is using an invalid, bogus, unofficial, or a social security number that has been assigned to another individual.

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

#### **Criminal Activity<sup>61</sup>**

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

#### SHA Policy

*If any household member is currently engaged in, or has engaged in any of the following criminal activities, the family will be denied admission:*

- *Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug, if the waiting period on the*

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<sup>61</sup> 24 CFR 960.203(b)-(c)

*following Violation Chart has not elapsed.<sup>62</sup>*

- *Fugitive Felon or Parole Violator: If an applicant is currently fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees.*
- *Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage, if the waiting period on the following Violation Chart has not elapsed.<sup>63</sup>*
- *Criminal activity that may threaten the health, safety, or welfare of other tenants, if the waiting period on the following Violation Chart has not elapsed..<sup>64</sup>*
- *Criminal activity that may threaten the health or safety of SHA staff, contractors, subcontractors, or agents, if the waiting period on the following Violation Chart has not elapsed..*
- *Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse, if the waiting period on the following Violation Chart has not elapsed..*

*Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members. See the Violation Chart for violation and waiting period requirements. In making its decision to deny assistance, SHA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, SHA may, on a case-by-case basis, decide not to deny assistance.*

*Denial or termination of assistance for criminal activity will be based on a preponderance of the evidence that the applicant, tenant, other household member, or guest actually engaged in criminal activity. Convictions will be given more weight than arrests in determining whether criminal activity actually happened.*

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<sup>62</sup> 24 CFR 5.100

<sup>63</sup> Ibid.

<sup>64</sup> 24 CFR 960.203(c)(3)

## VIOLATION CHART

<b>Violation</b>	<b>Waiting Period Before Assistance Can Begin</b>
Evicted from federally assisted housing for drug-related criminal activity	3 years, unless SHA can verify completion of a supervised drug rehabilitation program, or the person who committed the crime is no longer living in the household
Illegal drug use	6 months
Current use or pattern of use of illegal drugs or abuse of alcohol that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents	Ineligible. SHA will consider all credible evidence, including record of convictions, arrests, evictions for illegal drugs or abuse of alcohol. A conviction will be given more weight than an arrest. SHA will consider evidence from treatment providers or community based organizations providing services to household members.
Manufacture of methamphetamine	Lifetime denial, regardless of location of production
Lifetime registration under a state sex offender registry	Lifetime denial
Manufacture, sale, distribution, or possession with intent to manufacture, sell, or distribute any illegal drug	5 years, except for manufacture of methamphetamine (lifetime denial) and manufacture, sale, distribution, or possession of marijuana (18 months)
Manufacture, sale, distribution, or possession with intent to manufacture, sell, or distribute marijuana	18 months
Illegal use of a drug, or possession with intent to use an illegal drug	3 years, except for marijuana (18 months)
Use or possession of marijuana	18 months
Violent 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, including:  Armed Robbery, Robbery, Arson I, Assault I & II, Assault of a Public Safety Officer, Murder, Aggravated Murder, Attempted Murder, Sexual Assault, Domestic Violence without a Certificate	5 years
Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity, including:  Burglary I or II, Kidnapping, Manslaughter	3 years
Criminal activity that may threaten the health or safety of property owners and management staff, and persons performing contract administration functions or other responsibilities on behalf of SHA (including a SHA employee or a SHA contractor, subcontractor, or agent), including:  Identity Theft	3 years
Threatening or violent behavior against an SHA employee, contractor, subcontractor, or agent	Lifetime denial

The number of years that a family or individual is ineligible is based on the criteria set above and is not cumulative. For example, someone convicted of Burglary I and Kidnapping would be ineligible for 3 years from the most recent incident date, not 6. Tenant/applicant shall provide, upon request, proof of criminal activity-free record from Salem Police Department.

### **Previous Behavior<sup>65</sup>**

HUD authorizes SHA to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

In the event of the receipt of unfavorable information with respect to an applicant, SHA must consider the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Section 3-III.F, SHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking.

#### **SHA Policy**

*SHA will screen the following information about a prospective tenant's previous behavior to determine suitability for tenancy:*

- *Documentation of unsuitable past performance in meeting financial obligations.*
- *Documentation of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety, or welfare of other tenants.*
- *Documentation of eviction from housing or termination from residential programs (considering relevant circumstances).*
- *Documentation that money is owing to this or any other PHA or owner in connection with any assisted housing program. Applicants that owe money may apply to be on the waiting list, however all money owed must be paid in full prior to placement. If an applicant's name comes to the top of the waiting list and it is determined that they owe money to SHA, any other PHA or owner, they will be notified of the amount owing and will be given ten (10) calendar days from the date on the notification to make payment in full.*
- *Misrepresentation or incomplete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent.*
- *Documentation of fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.*

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<sup>65</sup> 24 CFR 960.203(c)-(d)

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

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

*In making its decision to deny admission, SHA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, SHA may, on a case-by-case basis, decide not to deny admission.*

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

### 3-III.D. SCREENING

#### **Screening for initial and on-going eligibility**

SHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the public housing program as well as screening for continued occupancy. This authority assists SHA in complying with HUD requirements and SHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records SHA must require every applicant/participant family to submit a consent form signed by each adult household member.<sup>66</sup>

SHA may not pass along to the applicant the costs of a criminal records check.<sup>67</sup>

Denial or termination of assistance for criminal activity will be based on a preponderance of the evidence that the applicant, tenant, other household member, or guest actually engaged in criminal activity.<sup>68</sup>

#### SHA Policy

*SHA will perform criminal background checks through OJIN, LEDS, and/or other available third party screening companies for all adult household members at the time of determining initial eligibility as well as at each annual recertification.*

SHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household

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<sup>66</sup> 24 CFR 5.903

<sup>67</sup> 24 CFR 960.204(d)

<sup>68</sup> PIH Notice 2015-19

member is known to have resided.<sup>69</sup>

If SHA proposes to deny admission or terminate tenancy based on a criminal record or on lifetime sex offender registration information, SHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission, or the termination of tenancy.<sup>70</sup>

### **Obtaining Information from Drug Treatment Facilities<sup>71</sup>**

HUD authorizes SHA to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, SHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head, spouse, or co-head regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform SHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use. *Drug Abuse Treatment Facility* means an entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use, and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

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

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

In all requests for information related to drug-related/violent criminal activity, SHA will abide by the HUD requirements for records management and confidentiality as described in 24 CFR 960.205(f).

#### **SHA Policy**

*SHA will submit a request for information only for certain household members, who by their own statement, or whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents.*

*SHA will obtain information from drug abuse treatment facilities to determine whether any applicant family's household members are currently engaging in illegal drug activity only when*

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<sup>69</sup> 24 CFR 960.204(a)(4)

<sup>70</sup> 24 CFR 5.903(f), (d)

<sup>71</sup> 24 CFR 960.205

*SHA has determined that the family will be denied admission based on a family member's drug-related criminal activity, and the family claims that the culpable family member has successfully completed a supervised drug or alcohol rehabilitation program.*

### **Screening for Suitability as a Tenant<sup>72</sup>**

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

#### *SHA Policy*

*SHA will consider the family's history with respect to the following factors:*

- *Payment of rent and utilities*
- *Caring for a unit and premises*
- *Respecting the rights of other residents to the peaceful enjoyment of their housing*
- *Criminal activity that is a threat to the health, safety, or property of others*
- *Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C*
- *Compliance with any other essential conditions of tenancy*

### **Resources Used to Check Applicant Suitability<sup>73</sup>**

SHA has a variety of resources available to it for determination of the suitability of applicants. Generally, SHA will reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

#### *SHA Policy*

*In order to determine the suitability of applicants SHA may examine applicant history. Such background checks may include:*

- *Past performance in meeting financial obligations, especially rent.*
- *Landlord references for the past three years will be required. If unable to provide landlord references for the past three years, or if the applicant has no rental history, applicant must provide three professional references. Personal references from family and/or friends will not be accepted. SHA will gather information about past performance in meeting rental obligations such as rent payment record, late payment record, whether the landlord ever began or completed lease termination for*

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<sup>72</sup> 24 CFR 960.203(c)

<sup>73</sup> PH Occ GB pp 47-56

*non-payment, and whether utilities were ever disconnected in the unit. Landlords will be asked if they would rent to the applicant family again.*

- *Whether the applicant can get utilities turned on in his/her name.*
- *SHA will check court records of eviction actions and other financial judgments.*
- *If previous landlords or the utility company do not respond to requests from SHA, the applicant may provide other documentation, to the satisfaction of SHA that demonstrates their ability to meet financial obligations (e.g. rent receipts, cancelled checks).*
- *Information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.*
- *Police and court records will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction.*
- *A personal reference will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available.*
- *At SHA's sole discretion, home visits may be used to determine the applicant's ability to care for the unit.*

### 3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION

#### **Evidence**

##### SHA Policy

*SHA will use the preponderance of the evidence standard as the standard for making all admission decisions.*

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

#### **Consideration of Circumstances<sup>74</sup>**

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<sup>74</sup> 24 CFR 960.203(c)(3),(d)

HUD authorizes SHA to consider all relevant circumstances when deciding whether to deny admission based on a family's past history except in the situations for which denial of admission is mandated (see Section 3-III.B).

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

#### SHA Policy

*SHA will consider the following factors prior to making its decision:*

- *The seriousness of the case, especially with respect to how it would affect other residents*
- *The effects that denial of admission may have on other members of the family who were not involved in the action or failure*
- *The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in Section 3-III.F) a victim of domestic violence, dating violence, sexual assault, or stalking*
- *The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future*
- *Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs*
- *In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully*
- *SHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.*

#### **Removal of a Family Member's Name from the Application<sup>75</sup>**

HUD permits SHA to impose as a condition of admission a requirement that family members who

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<sup>75</sup> 24 CFR 960.203(c)(3)(i)

participated in or were culpable for an action or failure to act which warrants denial of admission not to reside in the unit.

**SHA Policy**

*As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit.*

*The family must present evidence of the former family member's current address upon SHA request.*

**Reasonable Accommodation**

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

**SHA Policy**

*If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, SHA will determine whether the behavior is related to the disability. If so, upon the family's request, SHA will determine whether alternative measures are appropriate as a reasonable accommodation. SHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 2 for a discussion of reasonable accommodation.*

**3-III.F. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING<sup>76</sup>**

See Chapter 17. Violence Against Women Act

**3-III.G. NOTICE OF ELIGIBILITY OR DENIAL**

SHA will notify an applicant family of its final determination of eligibility in accordance with the policies in Section 4-III.E.

If SHA uses a criminal record or sex offender registration information obtained under 24 CFR 5 Subpart J as the basis of a denial, a copy of the record must precede the notice to deny with an opportunity for the applicant to dispute the accuracy and relevance of the information before SHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record.<sup>77</sup>

A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured

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<sup>76</sup> Pub.L. 109-162

<sup>77</sup> 24 CFR 5.903(f) & 24 CFR 5.905(d)

by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual disability; race; color; religion; sex; source of income; familial status; national origin; or actual or perceived sexual orientation, gender identity, marital status and/or domestic partnership.

No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, or any other recipient or sub-recipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted or HUD-insured housing for purposes of determining eligibility or otherwise making such housing available. However, permissible inquiries into sex are permissible for temporary, emergency shelter with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled.

#### SHA Policy

*If, based on a criminal record or sex offender registration information an applicant family appears to be ineligible, SHA will notify the family in writing of the proposed denial will refer the family to the Oregon State ID Bureau. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact SHA to dispute the information within that 10 day period, SHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal hearing process.*

Notice requirements related to denying admission to noncitizens are contained in Section 3-II.B. Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, or stalking are contained in Section 3-III.F.

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

##### **Person with Disabilities<sup>78</sup>**

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

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads: Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

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<sup>78</sup> 24 CFR 5.403

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act,<sup>79</sup> which defines developmental disability in functional terms as a severe, chronic disability of a person 5 years of age or older which:
  - Is attributable to a mental or physical impairment or combination of mental and physical impairments
  - Is manifested before the person attains age twenty-two
  - Is likely to continue indefinitely
  - Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency
  - Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”
- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

### **Individual with Handicaps<sup>80</sup>**

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

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<sup>79</sup> 42 USC 6001(8)

<sup>80</sup> 24 CFR 8.3

As used in this definition, the phrase *physical or mental impairment* includes:

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine.
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, or 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* means functions such as caring for one's self, 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* means:

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation.
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment.
- (c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

## Chapter 4: APPLICATIONS, WAITING LIST AND TENANT SELECTION

### INTRODUCTION

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

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

HUD regulations require that SHA comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program.<sup>81</sup> Adherence to the selection policies described in this chapter ensures that SHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and SHA policies for taking applications, managing the waiting list and selecting families from the waiting list. SHAs policies for assigning unit size and making unit offers are contained in Chapter 5. Together, Chapters 4 and 5 of the ACOP comprise SHA's Tenant Selection and Assignment Plan (TSAP).

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

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

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

**Part III: Tenant Selection.** This part describes the policies that guide SHA in selecting families from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that SHA has the information needed to make a final eligibility determination. This section also describes SHA's transfer policy and when a transfer for (a) current resident(s) will take priority over tenant selection from the waiting list.

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<sup>81</sup> 24 CFR 960.103 & PH Occ GB p.13

## PART I: THE APPLICATION PROCESS

### 4-I.A. OVERVIEW

This part describes the policies that guide SHA's efforts to distribute and accept applications and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list (or "AMP-based waiting list"). This part also describes SHA's obligation to ensure the accessibility of the application process.

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

Any family that wishes to reside in public housing must apply for admission to the program.<sup>82</sup> HUD permits SHA to determine the format and content of its applications, as well how such applications will be made available to interested families and how applications will be accepted by SHA.

#### SHA Policy

*SHA's Public Housing properties are set up in two groups of Asset Management Properties (AMPs). Each AMP contains an office space separate from the central office. Waiting list requests (i.e. applications) will be accepted online; paper applications will be accepted as an accommodation.*

*Applicants may apply for one or more AMP waiting lists at the same time. Applicants may obtain a waiting list request in one of the following manners:*

- *Obtaining a waiting list request in person at one of the AMP offices or the central office, during normal business hours;*
- *Calling 711;*
- *Through an advocate for seniors or persons with disabilities;*
- *Through an outside agency referral (e.g., the Emergency Housing Network, community partners, advocates for seniors or people with disabilities, or social services agencies);*
- *Via the internet (i.e. clients can download a waiting list request from SHA's website to complete, sign, and submit to one of the AMP offices or the SHA central office; and/or*
- *Via telephone request (i.e., a waiting list request form will be mailed to the family).*

*Applicants who have pertinent waiting list information updates must submit updated information in writing. SHA will provide the family with the appropriate form to change the information on the waiting list(s). Once the updated information is received by SHA, it will then be updated on the computer system and the form will be imaged for audit purposes.*

*The waiting list request process involves two phases. The first is the "initial" request or*

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<sup>82</sup> 24 CFR 1.4(b)(2)(ii), 24 CFR 960.202(a)(2)(iv), and PH Occ GB, p. 68

*application to be placed on the waiting list(s), which results in the family's placement on the AMP-based waiting list(s) for which SHA received a waiting list request form from the family.*

*Waiting list request forms must be complete, including the signature of the head of household, in order to be accepted by SHA for processing. If a waiting list request is incomplete, SHA will return the request to the family and ask that the missing information be completed and returned to SHA. The date/time that SHA receives a full, completed waiting list request will be considered the date/time of application of each waiting list.*

*AMP based waiting list requests are entered into a computerized waiting list by date and time of request, and are then reviewed to ensure accuracy. The computerized waiting list request becomes the final record of the request for placement on the list(s). All waiting list requests and/or change of information forms will be imaged and will become part of the family's record.*

*Applicants may be eligible for multiple bedroom size waiting lists. SHA will apply applicants to all appropriate waiting lists by bedroom size, based on the family's waiting list request and the Occupancy Standards referenced in Chapter 5.*

*Paper applicants are sent a letter which acts as an acknowledgment of their name being placed on the waiting list(s) indicating the anticipated waiting period for each AMP area. Online applicants are provided a confirmation number upon successful submission of their application.*

*The second phase is the "final determination of eligibility" (referred to as the application/certification or long-application). The application/certification takes place when the family reaches the top of the waiting list(s) for which they applied, per Chapter 4. At this time SHA ensures that verification of all HUD and SHA eligibility factors is current and/or obtained in order to determine the family's eligibility for placement in the Public Housing Program.*

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

SHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard SHA application process.

##### **Disabled Populations<sup>83</sup>**

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

##### **Limited English Proficiency**

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<sup>83</sup> 24 CFR 8 & PH Occ GB p. 68

SHA is required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency.<sup>84</sup> Chapter 2 provides a full discussion on SHA's policies related to ensuring access to people with limited English proficiency (LEP).

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

SHA must review each completed application (i.e. waiting list request form or AMP-based waiting list request form) received and make a preliminary assessment of the family's eligibility. SHA must place families on open waiting lists unless SHA determines the family to be ineligible. Where the family is determined to be ineligible, SHA must notify the family in writing.<sup>85</sup> When the family is determined to be eligible, the family will be placed on a waiting list of applicants.

##### **Ineligible for Placement on the AMP-Based Waiting List(s)**

###### SHA Policy

*All completed AMP-based waiting list requests will be entered into SHA's database. If during preliminary screening for basic eligibility per this ACOP, SHA determines that a family is ineligible, SHA will send written notification of the ineligibility determination within 30 business days of receiving a completed application. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal hearing and explain the process for doing so (see Chapter 14).*

##### **Eligible for Placement on the AMP-Based Waiting List(s)**

###### SHA Policy

*If during preliminary screening of the AMP-based waiting list request for basic eligibility criteria per this tenant selection plan, SHA determines that it appears the family is eligible, SHA will send written notification of the preliminary eligibility determination within 30 business days of receiving a completed application. If applicable, the notice will also indicate the waiting list preference(s) for which the family appears to qualify, and the estimated waiting time.*

*AMP based waiting list requests will undergo a preliminary screening of prior tenancy in any SHA administered program via WinHist and the HAPPY system. If it is found during the preliminary screening that the applicant(s) are ineligible per Chapter 3 Part III, the applicant(s) will be sent a denial letter stating the reason for the denial. Applicants must appear to meet the definition of family per 3.I.B. at the time the waiting list request is completed to be placed on one or more waiting lists.*

*Applicants who pass the preliminary screening will be placed and considered active on the AMP-*

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<sup>84</sup> 24 CFR 1

<sup>85</sup> 24 CFR 960.208(a) & PH Occ GB p. 41

*based waiting list(s) according to SHA preference(s), if applicable, and the date and time their complete waiting list request is received by SHA.*

*Placement on the AMP based waiting list(s) does not indicate that the family is in fact eligible for admission. A final determination of eligibility and qualification for preferences, if applicable, will be made when the family reaches the top of the waiting list.*

*SHA will assign families on the AMP-based waiting list according to the bedroom size for which a family qualifies as established in its occupancy standards (see Chapter 5). Families may request to be placed on the AMP based waiting list for a unit size smaller than designated by the occupancy guidelines (as long as the unit is not overcrowded according to SHA standards and local codes); however, in these cases the family must agree not to request a transfer for two years after admission, unless they have a change in family size or composition.*

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

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

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

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

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

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

#### **SHA Policy**

*The Asset Management Project (AMP) based waiting list contains the following information for each applicant:*

- *Name and social security number, if available, of head of household and all household members age 18 and above*
- *Unit size required (number of family members)*
- *Amount and source of annual income*
- *Accessibility requirement, if any*
- *Date and time of application*

- *Household type (family, elderly, disabled)*
- *Admission preference, if any*
- *Race and ethnicity of the head of household*

*SHA maintains separate AMP waiting lists for the two designated property management areas listed below:*

*AMP 1: 87 scattered site single-family, duplex, and triplex homes*

*AMP 2: 158 multi-family apartment townhomes in 6 complexes (Brush College Village, Glen Creek Village, Livingston Village, Meadowlark Village, Northgate Village, and Shelton Village)*

*SHA will contact applicants within the AMP-based waiting lists as vacancies occur according to the procedures described in this ACOP.*

HUD directs that a family that applies to reside in public housing must be offered the opportunity to be placed on the waiting list for any tenant-based or project-based voucher or moderate rehabilitation program that SHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.<sup>86</sup>

HUD permits, but does not require, that SHA's maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.<sup>87</sup>

#### *SHA Policy*

*SHA will not merge the public housing waiting list with the waiting list for any other program SHA operates as permitted by 24 CFR 982.205(a)(1).*

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

#### **Closing the AMP-Based Waiting List(s)**

SHA is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to fill its developments. SHA may close the waiting list completely, or restrict intake by preference, type of project, or by size and type of dwelling unit.<sup>88</sup>

#### *SHA Policy*

*When the estimated waiting period for housing applicants on an AM-based waiting list reaches 24 months for the most current applicants, SHA may close the applicable AMP-based waiting list(s). Where SHA has particular preferences or other criteria that require a specific category of family,*

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<sup>86</sup> 24 CFR 982.205(a)(2)(i)

<sup>87</sup> 24 CFR 982.205(a)(1)

<sup>88</sup> PH Occ GB p.31

*SHA may elect to continue to accept applications from these applicants while closing the waiting list to others.*

### **Reopening the AMP-Based Waiting List(s)**

If one or more AMP-based waiting lists has been closed, it may be reopened at any time. SHA will publish a notice in local newspapers of general circulation, minority media, and other suitable media outlets that SHA is reopening one or more of the AMP-based waiting lists. Such notice must comply with HUD fair housing requirements. SHA will specify who may apply and where and when applications will be received.

#### *SHA Policy*

*SHA will announce the reopening of an AMP based waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice. SHA will give public notice by publishing the relevant information in accordance with 4-II.D FAMILY OUTREACH below. The notice will specify where, when, and how applications are to be received.*

### **4-II.D. FAMILY OUTREACH**<sup>89</sup>

SHA will conduct outreach as necessary to ensure that SHA has a sufficient number of applicants on the AMP based waiting list(s) to fill anticipated vacancies and to assure that SHA is affirmatively furthering fair housing and complying with the Fair Housing Act. Because HUD requires SHA to serve a specified percentage of extremely low income families, SHA may also need to conduct special outreach to ensure that an adequate number of such families apply for public housing.

SHA's outreach efforts must comply with fair housing requirements. This includes:

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

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

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low

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<sup>89</sup> 24 CFR 903.2(d) & 24 CFR 903.7(a)-(b)

- income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

#### SHA Policy

*As needed, SHA will conduct affirmatively furthering fair housing marketing in accordance with Exhibit 4-1: OUTREACH TO LOW-INCOME FAMILIES, so AMP-based waiting lists include a mix of applicant races, ethnic backgrounds, ages, and disabilities proportionate to the mix of characteristics of the eligible population served by SHA.*

*The marketing plan will take into consideration the number and distribution of vacant units, units that can be expected to become vacant because of move-outs, and characteristics of families on the waiting lists. SHA will view these factors regularly to determine the need for and scope of marketing efforts. Marketing efforts will also include outreach to those least likely to apply.*

*SHA will print and distribute various brochures, as well as meet with community partners and neighborhood groups to provide information regarding the Public Housing Program. SHA will also publish information regarding the Public Housing Program on its website, and when applicable, will place “now leasing” signage at the properties.*

*Marketing and informational materials will:*

- *Comply with Fair Housing Act requirements on wording, logo, size of type, etc.;*
- *Accurately describe the housing units, application process, waiting list and preference structure;*
- *Use clear and easy to understand terms in all marketing media and use non-English-language print media when needed;*
- *Be provided to agencies that serve potentially qualified applicants least likely to apply (i.e. disabled) to ensure that accessible/adaptable units are offered to applicants who need those features;*
- *Make clear who is eligible: low income individuals and families, working and non-working people, and people with both physical and mental disabilities; and*
- *Be clear about SHA’s responsibility to provide reasonable accommodation to people with disabilities.*

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

#### SHA Policy

*While the family is on the AMP-based waiting list(s), the family must inform SHA of changes in family size or composition, preference status (if applicable), or contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing, and once the changes have been made to SHA’s database, the change in information form will be imaged and become part of the applicant’s record.*

*Changes in an applicant's circumstances while on the AMP-based waiting list(s) may affect the family's qualification for a particular bedroom size or entitlement to a preference. When an applicant reports a change that affects their placement on a particular AMP-based waiting list, the family will be notified of the requirement to apply to the appropriate AMP based waiting list.*

#### **4-II.F. UPDATING THE SERVICE AREA WAITING LIST(S)**

HUD requires SHA to establish policies to use when removing applicant names from the waiting list [24 CFR 960.202(a)(2)(iv)].

##### **Purging (Updating) the Waiting List**

###### *SHA Policy*

- *Each waiting list will be updated as needed to ensure that all applicants and applicant information is current and timely.*
- *SHA will update waiting lists as needed based on length of waiting list and unit turnover. This update request will be sent to the last address that SHA has on record for the applicant by 1<sup>st</sup> class mail. The update request will provide a deadline for the applicant to respond and will emphasize that failure to respond will result in the applicant's name being removed from the waiting list.*
- *The applicant's response must be in writing and may be delivered in person, by mail, email or by fax. Responses should be postmarked or documented as received by SHA by the timeframes established in the correspondence to the applicant.*
- *If the notice is returned by the post office with no forwarding address, the applicant will be removed from the applicable waiting list without further notice.*
- *If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated and the family will be given a new timeframe to respond. If the family fails to respond within the given time frame, applicant will be removed from the waiting lists.*
- *No informal hearing will be offered for failure to respond, as such action on the part of the applicant prevents SHA's ability to determine eligibility for its programs.*
- *The Housing Services Supervisor assigned to oversee the administration of the Public Housing Program, or any other SHA supervisor who may be assigned to oversee the waiting list(s) and/or any other SHA supervisor who is taking action to oversee the administration of the Public Housing Program, may reinstate the family if it is determined that lack of response was due to SHA error, circumstances beyond the family's control, or if a reasonable accommodation is needed due to a*

*disability. Requests for reinstatement must be in writing.*

## **Removal from the Waiting List**

### **SHA Policy**

*Applicant Request: SHA will remove applicants from the waiting list if they have requested their name be removed. Such requests will be accepted in writing. In such cases no informal hearing is required.*

*Ineligibility: If SHA determines that the family is not eligible for admission (see Chapter 3) at any time while the family is on the waiting list, the family will be removed from the waiting list. If a family is removed from a waiting list because SHA has determined the family is not eligible for admission, a notice will be sent to the family's address of record. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal hearing regarding SHA's decision (see Chapter 14).<sup>90</sup>*

## **PART III: TENANT SELECTION**

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

SHA must establish tenant selection policies for families being admitted to public housing.<sup>91</sup> SHA must not require any specific income or racial quotas for any developments.<sup>92</sup> SHA must not assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations.<sup>93</sup>

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

SHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to SHA's selection policies.<sup>94</sup> SHA's policies must be posted any place where SHA receives applications. SHA must provide a copy of its tenant selection policies upon request to any applicant or tenant. SHA may charge the family for providing a copy of its tenant selection policies.<sup>95</sup>

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<sup>90</sup> 24 CFR 960.208(a)

<sup>91</sup> 24 CFR 960.201(a)

<sup>92</sup> 24 CFR 903.2(d)

<sup>93</sup> 24 CFR 1.4(b)(1)(iii) & 24 CFR 903.2(d)(1)

<sup>94</sup> 24 CFR 960.206(e)(2)

<sup>95</sup> 24 CFR 960.202(c)(2)

### SHA Policy

*When an applicant or participant family requests a copy of SHA's admissions and continued occupancy policies, SHA will provide copies per SHA's Request for Information Fee Schedule.*

### 4-III.B. SELECTION METHOD

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

#### **Local Preferences<sup>96</sup>**

SHA is permitted to establish local preferences and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits SHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with SHA's plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.<sup>97</sup>

### SHA Policy

*The following preferences are applied to each of the SHA established/designated AMP-based projects:*

*Accessible Units. SHA will offer accessible units to current families in public housing who need the features of the accessible unit, regardless of the AMP they currently reside in.*

*If no current residents in public housing indicate a need for an accessible unit, SHA will offer the accessible unit to the next applicant on the appropriate size AMP-based waiting list that needs the features. If there are no qualified applicants for an accessible unit in a given AMP, SHA will next offer the unit to applicants who indicated a need for an accessible unit in another AMP based area.*

*If there are no applicants on any of SHA's AMP-based waiting lists that require the features of the unit, SHA will contact all other applicants in date and time order on the applicable AMP-based waiting list who have not indicated a need for the accessible features, and place the unit accordingly. In this case, the resident will be asked to sign an addendum stating that if the unit is needed at a later date for a current Public Housing tenant or applicant on the AMP-based waiting list that needs the accessible features of the unit, the resident understands they will have to move to the next available non-accessible*

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<sup>96</sup> 24 CFR 960.206

<sup>97</sup> 24 CFR 960.206(a)

*unit in the AMP where the unit is located.*

**Non-Accessible Units.** *Units will be offered first to families currently residing in a public housing unit, regardless of the AMP their unit is currently located in, who are required to transfer due to circumstances explained later in this Chapter and in Chapter 12. Units will then be offered to applicants in date and time order of their AMP based waiting list request according to the bedroom size unit(s) that are vacant or anticipated to be vacant.*

### **Income Targeting Requirement<sup>98</sup>**

HUD requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during SHA's fiscal year. ELI families are those with annual incomes that do not exceed the higher of the federal poverty level or 30% of the area median income. To ensure this requirement is met, SHA may skip non-ELI families on the waiting list in order to select an ELI family.

#### **SHA Policy**

*SHA will monitor, on a monthly basis, progress in meeting the ELI requirement throughout the fiscal year. ELI families will be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met for the Public Housing Program as a whole. Income targeting will not be monitored according to AMP.*

### **Mixed Population Developments<sup>99</sup>**

A mixed population development is a public housing development or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character) or the PHA at some point after its inception obtained HUD approval to give preference in tenant selection for all units in the development (or portion of a development) to elderly and disabled families.<sup>100</sup> Elderly family means a family whose head, spouse, co-head, or sole member is a person who is at least 62 years of age. Disabled family means a family whose head, spouse, co-head, or sole member is a person with disabilities.<sup>101</sup> The PHA must give elderly and disabled families equal preference in selecting these families for admission to mixed population developments. The PHA may not establish a limit on the number of elderly or disabled families that may occupy a mixed population development. In selecting elderly and disabled families to fill these units, the PHA must first offer the units that have accessibility features for families that include a person with a disability and require the accessibility features of such units. The PHA may

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<sup>98</sup> 24 CFR 960.202(b)

<sup>99</sup> 24 CFR 960.407

<sup>100</sup> 24 CFR 960.102

<sup>101</sup> 24 CFR 5.403

not discriminate against elderly or disabled families that include children.<sup>102</sup>

#### SHA Policy

*SHA currently has no mixed population developments.*

#### **Deconcentration of Poverty and Income-Mixing<sup>103</sup>**

SHA's admission policy must be designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. A statement of SHA's deconcentration policies must be included in its annual plan.<sup>104</sup> SHA's deconcentration policy must comply with its obligation to meet the income targeting requirement.<sup>105</sup>

Developments subject to the deconcentration requirement are referred to as 'covered developments' and include general occupancy (family) public housing developments.

#### ***Steps for Implementation<sup>106</sup>***

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

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

#### SHA Policy

*SHA will determine the average income of all families in all affected developments on an annual basis.*

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

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<sup>102</sup> Fair Housing Amendments Act of 1988

<sup>103</sup> 24 CFR 903.1 and 903.2

<sup>104</sup> 24 CFR 903.7(b)

<sup>105</sup> 24 CFR 903.2(c)(5)

<sup>106</sup> 24 CFR 903.2(c)(1)

### SHA Policy

*SHA will determine the average income of all families residing in each affected development (not adjusting for unit size) on an annual basis.*

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

Step 4. SHA with affected developments having average incomes outside the EIR must then determine whether or not these developments are consistent with its local goals and annual plan.

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

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

- Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities
- Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments
- Establishing a preference for admission of working families in developments below the EIR
- Skipping a family on the waiting list to reach another family in an effort to further the goals of deconcentration
- Providing other strategies permitted by statute and determined by SHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and SHA strategic objectives.
- A family has the sole discretion whether to accept an offer of a unit made under the family for choosing not to accept an offer of a unit under SHA's deconcentration policy.<sup>107</sup>

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

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<sup>107</sup> 24 CFR 903.2(c)(4)

### SHA Policy

*For developments outside the EIR, SHA will take the following actions to provide for deconcentration of poverty and income mixing:*

*If any covered development has average incomes outside the Established Income Range (EIR), SHA may explain or justify the income profile for these developments as being consistent with the furthering two sets of goals: the goals of deconcentration of poverty and income mixing as specified by the statute (bringing the higher income tenants into lower income developments and vice versa); and the local goals and strategies contained in SHA's Annual Plan. Elements of explanations or justifications that may satisfy these requirements can be found in CFR 903.2(c)(1)(iv).*

*If SHA determines that a covered development falls outside the HUD EIR, SHA may skip over families with higher or lower incomes if needed to meet deconcentration requirements.*

### **Order of Selection<sup>108</sup>**

#### First Priority - Transfers

SHA has five possible types of transfers: Emergency, Administrative - Category 1, Category 2, and Category 3 and Incentive Transfers.

The definitions of each type of transfer is found in Chapter 12, however the priority for transfers is listed below:

- 1) Emergency Transfers
- 2) Category 1 and 2 transfers
- 3) Incentive Transfers
- 4) Category 3 Transfers

#### Second priority – Date and Time Order

Applicants will be contacted in the date and time order in which they applied to the applicable AMP-based waiting list according to available unit sizes.

Properties with the highest number of vacancies will be offered first. If equal number of vacancies are available in more than one complex, offer will be made based on the unit that has the earliest vacate date and time.

In addition to the above, the following requirements also apply:

- Selection shall be made in accordance with occupancy standards (see Chapter 5).

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<sup>108</sup> 24 CFR 960.206(e)

- Accessible units will be offered first to those tenants/applicants who require the features of the unit.
- When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the vacant unit, SHA will require the applicant to agree to move to a non-accessible unit, when available.
- Selection will also be made in accordance with income targeting and deconcentration requirements.

For rejection of units, see Chapter 5.

When selecting applicants from the waiting list, SHA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. SHA will offer the unit to the highest ranking applicant who qualifies for that unit size or type, or that requires the accessibility features.

By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application.

Factors such as deconcentration or income mixing and income targeting will also be considered in accordance with HUD requirements and SHA policy.

#### 4-III.C. NOTIFICATION OF SELECTION

SHA must notify the applicant when they are selected from the waiting list.

##### SHA Policy

*SHA will notify the family by first class mail when they have reached the top of the waiting list.*

*The notice will inform the applicant of the deadline date and provide instructions on how to respond if they are still interested in a unit.*

*If a notification letter is returned to SHA with no forwarding address, the applicant will be removed from the waiting list without further notice. Such failure to respond by the applicant prevents SHA from making an eligibility determination; therefore no informal hearing will be offered.*

#### 4-III.D. THE APPLICATION INTERVIEW

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

constitute admission to the program.

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.<sup>109</sup>

*SHA Policy*

*Families selected from the AMP based waiting lists are required to participate in an eligibility interview.*

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

The interview will be conducted only if the head of household or spouse/co-head provides appropriate documentation of legal identity (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, SHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (see Chapter 3).

Interviews will be conducted in English. For Limited English Proficient (LEP) applicants, SHA will provide translation services in accordance with Chapter 2. An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

The applicant must contact SHA in advance of the interview to schedule a new appointment. If an applicant does not attend the first scheduled interview, SHA will send another notification letter with a new interview appointment time.

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<sup>109</sup> 24 CFR 8.4(a) and 24 CFR 100.204(a)

Applicants who fail to attend two consecutively scheduled interviews without *prior* SHA approval will have their applications withdrawn from the active waiting list based on the family's failure to supply information the needed to determine eligibility.

#### 4-III.E. FINAL ELIGIBILITY DETERMINATION<sup>110</sup>

SHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements, including SHA's suitability standards, SHA must make a final determination of eligibility (see Chapter 3).

When a determination is made that a family is eligible and satisfies all requirements for admission, including tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined.<sup>111</sup>

##### SHA Policy

*SHA will notify a family by phone or in writing of their eligibility and will provide the approximate date of occupancy insofar as that date can be reasonably determined.*

SHA must promptly notify any family determined to be ineligible for admission of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination.<sup>112</sup>

##### SHA Policy

*If SHA determines that the family is ineligible, SHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal hearing (see Chapter 14).*

#### EXHIBIT 4-1: OUTREACH TO LOWER-INCOME FAMILIES

SHA will conduct appropriate outreach as needed, including but not limited to:

##### 1. MEDIA

a. Newspaper. Daily general circulation newspapers may be used for any special outreach efforts when determined necessary. When appropriate, news releases are given to the Statesman Journal and other local general circulation publications to provide information to the general community.

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<sup>110</sup> 24 CFR 960.208

<sup>111</sup> 24 CFR 960.208(b)

<sup>112</sup> 24 CFR 960.208(a)

b. Radio. The various major Salem radio stations are used to assist in reaching the general public through radio spots, news releases, and talk shows.

c. Brochures/fliers: Brochures/fliers are distributed throughout the community on an as needed basis.

2. OTHER

a. Emergency Housing Network. Information is provided on a monthly basis to the various members of the Emergency Housing Network promoting Salem Housing Authority's programs and services.

b. Salem Housing Authority website. SHA's website includes information on SHA administered programs/projects. SHA may use its website to advertise availability of units and/or program funding.

## **Chapter 5: OCCUPANCY STANDARDS AND UNIT OFFERS**

### **INTRODUCTION**

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

This chapter contains policies for assigning unit size and making unit offers. SHA's waiting list and selection policies are contained in Chapter 4. Together, Chapters 4 and 5 of the ACOP comprise SHA's Tenant Selection and Assignment Plan (TSAP).

Policies in this chapter are organized in three parts.

**Part I: Occupancy Standards.** This part contains SHA's standards for determining the appropriate unit size for families of different sizes and types.

**Part II: Unit Offers.** This part contains SHA's policies for making unit offers, and describes actions to be taken when unit offers are refused.

**Part III: Non-Smoking Policy.** This part contains SHA's non-smoking policy.

### **PART I: OCCUPANCY STANDARDS**

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

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

#### **5-I.B. DETERMINING UNIT SIZE**

In selecting a family to occupy a particular unit, SHA may match characteristics of the family with the type of unit available, for example, number of bedrooms.<sup>113</sup>

HUD does not specify the number of persons who may live in public housing units of various sizes. SHA is permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children.<sup>114</sup>

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<sup>113</sup> 24 CFR 960.206(c)

<sup>114</sup> PH Occ GB, p. 62

Although SHA does determine the size of unit the family qualifies for under the occupancy standards, SHA does not determine who shares a bedroom/sleeping room.

SHA's occupancy standards for determining unit size must be applied in a manner consistent with fair housing requirements.

#### SHA Policy

*Units shall be occupied by families of the appropriate size. This policy maintains the usefulness of the units while preserving them from excess wear and tear and under- utilization.<sup>115</sup>*

BEDROOM SIZE	MINIMUM NUMBER OF PERSONS PER UNIT	MAXIMUM NUMBER OF PERSONS PER UNIT
0	N/A	N/A
1	N/A	N/A
2	2	5
3	3	7
4	4	9
5	5	11
6	N/A	N/A

*The following principals govern the size of the unit for which a family will qualify. Generally, two people are expected to share each bedroom, with these exceptions:*

- a) *Exceptions to the largest permissible unit size may be made in case of reasonable accommodations for a person with disabilities.*
- b) *An unborn child will not be counted as a person in determining unit size; however, a single pregnant woman with no other children will be assigned to a two bedroom unit.*
- c) *SHA will count a child temporarily away from the home due to placement in foster care, kinship care or school, as a person when determining unit size,*
- d) *A single head of household parent shall not be required to share a bedroom with his/her child although they may do so at the request of the family.*
- e) *A live-in attendant will be assigned a separate bedroom. Single elderly applicants/tenants with live-in attendants will be assigned a two bedroom unit.*
- f) *Families that qualify for more than one bedroom size will be placed on all bedroom size waiting lists for which they qualify.*

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<sup>115</sup> HUD PH Guidebook, Chapter 5

- g) Families who opt for a smaller unit, when eligible for both the smaller and larger size, will be required to sign a statement agreeing to occupy the unit assigned at their request until their family size or circumstances change.
- h) An applicant family that has had a change in household composition when they reach the top of the waiting list and no longer qualifies for the unit size for which they originally applied, will be notified that they must reapply for the appropriate sized waiting list.

## 5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS

### SHA Policy

*SHA will consider granting exceptions to the occupancy standards at the family's request if SHA determines the exception is justified by the relationship, age, sex, health, or disability of family members, or other personal circumstances. For example, an exception may be granted if a larger bedroom size is needed for medical equipment due to its size and/or function, or as a reasonable accommodation for a person with disabilities.*

*SHA will consider the size and configuration of the unit when evaluating any requests for exceptions. Exceptions may only be granted if they comply with local housing or occupancy codes, regulations or laws.*

*To prevent vacancies, SHA may provide an applicant family with a larger unit than occupancy standards permit. In these cases the family must agree to transfer to an available, smaller unit if another applicant household qualifies for the larger unit.*

### **Processing Exceptions**

#### SHA Policy

*All requests for exceptions to the occupancy standards must be submitted in writing. In the case of a request for exception as a reasonable accommodation, SHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, SHA will consider the exception request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.*

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

*SHA will notify the family of its decision within 30 calendar days of receiving their request.*

## **PART II: UNIT OFFERS<sup>116</sup>**

### 5-II.A. OVERVIEW

SHA must assign eligible applicants to dwelling units in accordance with a plan that is consistent with civil rights and nondiscrimination.

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

#### SHA Policy

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

*An Applicant whose name comes to the top of the waiting list for the unit size in which they originally applied, but have had a change in family composition and/or any other reason which causes them to be ineligible for the size unit for which they applied, will be notified that they must submit a new application/waiting list request for the size unit in which they now qualify.*

*Note: Applicants are allowed to be on more than one size waiting list at any given time.*

### 5-II.B. NUMBER OF OFFERS

#### SHA Policy

*SHA has adopted a “one offer plan” for offering units to applicants within each designated AMP. Under this plan the first qualified applicant in sequence on the waiting list for the AMP in which the property is located will be made one offer of a unit of the appropriate size.*

*If more than one unit of the appropriate type and size is available in multiple properties covered by the AMP, the offer will be made based on the unit with the oldest ready for occupancy date.*

*If an applicant rejects the offer for other than good cause, their name will be withdrawn from the waiting list and the applicant will be notified that they will need to reapply to the waiting list(s) if still interested.*

### 5-II.C. TIME LIMIT FOR UNIT OFFER ACCEPTANCE OR REFUSAL

#### SHA Policy

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<sup>116</sup> 24 CFR 1.4(b)(2)(ii) & 24 CFR 960.208

*Applicants must accept or refuse a unit offer within 3 business days of the date of the unit offer.*

*If the applicant does not accept or refuse a unit offer within 3 business days of the date of the unit offer, SHA will consider the offer a refusal by default and the applicant will be notified that their application has been withdrawn and they will have to reapply to the waiting list for the AMP in which the unit offered was located.*

## **5-II.D. REFUSALS OF UNIT OFFERS**

### **Good Cause for Unit Refusal**

#### SHA Policy

*Applicants may refuse to accept a unit offer for "good cause." Good cause includes situations in which an applicant is willing to move but is unable to do so at the time of the unit offer due to one of the issues listed below, or the applicant is able to demonstrate that acceptance of the offer would cause undue hardship not related to considerations of the applicant's race, color, national origin, etc.<sup>117</sup> Examples of good cause for refusal of a unit offer include, but are not limited to, the following:*

- *Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities*
- *The family demonstrates to SHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption*
- *A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member*
- *The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.*
- *Family does not have access to funds that would enable them to move and be able*

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<sup>117</sup> PH Occ GB, p. 104

*to pay applicable rent and security deposits, as well as place utilities in their name.*

- *Applicants will be allowed two “good cause” refusals. In the case of the first two unit refusals for good cause the applicant will not be removed from the waiting list as described in this section. The applicant will remain at the top of the waiting list until the family has refused a third unit. Whether or not the offer is rejected due to good cause, after two refusals, the applicant will be notified that they are being withdrawn from the waiting list and that they will need to reapply if interested.*

SHA will require documentation of good cause for unit refusals.

### **Unit Refusal Without Good Cause**

#### *SHA Policy*

*When an applicant rejects the final unit offer without good cause, SHA will remove the applicant’s name from the waiting list for the AMP in which the offered unit was located. The applicant will be notified of the removal of their name from the waiting list and instructed to reapply to the waiting list if interested.*

*Families needing reasonable accommodation due to a disability will be considered on case by case basis.*

### 5-II.E. ACCESSIBLE UNITS<sup>118</sup>

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

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

- First, to a current resident of another unit of the same development, or other public housing development under SHA’s control, who has a disability that requires the special features of the vacant unit and is occupying a unit not having such features; or if no such occupant exists, then:
- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, SHA will require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

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<sup>118</sup> 24 CFR 8.27

SHA Policy

*SHA will offer accessible units per Chapter 4, 4-III.B.*

**PART III: NON-SMOKING POLICY**

**5-I.A. NON-SMOKING UNITS**

Due to the increased risk of fire, increased maintenance costs, and the health effects of secondhand smoke, SHA has adopted non-smoking policies at all its owned or managed housing properties. This policy prohibits smoking in tenant units and all areas other than those areas designated as smoking areas as established by management, and applies to all residents, guests, visitors, service personnel and employees.

## Chapter 6: INCOME AND RENT DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 960, Subpart C]

### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's rent payment. SHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and SHA policies related to these topics in three parts as follows:

**Part I: Annual Income.** HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and SHA policies for calculating annual income are found in Part I.

**Part II: Adjusted Income.** Once annual income has been established HUD regulations require SHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and SHA policies for calculating adjusted income are found in Part II.

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

### PART I: ANNUAL INCOME

#### 6-I.A. OVERVIEW

The general regulatory definition of *annual income* shown below is from 24 CFR 5.609.

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

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member (which includes but is not limited to: payments such as social security benefits that are being paid to a payee who is not living in the assisted household, on behalf of a family member); or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date;
- (3) Which are not specifically excluded in paragraph 5.609(c); and
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Exhibit 6-1: Annual Income Inclusions
- Exhibit 6-2: Annual Income Exclusions
- Exhibit 6-3: Treatment of Family Assets
- Exhibit 6-4: Earned Income Disallowance
- Exhibit 6-5: The Effect of Welfare Benefit Reduction

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately.<sup>119</sup> In this ACOP, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

## 6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

<b>Summary of Income Included and Excluded by Person</b>	
Live-in aides	Income from all sources is excluded. <sup>120</sup>
Foster child or foster adult	Income from all sources is excluded. <sup>121</sup>
Head, spouse, or co-head; other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded. <sup>122</sup> All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co-head)	Employment income above \$480/year is excluded. <sup>123</sup> All other sources of income, except those specifically excluded by the regulations, are included.

### **Temporarily Absent Family Members**

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

<sup>119</sup> 24 CFR 5.609(b) and 24 CFR 5.609(c)

<sup>120</sup> 24 CFR 5.609(c)(5)

<sup>121</sup> 24 CFR 5.609(a)(1)

<sup>122</sup> 24 CFR 5.609(c)(1)

<sup>123</sup> 24 CFR 5.609(c)(11)

### SHA Policy

*Generally an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.*

### **Absent Students**

#### SHA Policy

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

### **Absences Due to Placement in Foster Care**

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.<sup>124</sup>

#### SHA Policy

*If a child has been placed in foster care, SHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member, however once the child has been absent for over 180 days, SHA will determine on a case by case basis whether they will continue to be a family member or not.*

### **Absent Head, Spouse, or Co-head**

#### SHA Policy

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

### **Individuals Confined for Medical Reasons**

#### SHA Policy

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

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<sup>124</sup> 24 CFR 5.403

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

## **Joint Custody of Children**

### SHA Policy

*Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 50 percent or more of the time. (50 percent of the time is equal to 183 or more days per calendar year.)*

*When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, SHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.*

*See 3-I.F. Dependents in Chapter 3 for further information regarding joint custody of children.*

## **Caretakers for a Child**

### SHA Policy

*If neither a parent nor a designated guardian remains in a household receiving assistance, SHA will take the following actions.*

- *If a responsible agency has determined that another adult is to be brought into the unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.*
- *If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases SHA will extend the caretaker's status as an eligible visitor.*
- *At any time that custody or guardianship legally has been awarded to a caretaker, the lease will be transferred to the caretaker, as head of household.*

- *During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.*

## 6-I.C. ANTICIPATING ANNUAL INCOME

SHA is required to count all income “anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date”.<sup>125</sup> Policies related to anticipating annual income are provided below.

### **Basis of Annual Income Projection**

SHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes SHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected;
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income);<sup>126</sup>
- The PHA believes that past income is the best available indicator of expected future income.<sup>127</sup>

### SHA Policy

*When SHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), SHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to SHA to show why the historic pattern does not represent the family's anticipated income.*

### **Known Changes in Income**

*If SHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.*

**Example:** An employer reports that a full-time employee who has been receiving \$9/hour will begin to receive \$9.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows:  $(\$9/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$9.25/\text{hour} \times 40 \text{ hours} \times 52 \text{ weeks})$

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<sup>125</sup> 24 CFR 5.609(a)(2)

<sup>126</sup> 24 CFR 5.609(d)

<sup>127</sup> Ibid.

$\times 40 \text{ hours} \times 45 \text{ weeks}$ ).

### ***History of Seasonal Employment/Unemployment***

*Family members who show a history of working in seasonal employment and then drawing unemployment benefits when not working will have employment calculated for the months/weeks they historically have worked and the remainder of the year will be calculated using unemployment benefits (UB), unless the family member is able to verify that UB are not available.*

### ***Income that Cannot be Anticipated for a Full 12 Months***

*Income that cannot be anticipated for a full 12 months (such as unemployment compensation/benefits) should be calculated assuming the current circumstances will last a full 12 months unless there is an anticipated change in the future.*

If an applicant/tenant is currently unemployed but will be starting work soon, SHA would use the person's unemployment compensation based on the start date of the employment and then calculate the employment income from that point forward to the end of the 12 month period.

**Example:** On April 1, SHA is processing a June 1 annual recertification and verifies that John is getting UB of \$145/week; however, he will return to work at the cannery beginning July 1, earning \$8.40/hr 20 hrs a week and will work for 5 months. In this scenario SHA would count UB of \$145 X 4.33 x 1 - and wages of \$8.40 x 20 x 4.33 x 5, plus UB of \$145 x 4.33 x 6 to calculate annual income.

*If unable to determine a start point for employment, SHA will anticipate 52 weeks of the unemployment compensation/benefit.*

### ***Income Anticipation Cutoff***

*The long-application/certification process extends until the point at which the applicant/tenant signs their lease or lease amendment and/or is given notice of rent. All income and changes in income verified through the long-application/certification process will be considered in the calculation of the applicant's/tenant's income and rent. The applicant/tenant is responsible for being forthcoming with all known income and anticipated changes in income throughout the long-application/certification process; SHA takes a variety of steps to ensure accurate calculation of income and rent.*

*An applicant/tenant who receives notice of change of income (e.g., new employment) after signing a lease or lease amendment and being given a notice of rent is not responsible for reporting such change under the Public Housing Program until the following reexamination.*

*In no case will an applicant/tenant receive less than 30 days' notice of new rent.*

*An Interim Recertification (See Chapter 9) is available to any Public Housing tenant who believes their rent should be lower due to a decrease in income after initial certification or annual reexam.*

## **Using Up-Front Income Verification (UIV/EIV)**

HUD requires the use of up-front income verification (UIV/EIV). UIV is “the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals.”

HUD allows SHA to use UIV/EIV information in conjunction with family-provided documents to anticipate income.

### **SHA Policy**

*SHA procedures for anticipating annual income will include the use of UIV/EIV methods approved by HUD in conjunction with family-provided documents dated within the last 60 days of SHA’s interview date.*

*EIV printouts will be used by staff as a resource for indicating sources of income of current residents. Residents will be required to provide the 2 most current paystubs for employers listed on the EIV printouts and SHA will anticipate income based on the paystubs provided. Current paystubs are defined as being within the most recent 60 days.*

*SHA will use the EIV printout for calculating income from the SSA; unless the tenant disputes the amount listed on the EIV printout. In those cases, the resident will be required to obtain and submit a current award letter from the SSA.*

*If the resident disputes a source of income that is reported on the EIV printout; the resident will be informed as to how to report identify theft in order to not have income from this source(s) counted. If the resident previously worked at a source listed on the EIV printout but now states they no longer work there, SHA staff will send a termination of employment verification form to the employer.*

*For more information/procedures on the use of UIV/EIV see Chapter 7. I.C.*

## **6-I.D. EARNED INCOME**

### **Types of Earned Income Included in Annual Income**

#### **Wages and Related Compensation**<sup>128</sup>

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income.

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<sup>128</sup> 24 CFR 5.609(b)(1)]

### SHA Policy

*SHA will use applicants' /tenants' two most current paystubs when annualizing all earned income, including bonuses and commissions. If the two most current paystubs are not adequate to calculate and annualize income; SHA will request that a third party employment verification form be completed by the third party. If the third party does not complete the employment verification form and/or if the information provided is incomplete, SHA may use tax returns and/or employment history provided via the State Wage Agency to annualize earned income.*

### Some Types of Military Pay

All regular pay, special pay, and allowances of a member of the Armed Forces are counted<sup>129</sup> except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire.<sup>130</sup>

### **Types of Earned Income Not Counted in Annual Income**

#### Temporary, Nonrecurring, or Sporadic Income<sup>131</sup>

This type of income (including gifts) is not included in annual income.

#### SHA Policy

*Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.*

#### **Children's Earnings<sup>132</sup>**

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income. (See Eligibility chapter for a definition of *foster children*.)

#### **Certain Earned Income of Full-Time Students**

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted.<sup>133</sup> To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program.

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<sup>129</sup> 24 CFR 5.609(b)(8)

<sup>130</sup> 24 CFR 5.609(c)(7)

<sup>131</sup> 24 CFR 5.609(c)(9)

<sup>132</sup> 24 CFR 5.609(c)(1)

<sup>133</sup> 24 CFR 5.609(c)(11)

## **Income of a Live-in Aide**

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income.<sup>134</sup> (See Eligibility chapter for a full discussion of live-in aides.)

## **Income Earned under Certain Federal Programs<sup>135</sup>**

Income from some federal programs is specifically excluded from consideration as income, including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973<sup>136</sup>
- Payments received under programs funded in whole or in part under the Job Training Partnership Act<sup>137</sup>
- Awards under the federal work-study program<sup>138</sup>
- Payments received from programs funded under Title V of the Older Americans Act of 1985<sup>139</sup>
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990<sup>140</sup>
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998<sup>141</sup>

## **Resident Service Stipend<sup>142</sup>**

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

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<sup>134</sup> 24 CFR 5.609(c)(5)

<sup>135</sup> 24 CFR 5.609(c)(17)

<sup>136</sup> 42 U.S.C. 5044(g), 5058

<sup>137</sup> 29 U.S.C. 1552(b)

<sup>138</sup> 20 U.S.C. 1087 uu

<sup>139</sup> 42 U.S.C. 3056(f)

<sup>140</sup> 42 U.S.C. 12637(d)

<sup>141</sup> 29 U.S.C. 2931

<sup>142</sup> 24 CFR 5.600(c)(8)(iv)

## State and Local Employment Training Program

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program.<sup>143</sup>

### SHA Policy

*SHA defines a training program as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual’s ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education.”<sup>144</sup>*

*SHA defines incremental earnings and benefits as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program.<sup>145</sup>*

*In calculating the incremental difference, SHA will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058.*

## HUD-Funded Training Programs

Amounts received under training programs funded in whole or in part by HUD are excluded from annual income.<sup>146</sup> Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

### SHA Policy

*To qualify as a training program, the program must meet the definition of training program*

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<sup>143</sup> 24 CFR 5.609(c)(8)(v)

<sup>144</sup> Notice PIH 98-2, p. 3

<sup>145</sup> expired Notice PIH 98-2, pp. 3-4

<sup>146</sup> 24 CFR

5.609(c)(8)(i)

*provided above for state and local employment training programs.*

## **Earned Income Tax Credit**

Earned income tax credit (EITC) refund payments received on or after January 1, 1991,<sup>147</sup> are excluded from annual income.<sup>148</sup> Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

## **Earned Income Disallowance**

The earned income disallowance is discussed in section 6-I.E below.

### **6-I.E. EARNED INCOME DISALLOWANCE**<sup>149</sup>

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 960.255 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

#### **Eligibility**

This disallowance applies only to individuals in families already participating in the public housing program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families.<sup>150</sup>
- New employment or increased earnings by a family member who has received

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<sup>147</sup> 26 U.S.C. 32(j)

<sup>148</sup> 24 CFR 5.609(c)(17)

<sup>149</sup> 24 CFR 960.255

<sup>150</sup> 24 CFR 5.603(b)

benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

### **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

#### **SHA Policy**

*SHA defines prior income, or prequalifying income, as the family member's last certified income prior to qualifying for the EID.*

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

#### ***Initial 12-Month Exclusion***

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. As of May 9, 2016, the initial 12 months of the exclusion period are consecutive, and immediately followed by the second 12-month exclusion period.<sup>151</sup>

#### **SHA Policy**

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

#### ***Second 12-Month Exclusion and Phase-In***

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. As of May 9, 2016, the 12 months are consecutive.<sup>152</sup>

#### ***Lifetime Limitation***

As of May 9, 2016, there is a 24-month period lifetime limitation on the EID exclusion benefit.<sup>153</sup> The one-time eligibility for the EID applies even if the eligible individual begins to receive

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<sup>151</sup> PIH Notice 2016-05

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

## **Individual Savings Accounts<sup>154</sup>**

### *SHA Policy*

*SHA chooses not to establish a system of individual savings accounts (ISAs) for families who qualify for the EID.*

*The following rules pertaining to ISAs do not apply to this public housing program.*

A qualified family paying income-based rent may choose an ISA instead of being given the EID. The PHA must advise the family that the ISA option is available. Families who choose the ISA will pay the higher rent and the PHA will deposit the difference between the higher rent and the EID rent in the savings account.

Amounts deposited to ISAs may only be withdrawn for the following reasons:

- Because the family is purchasing a home;
- To pay education costs of family members;
- Because the family is moving out of public or assisted housing; or
- To pay any other expenses the PHA authorizes to promote economic self-sufficiency.

The PHA is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The PHA may not charge the family a fee for maintaining the account. At least once each year the PHA must provide the family with a statement of the balance in their account, including any interest earned, if required by state law.

### *SHA Policy*

*When applicable, the PHA will provide the family with a statement of the balance in their account, including any interest earned, annually and upon request when the family makes withdrawals from the account.*

If the family moves out of public housing, the PHA must return the balance in the family's ISA, less any amounts the family owes the PHA.

## **6-I.F. BUSINESS INCOME<sup>155</sup>**

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<sup>154</sup> 24 CFR 960.255(d)

<sup>155</sup> 24 CFR 5.609(b)(2)

Annual income includes “the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.”<sup>156</sup>

## **Business Expenses**

Net income is “gross income less business expense.”

### *SHA Policy*

*To determine business expenses that may be deducted from gross income, SHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses per IRS Publication 535, unless a topic is addressed by HUD regulations or guidance as described below.*

## **Business Expansion**

HUD regulations do not permit SHA to deduct from gross income expenses for business expansion.

### *SHA Policy*

*Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.*

## **Capital Indebtedness**

HUD regulations do not permit SHA to deduct from gross income the amortization of capital indebtedness.

### *SHA Policy*

*Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means SHA will allow as a business expense interest, but not principal, paid on capital indebtedness.*

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<sup>156</sup> 24 CFR 5.609(b)(2)

## **Negative Business Income**

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

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

HUD regulations require SHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

### *SHA Policy*

*Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, SHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.*

## **Co-owned Businesses**

### *SHA Policy*

*If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.*

## **6-I.G. UNEMPLOYMENT COMPENSATION**

### *SHA Policy*

*Family members who show a history of working in seasonal employment and then drawing unemployment benefits when not working will have employment calculated for the months/weeks they historically have worked and the remainder of the year will be calculated using unemployment benefits (UB), unless the family member is able to verify that UB are not available.*

If an applicant/tenant is currently unemployed but will be starting work soon, SHA would use the person's unemployment compensation based on the start date of the employment and then calculate the employment income from that point forward to the end of the 12 month period.

**Example:** On April 1, SHA is processing a June 1 annual recertification and verifies that John is getting UB of \$145/week; however, he will return to work at the cannery beginning July 1, earning \$8.40/hr 20 hrs a week and will work for 5 months. In this scenario SHA would count UB of \$145 X 4.33 x 1 - and wages of \$8.40 x 20 x 4.33 x 5, plus UB of \$145 x 4.33 x 6 to calculate annual income.

*If unable to determine a start point for employment, SHA will anticipate 52 weeks of the unemployment compensation/benefit.*

## 6-I.H. ASSETS<sup>157</sup>

### **Overview**

There is no asset limitation for participation in the public housing program. However, HUD requires that SHA include in annual income the “interest, dividends, and other net income of any kind from real or personal property.”<sup>158</sup> This section discusses how the income from various types of assets is determined. For most types of assets, SHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets, and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

### **General Policies**

#### ***Income from Assets***

SHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes SHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) SHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, SHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### **SHA Policy**

*Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to SHA to show why the asset income determination does not represent the family's*

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<sup>157</sup> 24 CFR 5.609(b)(3) and 24 CFR 5.603(b)

<sup>158</sup> 24 CFR 5.609(b)(3)

*anticipated asset income.*

### ***Valuing Assets***

The calculation of asset income sometimes requires SHA to make a distinction between an asset's market value and its cash value.

The *market value* of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).

The *cash value* of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

### **SHA Policy**

*Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions.*

### ***Lump-Sum Receipts***

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account).<sup>159</sup> (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

### ***Imputing Income from Assets*<sup>160</sup>**

When net family assets are \$5,000 or less, SHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, SHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HUD-established\* passbook savings rate.

PIH Notice 2012-29 issued 10/21/12 requires that PHA's review and establish the HUD imputed passbook rate on an annual basis, which is to be used when assets total \$5,000 or more. SHA must count the higher of all income earned from all assets or the HUD imputed passbook rate.

### **SHA Policy**

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<sup>159</sup> RHIIP FAQs

<sup>160</sup> 24 CFR 5.609(b)(3)

*SHA will obtain the FDIC savings rate in January of each calendar year and will set the HUD imputed passbook rate at the rate published for savings accounts; on the date the reports are run; or if the published rate is within .75% plus or minus of the previously established rate, the SHA established HUD imputed passbook rate will not change.*

### ***Determining Actual Anticipated Income from Assets***

It may or may not be necessary for SHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

### ***Withdrawal of Cash or Liquidation of Investments***

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

### ***Jointly Owned Assets***

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

#### **SHA Policy**

*If an asset is owned by more than one person and any family member has unrestricted access to the asset, SHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.*

*If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, SHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, SHA will prorate the asset evenly among all owners.*

### ***Assets Disposed Of for Less than Fair Market Value<sup>161</sup>***

HUD regulations require SHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the

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<sup>161</sup> 24 CFR 5.603(b)

examination/reexamination, except as noted below.

### ***Minimum Threshold***

SHA may set a threshold below which assets disposed of for less than fair market value will not be counted.

#### **SHA Policy**

*SHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years does not exceed the gross amount received for the assets by more than \$1,000.*

*When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).*

*Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.*

### ***Separation or Divorce***

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

#### **SHA Policy**

*All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.*

### ***Foreclosure or Bankruptcy***

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

### ***Family Declaration***

#### **SHA Policy**

*Families must sign a declaration form at initial certification and each annual recertification*

*identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. SHA may verify the value of the assets disposed of if other information available to SHA does not appear to agree with the information reported by the family.*

## **Types of Assets**

### ***Checking and Savings Accounts***

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

#### **SHA Policy**

*In determining the value of a checking account, SHA will use the average monthly balance for the last six months.*

*In determining the value of a savings account, SHA will use the current balance.*

*In determining the anticipated income from an interest-bearing checking or savings account, SHA will multiply the value of the account by the current rate of interest paid on the account.*

### ***Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds***

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

#### **SHA Policy**

*In determining the market value of an investment account, SHA will use the value of the account on the most recent investment report.*

*How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), SHA will calculate asset income based on the earnings for the most recent reporting period.*

### ***Equity in Real Property or Other Capital Investments***

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker

fees) that would be incurred in selling the asset.<sup>162</sup>

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs<sup>163</sup>
- Equity in real property when a family member's main occupation is real estate. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands<sup>164</sup>
- Real property and capital assets that are part of an active business or farming operation.

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income

### SHA Policy

*In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless SHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.*

### **Trusts**

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

#### **Revocable Trusts**

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset.<sup>165</sup> Any income earned as a result of investment of trust funds is counted as

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<sup>162</sup> PH GB, p. 121

<sup>163</sup> 24 CFR 5.603(b)

<sup>164</sup> 24 CFR 5.603(b)

<sup>165</sup> HCV GB, p. 5-25

actual asset income, whether the income is paid to the family or deposited in the trust.

### ***Non-revocable Trusts***

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate.<sup>166</sup> (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

### **Retirement Accounts**

#### ***Company Retirement/Pension Accounts***

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the PHA must know whether the money is accessible before retirement.

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset.

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate, except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

#### ***IRA, Keogh, and Similar Retirement Savings Accounts***

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty.

### **Personal Property**

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset.

#### **SHA Policy**

*In determining the value of personal property held as an investment, SHA will use the family's estimate of the value. However, SHA also may also request the family to obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.*

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<sup>166</sup> 24 CFR 5.603(b)

*Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.*

Necessary items of personal property are not considered assets.<sup>167</sup>

#### SHA Policy

*Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.*

#### ***Life Insurance***

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

### 6-I.H. PERIODIC PAYMENTS

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

#### **Periodic Payments Included in Annual Income**

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family.<sup>168</sup>
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum.<sup>169</sup>

#### **Lump-Sum Payments for the Delayed Start of a Periodic Payment**

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the

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<sup>167</sup> 24 CFR 5.603(b)

<sup>168</sup> 24 CFR 5.609(b)(4) and (b)(3)

<sup>169</sup> 24 CFR 5.609(b)(4)

delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income.<sup>170</sup>

## **Periodic Payments Excluded from Annual Income**

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).<sup>171</sup>

### **SHA Policy**

*SHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency.*

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home<sup>172</sup>
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c))<sup>173</sup>
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)<sup>174</sup>
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j))<sup>175</sup>.

*Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.).<sup>176</sup>

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<sup>170</sup> 24 CFR 5.609(b)(4)

<sup>171</sup> 24 CFR 5.609(c)(2)

<sup>172</sup> 24 CFR 5.609(c)(16)

<sup>173</sup> 24 CFR 5.609(c)(17)

<sup>174</sup> 24 CFR 5.609(c)(17)

<sup>175</sup> 24 CFR 5.609(c)(17)

<sup>176</sup> 24 CFR 5.609(b)(4)

## **6-I.I. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income<sup>177</sup> if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts.<sup>178</sup> (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

## **6-I.J. WELFARE ASSISTANCE**

### **Overview**

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments.<sup>179</sup>

### **Sanctions Resulting in the Reduction of Welfare Benefits<sup>180</sup>**

SHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was a public housing resident at the time the sanction was imposed.

### ***Covered Families***

The families covered by 24 CFR 5.615 are those "who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance."<sup>181</sup>

### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family's welfare income because the

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<sup>177</sup> 24 CFR 5.609(b)(5)

<sup>178</sup> 24 CFR 5.609(c)(3)

<sup>179</sup> 24 CFR 5.603(b)

<sup>180</sup> 24 CFR 5.615

<sup>181</sup> 24 CFR

5.615(b)

family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, SHA must include in annual income "imputed" welfare income. SHA must request that the welfare agency inform SHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements.<sup>182</sup>

For special procedures related to grievance hearings based upon SHA's denial of a family's request to lower rent when the family experiences a welfare benefit reduction, see Chapter 14, Grievances and Appeals.

### ***Offsets***

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero.<sup>183</sup>

## **6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES<sup>184</sup>**

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with a tenant family.

### **Alimony and Child Support**

SHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

#### **SHA Policy**

*SHA will count court-awarded amounts for alimony and child support unless SHA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.*

*Families who do not have court-awarded alimony and child support awards are not required to*

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<sup>182</sup> 24 CFR 5.615(b)(2)

<sup>183</sup> 24 CFR 5.615(c)(4)

<sup>184</sup> 24 CFR 5.609(b)(7)

*seek a court award and are not required to take independent legal action to obtain collection.*

### **Regular Contributions or Gifts**

SHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family.<sup>185</sup> Temporary, nonrecurring, or sporadic income and gifts are not counted.<sup>186</sup>

#### *SHA Policy*

*Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.*

*Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by SHA. For contributions that may vary from month to month (e.g., utility payments), SHA will include an average amount based upon past history.*

### **6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses<sup>187</sup>
- The full amount of student financial assistance paid directly to the student or to the educational institution, *except that in accordance with Section 224 of the FY 2005 Appropriations Act, the portion of any athletic scholarship assistance available for housing costs must be included in annual income.*<sup>188</sup>

#### *SHA Policy*

*Regular financial support from parents and/or guardians to students for food, clothing personal items, and entertainment is not considered student financial assistance and is included as annual income.*

- Amounts received by participants in other publicly assisted programs which are

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<sup>185</sup> 24 CFR 5.609(b)(7)

<sup>186</sup> 24 CFR 5.609(c)(9)

<sup>187</sup> 24 CFR 5.609(c)(4)

<sup>188</sup> PIH Notice 2005-16

specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program<sup>189</sup>

- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)<sup>190</sup>
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era<sup>191</sup>
- Adoption assistance payments in excess of \$480 per adopted child<sup>192</sup>
- Refunds or rebates on property taxes paid on the dwelling unit<sup>193</sup>
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home<sup>194</sup>
- Amounts specifically excluded by any other federal statute<sup>195</sup>

HUD publishes an updated list of these exclusions periodically. It includes:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977<sup>196</sup>
- (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973<sup>197</sup>
- (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes<sup>198</sup>
- (e) Payments or allowances made under the Department of Health and Human

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<sup>189</sup> 24 CFR 5.609(c)(6) & Section 224 of the FY 2005 Appropriations Act

<sup>190</sup> (24 CFR 5.609(c)(8)(ii)

<sup>191</sup> 24 CFR 5.609(c)(10)

<sup>192</sup> 24 CFR 5.609(c)(12)

<sup>193</sup> 24 CFR 5.609(c)(15)

<sup>194</sup> 24 CFR 5.609(c)(16)

<sup>195</sup> 24 CFR 5.609(c)(17)

<sup>196</sup> 7 U.S.C. 2017 (b)

<sup>197</sup> 42 U.S.C. 5044(g), 5058

<sup>198</sup> 25 U.S.C. 459e

Services' Low-Income Home Energy Assistance Program<sup>199</sup>

(f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998)<sup>200</sup>

(g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians<sup>201</sup>

(h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands<sup>202</sup>

(i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs<sup>203</sup>

(j) Payments received from programs funded under Title V of the Older Americans Act of 1985<sup>204</sup>

(k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

(l) Payments received under the Maine Indian Claims Settlement Act of 1980<sup>205</sup>

(m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990<sup>206</sup>

(n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991<sup>207</sup>

(o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation<sup>208</sup>

(p) Allowances, earnings and payments to AmeriCorps participants under the

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<sup>199</sup> 42 U.S.C. 8624(f)

<sup>200</sup> 29 U.S.C. 2931

<sup>201</sup> Pub. L. 94-540, 90 Stat. 2503-04

<sup>202</sup> 25 U.S.C. 1407-1408

<sup>203</sup> 20 U.S.C. 1087uu

<sup>204</sup> 42 U.S.C. 3056(f)

<sup>205</sup> 25 U.S.C.1721

<sup>206</sup> 42 U.S.C. 9858q

<sup>207</sup> 26 U.S.C. 32(j)

<sup>208</sup> Pub. L. 95-433

- (q) National and Community Service Act of 1990<sup>209</sup>  
Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran<sup>210</sup>
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act<sup>211</sup>
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998<sup>212</sup>
- (t) Any deferred Department of Veteran's Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts.

## PART II: ADJUSTED INCOME

## 6-II.A. INTRODUCTION

## Overview

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611:

In determining adjusted income, the responsible entity (PHA) must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
  - (i) Unreimbursed medical expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed.

This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

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

<sup>209</sup> 42 U.S.C. 12637(d)

<sup>210</sup> 38 U.S.C. 1805

211 42 U.S.C. 10602

212 29 U.S.C. 2931

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7, Verifications.

## **Anticipating Allowable Expenses**

### *SHA Policy*

*Generally, SHA will use current circumstances to anticipate allowable expenses. When possible, for allowable expenses that are expected to fluctuate during the year (e.g., child care during school and nonschool periods and cyclical medical expenses), SHA will estimate costs based on historic data and known future expenses.*

*If a family has an accumulated debt for medical or disability assistance expenses, SHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. SHA may require the family to provide documentation of payments made in the preceding year.*

### **6-II.B. DEPENDENT DEDUCTION**

A deduction of \$480 is taken for each dependent.<sup>213</sup> *Dependent* is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents.<sup>214</sup>

### **6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$400 is taken for any elderly or disabled family.<sup>215</sup> An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities.<sup>216</sup>

### **6-II.D. MEDICAL EXPENSES DEDUCTION<sup>217</sup>**

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

The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction,

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<sup>213</sup> 24 CFR 5.611(a)(1)

<sup>214</sup> 24 CFR 5.603(b)

<sup>215</sup> 24 CFR 5.611(a)(2)

<sup>216</sup> 24 CFR 5.403

<sup>217</sup> 24 CFR 5.611(a)(3)(i)

the medical expenses of all family members are counted.

### **Definition of *Medical Expenses***

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

### **SHA Policy**

*The most current IRS Publication 502, Medical and Dental Expenses, will be used to determine the costs that qualify as medical expenses.*

### **Families That Qualify for Both Medical and Disability Assistance Expenses**

### **SHA Policy**

*This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.*

*When expenses anticipated by a family could be defined as either medical or disability assistance expenses, SHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.*

## **6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION<sup>218</sup>**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

### **Earned Income Limit on the Disability Assistance Expense Deduction**

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work.<sup>219</sup> The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense.<sup>220</sup> The earned income used

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<sup>218</sup> 24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)

<sup>219</sup> 24 CFR 5.603(b)

<sup>220</sup> 24

CFR 5.611(a)(3)(ii)

for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

#### **SHA Policy**

*The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family's request, SHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.*

*When SHA determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members' incomes [PH Occ GB, p. 124].<sup>221</sup>*

#### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows: “Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals,” but only if these items are directly related to permitting the disabled person or other family member to work. HUD advises PHAs to further define and describe auxiliary apparatus.

#### ***Eligible Auxiliary Apparatus***

#### **SHA Policy**

*Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible expenses. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.*

#### ***Eligible Attendant Care***

The family determines the type of attendant care that is appropriate for the person with disabilities.

#### **SHA Policy**

*Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing*

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<sup>221</sup> PH Occ GB, p. 124

*services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.*

*Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.*

*If the care attendant also provides other services to the family, SHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.*

### ***Payments to Family Members***

No disability expenses may be deducted for payments to a member of a tenant family.<sup>222</sup> However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are reimbursed by an outside source.

### ***Necessary and Reasonable Expenses***

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### ***SHA Policy***

*SHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, SHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and SHA will consider, the family's justification for costs that exceed typical costs in the area.*

### ***Families That Qualify for Both Medical and Disability Assistance Expenses***

#### ***SHA Policy***

*This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.*

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<sup>222</sup> 23 CFR

*When expenses anticipated by a family could be defined as either medical or disability assistance expenses, SHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.*

## **6-II.F. CHILD CARE EXPENSE DEDUCTION**

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household. However, child care expenses for foster children that are living in the assisted family’s household, are included when determining the family’s child care expenses.

### **Qualifying for the Deduction**

#### ***Determining Who Is Enabled to Pursue an Eligible Activity***

##### **SHA Policy**

*The family must identify the family member(s) enabled to pursue an eligible activity. The term eligible activity in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).*

*In evaluating the family’s request, SHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.*

##### **Seeking Work**

##### **SHA Policy**

*If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member’s efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member’s job search efforts are not commensurate with the child care expense being allowed by SHA.*

##### **Furthering Education**

##### **SHA Policy**

*If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.*

### ***Being Gainfully Employed***

#### *SHA Policy*

*If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.*

### **Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income.”<sup>223</sup> The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

Note: The paragraph below is regulatory; however it has been bolded so that staff is aware of this issue when calculating child care expense deductions for a family member who is receiving EID.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

The PHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working.

#### *SHA Policy*

*When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, SHA generally will limit allowable child care expenses to the earned*

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<sup>223</sup> 24 CFR 5.603(b)

*income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.*

### **Eligible Child Care Expenses**

The type of care to be provided is determined by the tenant family. SHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care.

#### ***Allowable Child Care Activities***

##### **SHA Policy**

*For school-age children, costs attributable to public or private school activities during standard school hours are not considered.*

*Child care expenses for a child or children who are attending school, will be calculated based on a standard school year of 36 weeks of school and 16 weeks of vacation.*

*The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.*

*If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, SHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.*

#### ***Necessary and Reasonable Costs***

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

##### **SHA Policy**

*Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.*

*To establish the reasonableness of child care costs, SHA will use the schedule of child care costs*

*from the Department of Human Services day care allowance schedule as a guide to determine the maximum allowable deductions for childcare expenses. Families may present, and SHA will consider, justification for costs that exceed typical costs in the area.*

#### **6-II.G. PERMISSIVE DEDUCTIONS<sup>224</sup>**

Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the PHA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions.<sup>225</sup>

The *Form HUD-50058 Instruction Booklet* states that the maximum allowable amount for total permissive deductions is less than \$90,000 per year.

#### **SHA Policy**

*SHA has opted to not allow permissive deductions as allowed by HUD.*

### **PART III: CALCULATING RENT**

#### **6-III.A. OVERVIEW OF INCOME-BASED RENT CALCULATIONS**

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by SHA.

#### **TTP Formula<sup>226</sup> [**

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)

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<sup>224</sup> 24 CFR 5.611(b)(1)

<sup>225</sup> PH Occ GB, p. 128

<sup>226</sup> 24 CFR 5.628

- A minimum rent between \$0 and \$50 that is established by SHA.

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

***Welfare Rent***<sup>227</sup>

**SHA Policy**

*Welfare rent does not apply in this locality.*

***Minimum Rent***<sup>228</sup>

**SHA Policy**

*The minimum rent is \$0.*

**Optional Changes to Income-Based Rents**<sup>229</sup>

SHA has been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At SHA's discretion, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

SHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to SHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

**SHA Policy**

*SHA chooses not to adopt optional changes to income-based rents.*

**Ceiling Rents**<sup>230</sup>

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the

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<sup>227</sup> 24 CFR 5.628

<sup>228</sup> 24 CFR 5.630

<sup>229</sup> 24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134

<sup>230</sup> 24 CFR 960.253 (c)(2) and (d)

calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing. Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities).<sup>231</sup>

#### SHA Policy

*SHA chooses not to use ceiling rents.*

#### **Utility Reimbursement<sup>232</sup>**

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits SHA to pay the reimbursement to the family or directly to the utility provider.

#### SHA Policy

*SHA will make utility reimbursements directly to the utility provider.*

### 6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT<sup>233</sup>

#### SHA Policy

*The financial hardship rules do not apply in this jurisdiction because SHA has established a minimum rent of \$0.*

### 6-III.C. UTILITY ALLOWANCES<sup>234</sup>

#### **Overview**

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, SHA must use the utility allowance applicable to the type of dwelling unit leased by the family. For policies on establishing and updating utility allowances, see Chapter 16.

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<sup>231</sup> PH Occ GB, p. 135

<sup>232</sup> 24 CFR 960.253(c)(3)

<sup>233</sup> 24 CFR 5.630

<sup>234</sup> 24 CFR 965, Subpart E

## **Reasonable Accommodation<sup>235</sup>**

On request from a family, SHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability.<sup>236</sup>

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability.<sup>237</sup> See Chapter 2 for policies related to reasonable accommodations.

## **Utility Allowance Revisions<sup>238</sup>**

SHA must review its schedule of utility allowances each year. Between annual reviews, SHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective.<sup>239</sup>

The tenant rent calculations must reflect any changes in SHA's utility allowance schedule.<sup>240</sup>

### **SHA Policy**

*Unless SHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first action relating to an annual recertification, interim recertification or other change of unit that is effective after the allowance is adopted.*

## **6-III.D. PRORATED RENT FOR MIXED FAMILIES<sup>241</sup>**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. SHA must prorate the assistance provided to a mixed family. SHA will first determine

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<sup>235</sup> 24 CFR 8

<sup>236</sup> PH Occ GB, p. 172

<sup>237</sup> PH Occ GB, p. 172

<sup>238</sup> 24 CFR 965.507

<sup>239</sup> PH Occ GB, p. 171

<sup>240</sup> 24 CFR 960.253(c)(3)

<sup>241</sup> 24 CFR 5.520

TPP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, SHA must:

- (1) Subtract the TPP from a flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).
- (3) Multiply the member maximum subsidy by the number of eligible family members.
- (4) Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TPP.
- (5) Subtract the utility allowance for the unit from the prorated TPP. This is the prorated rent for the mixed family.

#### SHA Policy

*Revised public housing flat rents will be applied to a family's rent calculation at the first action relating to an annual recertification, interim recertification or other change of unit that is effective after the revision is adopted.*

For policies related to the establishment of the public housing maximum rent see Chapter 16.

#### 6-III.E. FLAT RENTS AND FAMILY CHOICE IN RENTS<sup>242</sup>

##### **Flat Rents<sup>243</sup>**

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient. There is no utility allowance or reimbursement with flat rents. When the family elects to pay the flat rent, the flat rent amount quoted to the family by SHA is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents is contained in Chapter 16.

The Housing Authority of the City of Salem hereby amends its flat rent policies to comply with the statutory changes contained within, Public Law 113 – 76, the Fiscal Year 2014 Appropriation Act.

The Housing Authority will set the flat rental amount for each public housing unit that complies with the requirement that all flat rents be set at no less than 80 percent of the applicable Fair Market Rent (FMR) adjusted, if necessary, to account for reasonable utilities costs. The new flat rental amount will apply to all

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<sup>242</sup> 24 CFR 960.253

<sup>243</sup> 24 CFR 960.253(b)

new program admissions effective October 1, 2014. For current program participants that pay the flat rental amount, the new flat rental amount will be offered, as well as the income-based rental amount, at the next annual rental option.

The Housing Authority will place a cap on any increase in a family's rental payment that exceeds 35 percent, and is a result of changes to the flat rental amount as follows:

- Multiply the existing flat rental payment by 1.35 and compare that to the updated flat rent amount;
- SHA will present two rent options to the family as follows:
  - o The lower of the product of the calculation and the updated flat rental amount; and
  - o The income-based rent.

### **Family Choice in Rents<sup>244</sup>**

Once each year, SHA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. SHA must document that flat rents were offered to families under the methods used to determine flat rents for the PHA.

#### *SHA Policy*

*The annual SHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination. SHA will document each family's choice in their tenant file as a part of the admission or annual reexamination process.*

SHA must provide sufficient information for families to make an informed choice. This information must include SHA's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year SHA is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

### **Switching from Flat Rent to Income-Based Rent Due to Hardship<sup>245</sup>**

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If SHA determines that a financial hardship exists, SHA must immediately allow the family to switch from flat rent to the income-based rent.

#### *SHA Policy*

*Upon determination by SHA that a financial hardship exists, SHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.*

Reasons for financial hardship include:

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<sup>244</sup> 24 CFR 960.253(a) and (e)

<sup>245</sup> 24 CFR 960.253(f)

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by SHA to be appropriate

#### SHA Policy

*SHA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent.<sup>246</sup>*

#### **Change in Flat Rents**

#### SHA Policy

*Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit.<sup>247</sup>*

#### **Flat Rents and Earned Income Disallowance [A&O FAQs]**

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

A family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their 48 month period would have the 12 cumulative months of full (100 percent) and phase-in (50 percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the 48-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 48-month lifetime limit expire while the family is paying flat rent.

#### **Flat Rents and Mixed Families [A&O FAQs]**

Mixed families electing to pay flat rent must first have a flat rent worksheet completed to see if the flat rent must be prorated. The worksheet is located in Appendix III of the *Form HUD-50058 Instruction Booklet*.

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<sup>246</sup> PH Occ GB, p. 137

<sup>247</sup> PH Occ GB, pp. 137-138

If the flat rent is greater than or equal to the public housing maximum rent, there is no proration of flat rent and the family pays the flat rent for the unit.

If the flat rent is less than the maximum rent, the worksheet will calculate a prorated flat rent. The mixed family will pay the prorated flat rent.

#### **EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS<sup>248</sup>**

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

- 1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- 2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- 3) Which are not specifically excluded in paragraph (c) of this section.
- 4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

- 1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- 2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- 3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- 4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
- 5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
- 6) Welfare assistance payments.
  - i. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

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<sup>248</sup> 24 CFR 5.609

- (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31;<sup>249</sup> and
  - (B) Are not otherwise excluded under paragraph (c) of this section.
- ii. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
  - (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
  - (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
- (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)
- (9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

#### HHS DEFINITION OF "ASSISTANCE"<sup>250</sup>

- (a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).
- (2) It includes such benefits even when they are:
  - (i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and
  - (ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).
- (3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.
- (b) **[The definition of "assistance"] excludes:**
  - (1) Nonrecurrent, short-term benefits that:
    - (i) Are designed to deal with a specific crisis situation or episode of need;

<sup>249</sup> See "HHS DEFINITION OF ASSISTANCE" below.

<sup>250</sup> 45 CFR 260.31

- (ii) Are not intended to meet recurrent or ongoing needs; and
- (iii) Will not extend beyond four months.
- (2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- (3) Supportive services such as child care and transportation provided to families who are employed;
- (4) Refundable earned income tax credits;
- (5) Contributions to, and distributions from, Individual Development Accounts;
- (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
- (7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

## EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS<sup>251</sup>

*Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8)
  - (i) Amounts received under training programs funded by HUD;
  - (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
  - (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

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<sup>251</sup> 24 CFR 5.609

- (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]
- (18) Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits
  - a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
  - b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
  - c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
  - d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
  - e) Payments or allowances made under the Department of Health and Human

Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

- f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);
- g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);
- h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
- i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));
- k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.);
- l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));
- o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
- q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
- r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).
- t) Any deferred Department of Veteran's Affairs (VA) disability benefits that

are received in a lump sum amount or in prospective monthly amounts.

#### EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS<sup>252</sup>

##### **Net Family Assets**

- (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.
- (3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- (4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

#### EXHIBIT 6-4: EARNED INCOME DISALLOWANCE<sup>253</sup>

##### **Self-sufficiency incentive—Disallowance of increase in annual income.**

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

*Disallowance.* Exclusion from annual income.

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

*Qualified family.* A family residing in public housing:

- (i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;
- (ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or
- (iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services

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<sup>252</sup> 24 CFR 5.603(b)

<sup>253</sup> 24 CFR 960.255

under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

*(b) Disallowance of increase in annual income.*

*(1) Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

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

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

*(c) Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

*(d) Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

- (1) The PHA must advise the family that the savings account option is available;
- (2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;
- (3) Amounts deposited in a savings account may be withdrawn only for the purpose of:
  - (i) Purchasing a home;
  - (ii) Paying education costs of family members;
  - (iii) Moving out of public or assisted housing; or
  - (iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;
- (4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the

account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA

**EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION<sup>254</sup>**

**Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

**(a) Applicability.** This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

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

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual

income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefits reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

- (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
- (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
- (iii) because a family member has not complied with other welfare agency requirements.

**(c) Imputed welfare income.**

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the

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<sup>254</sup> 24 CFR 5.615

reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

***(d) Review of PHA decision.***

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

***(e) PHA relation with welfare agency.***

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the

PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

## **Chapter 7: VERIFICATION**

[24 CFR 960.259, 24 CFR 5.230]

### **INTRODUCTION**

SHA must verify all information that is used to establish the family's eligibility and level of assistance must obtain the family's consent to collect the information. Applicants and tenants must cooperate with the verification process as a condition of receiving assistance.

SHA will follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance ("VG") and any subsequent guidance issued by HUD. This chapter explains those requirements and provides supplementary SHA policies in four parts:

**Part I: General Verification Requirements.** This part describes all verification requirements, including different verification systems and processes.

**Part II: Verifying Family Information.** This part describes in detail required forms of family verification documents.

**Part III: Verifying Income and Assets.** This part describes in detail required forms of income and asset verification documents.

**Part IV: Verifying Mandatory Deductions.** This part describes in detail required forms of expense deduction documents.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by SHA.

### **PART I: GENERAL VERIFICATION REQUIREMENTS**

#### **7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION<sup>255</sup>**

The family must supply any information that SHA or HUD determines is necessary to the administration of the program and must consent to SHA verification of that information.<sup>256</sup>

##### **Consent Forms**

All adult applicants and tenants are required to sign form HUD-9886, Authorization for Release of Information. This form facilitates automated data collection and computer matching from specific sources. HUD and SHA may collect information from State Wage Information Collection

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<sup>255</sup> 24 CFR 960.259, 24 CFR 5.230

<sup>256</sup> 24 CFR 960.259(a)(1)

Agencies (SWICAs) and current and former employers of adult family members.

Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

### **Penalties for Failing to Consent<sup>257</sup>**

If any family member who is required to sign a consent form fails to do so, SHA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with SHA's grievance procedures.

## **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

### **HUD's Verification Hierarchy**

HUD authorizes SHA to use five methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires SHA to use the most reliable form of verification that is available and to document the reasons when SHA uses a lesser form of verification.

SHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that SHA has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

#### **SHA Policy**

*In order of priority, the forms of verification that SHA will use are:*

<b>Level</b>	<b>Verification Technique</b>	<b>Ranking</b>
<b>6</b>	<b>Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system (available for income verifications of tenants only)</b>	<b>Highest</b> (Mandatory)
<b>5</b>	<b>Upfront Income Verification (UIV) using non-HUD system</b>	<b>Highest</b> (Discretionary)
<b>4</b>	<b>Written Third Party Verification</b>	<b>High</b> Mandatory to use under the following circumstances: • to supplement EIV-reported income sources; • if data is not available through EIV; • for non-EIV reported income sources; • if tenant disputes EIV-reported employment and income information <b>and</b> is unable to provide acceptable documentation to support dispute

<sup>257</sup> 24 CFR 5.232

3	<b>Written Third Party Verification Form</b>	<b>Medium-Low</b> Mandatory to use under the following circumstances: • if written third party verification documents are not available or rejected by the PHA • if the applicant or tenant is unable to provide acceptable documentation
2	<b>Oral Third Party Verification</b>	<b>Low</b> Mandatory if written third party verification is not available
1	<b>Tenant Declaration</b>	<b>Low</b> Use as a last resort when unable to obtain any type of third party verification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of the chapter contains an excerpt from the Verification Guidance that provides guidance with respect to how each method may be used.

## Requirements for Acceptable Documents

### SHA Policy

*Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 calendar days of the date they are provided to the PHA. The documents must be readable and not damaged or altered in any way.*

*SHA will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, SHA would accept the most recent report.*

*Print-outs from web pages are considered original documents. SHA staff members who view the original documents must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.*

*Any family self-certifications must be made in a format acceptable to SHA and must be signed in the presence of a SHA notary public.*

## 7-I.C. UP-FRONT INCOME VERIFICATION (UIV/EIV)

Up-front income verification (UIV/EIV) refers to SHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV/EIV will be used to the extent that these systems are available to SHA.

### SHA Policy

*SHA will inform all applicants and residents of its use of the following UIV/EIV resources during the admission and/or reexamination process:*

- *HUD's EIV system (Enterprise Income Verification);*

- *DHS Screens (Department of Human Services for verification of TANF);*
- *Work Number/Equifax (Provides income information to employers throughout the United States);*
- *Oregon State Employment Division; and/or*
- *Department of Justice Child Support Division*

*SHA will review computer matching reports from sources such as, but not limited to: DHS for TANF; Employment Division for unemployment benefits; and the Department of Justice Child Support Division for child support, where SHA has received information from a sources stating that the client may be receiving one or more of these types of income, or when a family has reported that the income data reported in EIV is inaccurate.*

*Information received from DHS; the Work Number; Oregon State Employment Division and the Department of Justice Child Support Division will be considered third party verification.*

*SHA will restrict access to and safeguard UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.*

*There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until SHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through SHA's informal review/hearing processes.*

### **Use of HUD's Enterprise Income Verification (EIV) Reporting System**

HUD's EIV system contains data showing sources of earned income, unemployment benefits, Social Security Administration SS and SSI benefits for resident families. HUD requires SHA to actively use the EIV system when available. SHA has implemented the following procedures that apply to use of HUD's EIV reporting system:

#### **EIV Reports - New Admissions**

Search for Former Tenants. Prior to placement, SHA will conduct a search for existing tenants and ensure that the applicant household does not have an outstanding debt nor an eviction/termination record that would prevent SHA from proceeding with the placement. If the above search indicates the applicant household owes debt to SHA or another PHA or has an eviction/termination that would prevent SHA from placing the applicant household, the issue will be researched and resolved prior to proceeding with the placement.

Income/Discrepancy/New Hire Reports. SHA will obtain EIV income; discrepancy and new hire reports no later than 120 days after the effective date of the move-in. If research indicates a discrepancy, SHA will follow up within 60 days and determine if the discrepancy is valid or invalid. If valid, SHA will take appropriate steps per the final HUD rule regarding the mandatory use of EIV.

Debts Owed to PHA & Terminations Report. Prior to placement, SHA will conduct a search in the

Debts Owed to PHA & Terminations Report and determine if the placement can proceed based on the findings.

Existing Tenant Search. Prior to placement, SHA will conduct a search in the Existing Tenant Search section of EIV and ensure that the applicant household is not currently being assisted in another PH/MFH program/property. If the research determines that the applicant household is being assisted in another PH/MFH program/property, SHA will verify that the household has moved and/or been terminated from the other program before proceeding with the new admission.

### **EIV Reports - Annual Recertifications**

Income/Discrepancy/New Hire Reports. SHA will obtain EIV income, discrepancy and new hire reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

If research indicates a discrepancy, SHA will follow up within 30 days and determine if the discrepancy is valid or invalid. If found valid, SHA will take the appropriate steps per HUD regarding the mandatory use of EIV.

Immigration Report. SHA will generate an Immigration Report on a monthly basis.

SHA staff will review the report and follow up on any discrepancies (e.g., a household member whose record indicates they are an eligible citizen, however an alternate ID has been issued to them). SHA staff will review the report to ensure that rent is prorated for any household that contains an ineligible non-citizen. If needed, corrections to tenant household data and/or rent will be processed depending on the result of the research.

### **EIV Reports - Interim Recertifications**

Income/Discrepancy/New Hire Reports. SHA will obtain EIV income, discrepancy and new hire reports when an interim recertification is scheduled. If research indicates a discrepancy, SHA will follow up within 30 days and determine if the discrepancy is valid or invalid. If found valid; SHA will take the appropriate steps per the final HUD rule regarding the mandatory use of EIV.

### **New admissions, Annual and Interim Recertifications**

Income reports will be compared to family-provided information as part of the annual reexamination process.

Income reports will be used in the calculation of SSA annual income, unless the tenant disputes the information being provided on the EIV income report. Income reports that show employment income, will be used to match sources of employment income, however income calculations will be made using the two most current tenant provided documents such as paystubs.

Discrepancy Reports. SHA will review all discrepancy reports during the annual recertification process and will determine within 30 days if the discrepancy is valid or invalid. The discrepancy reports and any documentation provided to support the discrepancy being valid or invalid will be maintained in the tenant file.

New Hire Reports. SHA will review and compare the information on the new hire report to the information being provided by the tenant. When SHA determines through the income; discrepancy and/or new hire reports as well as third party verification that a family has concealed and/or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

All EIV Reports. All reports will be retained in resident files with the applicable annual or interim reexamination documents for three years past when the tenant moves out of the program/project. After the three years past move out has passed, the EIV reports will be purged and the file will be noted accordingly.

### **EIV Reports – Verifications**

Multiple Subsidy Reports. SHA will generate the Multiple Subsidy Report on a monthly basis. Any tenant household who appears on the report, will be researched and a determination will be made if the multiple subsidy report is valid or invalid. If it is found that the tenant household is being assisted in another PH/MFH program/property; SHA will take steps to terminate the tenancy of the tenant household.

Identity Verification Report. The EIV system verifies resident identities against SSA records. These records are compared to PIC data for a match on social Security number, name, and date of birth. When identity verification for a resident fails, a message will be displayed within the EIV system and no income information will be displayed.

SHA will generate the Identify Verification Report on a monthly basis. SHA staff will follow up on all failed EIV pre-screening; and failed SSA screening reports within 30 days of the date of the report. Staff will document their findings and/or any action they took to resolve the issue as results of their research. Proper records will be maintained in all applicable tenant files as well as any other SHA determined master file.

SHA will attempt to resolve PIC/SSA discrepancies by reviewing file documents. When SHA determines that discrepancies exist due to SHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly and a corrected 50058 will be submitted to PIC.

If SHA discovers that a member of the household is using a social security number not assigned to that family member, or if the household member is found to have provided an invalid, bogus, unofficial social security number, SHA will take action to deny or terminate the family from the Public Housing Program for the unauthorized use of a non-assigned social security number.

Deceased Tenant Report. SHA will generate a deceased tenant report on a monthly basis. The report will be run using the recertification month/year for which income reports are being generated.

When a tenants name appears on the report, SHA staff will follow up and determine if an end of

participation (EOP) needs processed or if the records at SSA need corrected. If SSA records need to be corrected the tenant must handle and provide verification to SHA that the records have been corrected, and SHA will then re-finalize the 50058 and submit to PIC.

Deceased Tenant reports will be researched and remedied within 30 days of generating the report.

## **7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

### **Reasonable Effort and Timing**

Unless third-party verification is not required as described below, HUD requires SHA to make at least two unsuccessful attempts to obtain third-party verification before using another form of verification.

#### **SHA Policy**

*SHA will diligently seek third-party verification using a combination of written and oral requests to verification sources, for all sources of income where third-party verification is required. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.*

*SHA may mail, fax, or e-mail. Third-party written verification requests and will accept third-party responses using any of these methods. SHA will send a written request for verification to each required source within 3-5 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing. If a response has not been received by the 11<sup>th</sup> business day, SHA will request third-party oral verification.*

*SHA will make a minimum of two attempts, one of which may be oral, to obtain third- party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file.*

*Regarding third-party oral verification, SHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided. The staff member documenting the oral verification will date and sign their documentation.*

*When any source responds verbally to the initial written request for verification SHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.*

*If a third party agrees to confirm in writing the information provided orally, SHA will wait no more than 5 business days for the information to be provided. If the information is not provided by the 6th business day, SHA will use any information provided orally in combination with reviewing family-provided documents (see below).*

## **When Third-Party Information is Late**

When third-party verification has been requested and the timeframes for submission have been exceeded, SHA will use the information from documents on a provisional basis. If SHA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, SHA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of SHA's interim reexamination policy.

## **When Third-Party Verification is Not Required**

Primary Documents. Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

Certain Assets and Expenses. SHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value, when the value of the disposed asset is determined to be no more than \$1,000.

Certain Income, Asset and Expense Sources. SHA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification. For example, SHA will rely upon review of documents when SHA determines that a third party's privacy rules prohibit the source from disclosing information.

### *SHA Policy*

*SHA will determine that third-party verification is not available when there is a service charge for verifying an asset or expense and the family has documents that provide the necessary information.*

*If the family cannot provide documents that are acceptable to SHA for verifying assets or expenses, at SHA's sole discretion, a notarized self-certification may be accepted by SHA as the only means of verification.*

*Acceptance of alternate forms of verification is at the sole discretion of SHA. SHA may determine that lack of proper verification results in SHA being unable to determine initial and/or ongoing eligibility for the program.*

## **7-I.E. REVIEW OF DOCUMENTS**

### **Using Review of Documents as Verification**

#### *SHA Policy*

*If SHA has determined that third-party verification is not available or not required, SHA will use documents provided by the family as verification.*

*SHA will require two (2) of the residents' most current paystubs, when review of documents pertains to employment income. Current paystubs is defined as being dated within 60 days of the date paystubs were requested.*

*SHA may also review documents when necessary to help clarify information provided by third parties. In such cases SHA will document in the file how SHA arrived at a final conclusion about the income or expense to include in its calculations.*

## **7-I.F. SELF-CERTIFICATION**

### **SHA Policy**

*When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to SHA.*

*SHA may require a family to certify that a family member does not receive a particular type of income or benefit.*

*The self-certification must be made in a format acceptable to SHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a SHA representative and/or in the presence of a SHA notary public. Any self-certifications signed in the presence of a SHA representative, that is not notarized, must include documentation as to which SHA representative witnessed the signature and the date and time of such witness.*

## **PART II: VERIFYING FAMILY INFORMATION**

### **7-II.A. VERIFICATION OF LEGAL IDENTITY/IDENTIFICATION OF FAMILY MEMBERS**

#### **SHA Policy**

*SHA will require families to furnish verification of legal identity for each household member.*

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicle identification card U.S. military discharge (DD 214) U.S. passport Employer identification card	Certificate of birth Adoption papers Custody agreement Health and Human Services ID School records

If a document submitted by a family is illegible or otherwise questionable, more than one of these

documents may be required.

If none of these documents can be provided and at SHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to SHA and be signed in the presence of a SHA notary public.

All heads of household, spouses and/or co-heads (regardless of age) are required to provide picture identification, with an issue date not more than 8 years prior to the effective date of the certification. In cases where the individual is 62 years of age or older, developmentally disabled or as a reasonable accommodation, SHA may at its discretion, accept picture identification that is older than 8 years from the date of issuance.

Picture identification may include, but is not limited to:

- Driver's license;
- Government issued identification card;
- Passport;
- Military identification; or
- Employment identification card.

Family members who attain age 18 while on the program will be required to provide picture I.D. as stated above at the next scheduled certification.

If the head of household, spouse and/or co-head (regardless of age) are unable to provide acceptable picture I.D., two other forms of identification will be required in lieu of the picture I.D. SHA will determine at its sole discretion if the identification is acceptable.

Other forms of acceptable identification may include, but is not limited to: birth certificate, social security card, insurance identification card.

Picture identification will be verified only once during continuously-assisted occupancy. All other household members are required to provide a form of identification which may include, but are not limited to: birth certificate, valid proof of social security number, insurance identification card, immunization card, school record, document from another government agency.

## 7-II.B. SOCIAL SECURITY NUMBERS<sup>258</sup>

Effective 1/31/2010, every family member must provide documentation of a disclosed, assigned social security number (SSN), or a self-certification stating that no SSN has been issued. The self-certification must be executed personally by any family member 18 or older, or by a parent or guardian for a minor.

SHA is not required to re-verify previously disclosed valid SSN's.

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<sup>258</sup> 24 CFR 5.216

The social security numbers of household members, such as live-in aids, must be disclosed and verified for the purpose of conducting criminal background checks.

The social security numbers of foster children and/or foster adults must be disclosed and verified for the purpose of entering the data on the 50058.

### **Verification of Social Security Numbers**

SHA will accept the following documents as verification of the family member(s) social security number if the SSN is provided on the document:

- SSN card issued by the Social Security Administration (SSA); or
- An original document issued by a federal government agency (e.g. SSA, IRS, etc) or State governmental agency.

The document must contain the SSN of the individual, along with other identifying information (e.g. Unemployment office, Department of Social Services; Child Support Office, etc.).

When there is an addition of new household members under the age of 6 and no assigned SSN:

- Individual is included as a household member and entitled to benefits (generate PIC alt ID); and the Head of Household is provided 90 days to provide documentation of the SSN.
- When SSN has been assigned, household is required to disclose and verify the newly assigned SSN and SHA is required to submit a 50058 showing the newly assigned number with 30 days of the family providing the appropriate documentation of such number.

When there is an addition of new household members at least 6 years of age or under the age of 6 with assigned SSN's:

- Tenant must disclose the SSN and provide documentation of the SSN to SHA at the time of request to add new household member or during interim recertification; and
- The new household member cannot be added to the family composition until the family has complied with SSN disclosure & verification requirements.

Household member(s) who are assigned a new SSN:

- Tenants are required to disclose and verify newly assigned SSNs at the next interim or annual recertification, whichever is earlier.

- When SHA is processing the Interim or Annual Recertification SHA will replace the current SSN with the newly assigned SSN and will submit to PIC on the 50058.

If a lawfully present individual indicates s/he does not have evidence of assigned SSN:

- SHA will refer the individual(s) to the local SSA office to request an original or replacement SSN card.

Reasons for Rejection of SSN Documentation:

- Document is not an original;
- Original document has been altered, mutilated, or not legible; or
- Document appears to be a forged document (e.g. does not appear to be authentic).

HUD, via its computer matching program with the SSA, will validate the SSN (along with the individuals name and date of birth) against the SSA's data base.

Once an individual's verification status is classified as verified, SHA will remove and destroy, by no later than the next reexam of family income or composition, the copy of the documentation used to verify the individuals social security number. The paper copy will be destroyed by shredding. Electric documentation will be destroyed by erasing or permanently deleting the file per SHA's electronic documentation destruction instructions.

#### SHA Policy

*Federal Law requires that all employees have a social security number in order to work; therefore SHA will require:*

- *Each working member of the household to provide to SHA a valid assigned social security number.*
- *Any family member(s) who provides SHA with an invalid, bogus, unofficial, or unassigned social security number will be denied placement and/or action will be taken to terminate the lease for current participants for providing false or misleading information.*
- *If EIV verifications indicate that an individual's social security number does not match the information received by the Social Security Administration, the family member(s) will be provided 60 calendar days to provide documentation from the Social Security Administration or from the Internal Revenue Service that they do have a valid assigned social security number.*

- *If the family member(s) is unable to provide this documentation, SHA will deny placement and/or action will be taken to terminate the lease for current participants for providing false and misleading information.*
- *SHA will deny applicants and/or terminate participants of a household where an individual is found to be using an invalid, bogus, unofficial, or unassigned social security number to obtain work or to obtain other benefits of the Public Housing program.*

### **7-II.C. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

#### **SHA Policy**

*If an official record of birth or evidence of social security retirement benefits cannot be provided, SHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded).*

Age must be verified only once during continuously-assisted occupancy.

### **7-II.D. FAMILY RELATIONSHIPS**

Applicants and tenants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

#### **SHA Policy**

*Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.*

### **Marriage, Separation or Divorce**

#### **SHA Policy**

*Certification by the head of household is normally sufficient verification. If SHA has reasonable doubts about that status of a marital relationship, SHA will require the family to document the marriage, separation or divorce.*

*A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.*

*A copy of a court-ordered maintenance or other court record is required to document a separation.*

*If no court document is available, documentation from a community-based agency will be accepted. In the cases of separation or divorce, the family member will be required to fill out SHA's "Estrangement/Separation" form.*

### **Absence of Adult Member**

#### *SHA Policy*

*If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).*

### **Foster Children and Foster Adults**

#### *SHA Policy*

*Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required, including providing the birth certificate and SSN for each foster child and/or foster adult.*

### **7-II.E. VERIFICATION OF STUDENT STATUS**

#### *SHA Policy*

*SHA requires families to provide information about the student status of all students who are 18 years of age or older.*

### **7-II.F. DOCUMENTATION OF DISABILITY**

SHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. SHA is not permitted to inquire about the nature or extent of a person's disability.<sup>259</sup> SHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If SHA receives a verification document that provides such information, SHA will not place this information in the tenant file. Under no circumstances will SHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at [www.os.dhhs.gov](http://www.os.dhhs.gov).

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:

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<sup>259</sup> 24 CFR 100.202(c)

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

## **Family Members Receiving SSA Disability Benefits**

Verification of receipt of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions.

### **SHA Policy**

*For family members claiming disability who receive SSI or other disability payments from the SSA, SHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, SHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), SHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or resident receives the benefit verification letter they will be required to provide it to SHA.*

## **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

### **SHA Policy**

*For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See Chapter 3 Eligibility for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.*

## 7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS

### **Overview<sup>260</sup>**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and PHA verification requirements related to citizenship status. The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy.<sup>261</sup>

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

SHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

### **SHA Policy**

*Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless SHA receives information indicating that an individual's declaration may not be accurate.*

### **Eligible Immigrants**

Documents Required. All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals. The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

PHA Verification. For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this ACOP. No further verification of eligible immigration status is required. For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the U.S. Citizenship and

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<sup>260</sup> 24 CFR 5.508

<sup>261</sup> 24 CFR 5.508(g)(5)

Immigration Services (USCIS).

SHA will follow all USCIS protocols for verification of eligible immigration status.

#### **7-II.H. VERIFICATION OF PREFERENCE STATUS**

SHA must verify any preferences claimed by an applicant.

##### **SHA Policy**

*SHA does not offer a preference for working families, as described in Section 4-III.B.*

### **PART III: VERIFYING INCOME AND ASSETS**

Chapter 6, Part I of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides SHA policies that supplement the general verification procedures specified in Part I of this chapter.

#### **7-III.A. EARNED INCOME**

##### **Tips**

##### **SHA Policy**

*Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.*

#### **7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME**

##### **SHA Policy**

*Business owners and self-employed persons will be required to provide:*

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.*
- All schedules completed for filing federal and local taxes in the preceding year.*
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.*

*SHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.*

*At any reexamination SHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.*

*If a family member has been self-employed less than three (3) months, SHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months SHA will require the family to provide documentation of income and expenses for this period and use that information to project income.*

### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

#### **Social Security/SSI Benefits**

##### **SHA Policy**

*To verify the SS/SSI benefits of applicants, SHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the PHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant has received the benefit verification letter they will be required to provide it to the PHA.*

*To verify the SS/SSI benefits of residents, SHA will obtain information about social security/SSI benefits through the HUD EIV System. If benefit information is not available in the HUD system and/or if the household disputes the data provided on the EIV income report, SHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) SHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the resident has received the benefit verification letter they will be required to provide it to SHA.*

### **7-III.D. ALIMONY OR CHILD SUPPORT**

##### **SHA Policy**

*The way SHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.*

*If the family declares that it receives regular payments, verification will be sought in the following order:*

1. *If payments are made through a state or local entity, the PHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments.*
2. *Third-party verification from the person paying the support*
3. *Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules*
4. *Copy of the latest check and/or payment stubs*
5. *Family'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 the family declares that it receives irregular or no payments, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:*

- *A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts*
- *If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts*

*Note: Families are not required to undertake independent enforcement action.*

#### 7-III.E. ASSETS AND INCOME FROM ASSETS

##### **Assets \$5,000 or Less**

###### SHA Policy

*Upon recertification, and provided all assets and asset income were third-party verified within the past three years, participant families may self-certify assets totaling \$5,000 or less.<sup>262</sup>*

##### **Assets Disposed of for Less than Fair Market Value**

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. SHA needs to verify only those certifications that warrant documentation.

###### SHA Policy

*SHA will verify the value of assets disposed of only if:*

- *SHA does not already have a reasonable estimation of its value from previously collected information;*
- *if the value of the asset is over \$1,000;*

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<sup>262</sup> PIH Notice 2016-05

- *and/or the amount reported by the family in the certification appears obviously in error.*

**Example 1:** An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and SHA verified this amount. Now the person reports that she has given this \$10,000 to her son. SHA has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

**Example 2:** A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, SHA will verify the value of this asset.

#### 7-III.F. NET INCOME FROM RENTAL PROPERTY

##### SHA Policy

*The family must provide:*

- 1) *A current executed lease for the property that shows the rental amount or certification from the current tenant; and*
- 2) *A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the PHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.*

#### 7-III.G. RETIREMENT ACCOUNTS

##### SHA Policy

*When third-party verification is not available the type of original document that will be accepted depends upon the family member's retirement status as described below:*

- *Before retirement, SHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination, which also includes information regarding if the family member has access to the funds, or not..*
- *Upon retirement, SHA will accept an original document from the entity holding the*

*account that reflects any distributions of the account balance, any lump sums taken and any regular payments.*

- *After retirement, SHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.*

#### 7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

SHA must obtain verification for income exclusions only if, without verification, SHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, SHA will confirm that SHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

##### SHA Policy

*SHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family's rent (as is the case with the earned income disallowance). In all other cases, SHA will report the amount to be excluded as indicated on third party verifications and/or documents provided by the family.*

#### 7-III.I. ZERO ANNUAL INCOME STATUS

##### SHA Policy

*SHA will check UIV/EIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by families claiming to have zero annual income.*

*SHA will also ask the family to complete a "zero income statement" in a format acceptable to SHA that documents how the family pays for everyday sundries; expenses when declaring zero income.*

### **PART IV: VERIFYING MANDATORY DEDUCTIONS**

#### 7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that SHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

##### **Dependent Deduction**

See Chapter 6 (6-II.B.) for a full discussion of this deduction. SHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

### **Elderly/Disabled Family Deduction**

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. SHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **7-IV.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### **Amount of Expense**

##### **SHA Policy**

*SHA will provide a third-party verification form directly to the medical provider requesting the needed information with the exception of prescriptions.*

*Medical expenses other than prescriptions will be verified through:*

- *Third-party verification form signed by the provider, when possible*
- *If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case SHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. SHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.*
- *If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months*
- *Prescriptions will be verified by asking the family member(s) to obtain a printout of out of pocket expenses from the pharmacy that provided the prescriptions. SHA will not mail verifications to Pharmacies - as the cost to obtain the verifications is financially not feasible for SHA to pay (e.g. Walgreen's is charging \$55 per request to fill out verification forms and/or provide a printout of expenses directly to SHA.)*

*In addition, SHA will verify that:*

- *The household is eligible for the deduction.*

- *The costs to be deducted are qualified medical expenses.*
- *The expenses are not paid for or reimbursed by any other source.*
- *Costs incurred in past years are counted only once.*

## **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 or a person with disabilities. SHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan. Once eligibility is established, medical expenses will be considered for all family members, not just for the person(s) who qualified the family for the medical deductions.

## **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for SHA's policy on what counts as a medical expense.

## **Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

### **SHA Policy**

*The family will be required to certify/verify that the medical expenses are not paid or reimbursed to the family from any source.*

## **Expenses Incurred in Past Years**

### **SHA Policy**

*When anticipated costs are related to on-going payment of medical bills incurred in past years, SHA will verify:*

- *The anticipated repayment schedule*
- *The amounts paid in the past, and*
- *Whether the amounts to be repaid have been deducted from the family's annual income in past years*

## **7-IV.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

## **Attendant Care**

### SHA Policy

*SHA will provide a third-party verification form directly to the care provider requesting the needed information. Expenses for attendant care will be verified through:*

- *Third-party verification form signed by the provider, when possible*
- *If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source*
- *If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months*

### **Auxiliary Apparatus**

#### SHA Policy

*Expenses for auxiliary apparatus will be verified through:*

- *Third-party verification of anticipated purchase costs of auxiliary apparatus*
- *If third-party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months*
- *If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months*

*In addition, SHA will verify that:*

- *The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).*
- *The expense permits a family member, or members, to work (as described in 6-II.E.).*
- *The expense is not reimbursed from another source (as described in 6-II.E.).*

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. SHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### **Family Member(s) Permitted to Work**

SHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

### SHA Policy

*SHA will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).*

*If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.*

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

### SHA Policy

*An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.*

*The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.*

### 7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, SHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable.

### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. SHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

*SHA Policy*

*The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.*

*The family will be required to certify/verify that the child care expenses are not paid by or reimbursed to the family from any source.*

*SHA will use the Department of Human Services child care rate schedule as a guide to determine the maximum allowable deduction for child care deductions.*

**7-IV.E. INTERVIEW/VERIFICATION TIME LIMITS**

The limits for the interview/verification process vary depending on the item being verified and on the circumstances (e.g. reexamination of family income and/or composition). There are no HUD regulatory requirements regarding the age of documentation used to verify a family's annual and adjusted income. PHA policy should define timeframes for which documentation used for this purpose will be acceptable.

*SHA Policy*

*Interviews and verifications will be considered valid and timely for initial placement into a Public Housing unit, if they are dated within 60 days of the effective date of the move-in.*

*Interviews/verifications dated more than 60 days prior to the effective date would no longer be considered valid and would need to be updated in order to proceed with placement.*

*Interviews and verifications will be considered valid and timely for all other actions other than an initial placement, if they are dated within 120 days of the effective date of the action.*

*Interviews/verifications dated more than 120 days prior to the effective date of all actions other than initial placements, would no longer be considered invalid and would need to be updated in order to proceed with processing the action.*

*Time limits do not apply to information that does not need to be re-verified, such as age; family membership; citizenship status; and/or Social Security numbers*

**Pursuing an Eligible Activity**

SHA must verify that the family member(s) identified as being enabled to seek work, pursue education, or be gainfully employed, are pursuing those activities.

*SHA Policy*

*Information to be gathered.* *SHA will verify information about how the schedule for the claimed*

*activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.*

*Seeking Work.* Whenever possible SHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases SHA will request verification from the agency of the member's job seeking efforts to date and require the family to submit to SHA any reports provided to the other agency. In the event third-party verification is not available, SHA will require that the family member record their job search efforts. SHA will review this information at each subsequent reexamination for which this deduction is claimed.

*Furthering Education.* SHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

*Gainful Employment.* SHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

### **Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

#### *SHA Policy*

*SHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).*

*SHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).*

*SHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.*

### **Reasonableness of Expenses**

Only reasonable child care costs can be deducted.

#### *SHA Policy*

*The actual costs the family incurs will be compared with SHA's established standards of*

*reasonableness for the type of care in the locality to ensure that the costs are reasonable. If the family presents a justification for costs that exceed typical costs in the area, SHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.*

*SHA will use the Department of Human Services child care rate schedule as a guide to determine the maximum allowable deduction for child care deductions.*

## EXHIBIT 7.1 HUD Verification Guidance Notice Excerpt

Upfront (UIV)		Highest (Highly Recommended, highest level of 3rd party verification)			
Written 3rd Party		High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)			
Oral 3rd Party		Medium (Mandatory if written 3rd party verification is not available)			
Document Review		Medium-Low (Use on provisional basis)			
Tenant Declaration		Low (Use as last resort)			
Income Type	Upfront	Written 3rd Party	Oral 3rd Party	Document Review	Tenant Declaration
		Level 5	Level 4	Level 3	Level 2
Wages/Salaries	Use of computer matching agreements with a State Wage Information Collection Agency (SWICA) to obtain wage information electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the independent sources to obtain wage information.	In the event the independent source does not respond to the PHA's written request for information, the PHA may contact the independent source by phone or make an in person visit to obtain the requested information.	When neither form of 3rd party verification can be obtained, the PHA may accept original documents such as consecutive pay stubs (HUD recommends the PHA review at least 3 months of pay stubs, if employed by the same employer for 3 months or more), W-2 forms, etc. from the tenant. Note: the PHA must document in the tenant file, the reason 3rd party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from earnings. Note: The PHA must document in the tenant file, the reason third party verification was not available.
	Agreements with private vendor agencies, such as The Work Number or ChoicePoint to obtain wage and salary information.	The PHA may have the tenant sign a Request for Earnings Statement from the SSA to confirm past earnings. The PHA mails the form to SSA and the statement will be sent to the address the PHA specifies on the form.			
	Use of HUD systems, when available.				
Verification of Employment Income: The PHA should always obtain as much information as possible about the employment, such as start date (new employment), termination date (previous employment), pay frequency, pay rate, anticipated pay increases in the next 12 months, year-to-date earnings, bonuses, overtime, company name, address and telephone number, name and position of the person completing the employment verification form.					
Effective Date of Employment: The PHA should always confirm start and termination dates of employment.					
Self-Employment	Not Available	The PHA mails, faxes, or e-mails a verification form directly to the sources identified by the family to obtain income information.	The PHA may call the source to obtain income information.	The PHA may accept any documents (i.e., tax returns, invoices and letters from customers) provided by the tenant to verify self-employment income. Note: The PHA must document in the tenant file the reason 3rd party verification was not obtained.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from self-employment. Note: The PHA must document in the tenant file, the reason third party verification was not available.

**Verification of Self-Employment Income:** Typically, it is a challenge for PHAs to obtain third party verification of self-employment income. When 3rd party verification is not available, the PHA should always request a notarized tenant declaration that includes a perjury statement.

Income Type	Upfront	Written 3rd Party	Oral 3rd Party	Document Review	Tenant Declaration
	Level 5	Level 4	Level 3	Level 2	Level 1
Social Security Benefits	Use of HUD Tenant Assessment System (TASS) to obtain current benefit history and discrepancy reports.	The PHA mails or faxes a verification form directly to the local SSA office to obtain social security benefit information. (Not available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)	The PHA may call SSA, with the tenant on the line, to obtain current benefit amount. (Not available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)	The PHA may accept an original SSA Notice from the tenant. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly social security benefits. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.
Welfare Benefits	Use of computer matching agreements with local Social Services Agency to obtain current benefit amount electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the local Social Services Agency to obtain welfare benefit information.	The PHA may call the local Social Services Agency to obtain current benefit amount.	The PHA may review an original award notice or printout from the local Social Services Agency provided by the tenant. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly welfare benefits. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.
Child Support	Use of agreement with local Child Support Enforcement Agency to obtain current child support amount and payment status electronically, by mail, or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the local Child Support Agency or child support payer to obtain current child support amount and payment status.	The PHA may call the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may review an original award court order, notice, or printout from the local Child Support Enforcement Agency provided by the tenant to verify child support amount and payment status. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares current child support amount and payment status. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.

Income Type	Upfront	Written 3rd Party	Oral 3rd Party	Document Review	Tenant Declaration
	Level 5	Level 4	Level 3	Level 2	Level 1
Unemployment Benefits	Use of computer matching agreements with a State Wage Information Collection Agency (SWICA) to obtain unemployment compensation electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the State Wage Collection Agency to obtain unemployment compensation information.	The PHA may call the State Wage Collection Agency to obtain current benefit amount.	The PHA may review an original benefit notice or unemployment check stub, or printout from the local State Wage Information Collection Agency provided by the tenant. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares unemployment benefits. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.
	Use of HUD systems, when available.				
Pensions	Use of computer matching agreements with a Federal, State, or Local Government Agency to obtain current benefit amount electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the pension provider to obtain pension information.	The PHA may call the pension provider to obtain current benefit amount.	The PHA may review an original benefit notice from the pension provider provided by the tenant. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly pension amounts. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.
Assets	Use of cooperative agreements with sources to obtain asset and asset income information electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the source to obtain asset and asset income information.	The PHA may call the source to obtain asset and asset income information.	The PHA may review original documents provided by the tenant. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares assets and asset income. Note: The PHA must document in the tenant file the reason 3rd party verification was not available.
Comments	Whenever HUD makes available wage, unemployment, and SSA information, the PHA should use the information as part of the reexamination process. Failure to do so may result in disallowed costs during a RIM review.	Note: The independent source completes the form and returns the form directly to the PHA. The team should not hand carry documents to or from the independent source.	The PHA should document in the tenant file: the date and time of the phone call or in person visit, along with the name and title of the person that verified the current income amount.		The PHA should use this verification method as a last resort, when all other verification methods are not possible or have been unsuccessful. Notarized statement should include a perjury penalty statement.

Note: The PHA must not pass verification costs along to the participant.

Note: In cases where the PHA cannot reliably project annual income, the PHA may elect to complete regular interim reexaminations. If applicable, this policy should be a part of the PHA's written policies.

## EXHIBIT 7.2 Summary of Documentation Requirements for Noncitizens

<ul style="list-style-type: none"><li>• All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.</li><li>• Except for persons 62 or older, all noncitizens must sign a verification consent form.</li><li>• Additional documents are required based upon the person's status.</li></ul>	
<b>Elderly Noncitizens</b> <ul style="list-style-type: none"><li>• A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.</li></ul>	
<b>All other Noncitizens</b> <ul style="list-style-type: none"><li>• Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</li></ul>	
<ul style="list-style-type: none"><li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li><li>• Form I-94 Arrival-Departure Record annotated with one of the following:<ul style="list-style-type: none"><li>•“Admitted as a Refugee Pursuant to Section 207”</li><li>•“Section 208” or “Asylum”</li><li>•“Section 243(h)” or “Deportation stayed by Attorney General”</li><li>•“Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Form I-94 Arrival-Departure Record with no annotation accompanied by:<ul style="list-style-type: none"><li>•A final court decision granting asylum (but only if no appeal is taken);</li><li>•A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li><li>•A court decision granting withholding of deportation; or</li><li>•A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li></ul>	<ul style="list-style-type: none"><li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a.12(11)” or “Provision of Law 274a.12”.</li></ul>
<ul style="list-style-type: none"><li>• A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or</li><li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li></ul>	

### EXHIBIT 7-3 Third Party Verification Requirement

SHA is required to comply with admission and occupancy requirements for Public Housing under 24 CFR 960.259 (c)(1), which requires SHA to obtain and document in the family/tenant file third party verification of the following factors, or document in the file why third party verification was not available:

- (1) reported family annual income;
- (2) the value of assets;
- (3) expenses related to deductions; and
- (4) other factors that affect the determination of adjusted income or income-based rent.

It is HUD's position that a SSA Benefit Verification letter (dated within the last 60 days of SHA's request date for information or within SHA's interview date) provided by the applicant family and an EIV Income Report which display the current social security benefit amount for tenant families is third party verification. No additional verification is required by SHA.

SHA will print the EIV Income Report within 60 days of the interview date for the interim and/or annual recertification.

## **Chapter 8: LEASING AND INSPECTIONS**

[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

### **INTRODUCTION**

Public housing leases are the basis of the legal relationship between SHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD's regulations.

HUD rules also require SHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, SHA may require additional inspections in accordance with SHA policy.

This chapter is divided into two parts as follows:

**Part I: Leasing.** This part describes pre-leasing activities and SHA's policies pertaining to lease execution, modification, and payments under the lease.

**Part II: Inspections.** This part describes SHA's policies for inspecting dwelling units.

### **PART I: LEASING**

#### **8-I.A. OVERVIEW**

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that SHA may not renew the lease if the family has violated the community service requirement.<sup>263</sup>

Part I of this chapter contains regulatory information, when applicable, as well as SHA's policies governing leasing issues.

#### **8-I.B. LEASE ORIENTATION**

##### **SHA Policy**

*After unit acceptance but prior to occupancy, a SHA representative will provide a lease orientation to the family. The head of household or spouse is required to attend.*

##### **Orientation Agenda**

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<sup>263</sup> 24 CFR 966.4(a)(2)

### SHA Policy

*When families attend the lease orientation, they will be provided with:*

- *A copy of the lease*
- *A copy of the tenant handbook*
- *A copy of SHA's schedule of maintenance charges*
- *A copy of the pamphlet Protect Your Family from Lead in Your Home*
- *A copy of Things You Should Know (HUD-1140-OIG)*

*Topics to be discussed will include:*

- *Applicable deposits and other charges*
- *Review and explanation of lease provisions*
- *Unit maintenance and work orders*
- *SHA's reporting requirements Community service requirements*
- *Family choice of rent*
- *Showing Units Prior to Leasing*

*Note: when offering units, SHA will provide the applicant with a brief property description, and other information to help orient the applicant to the neighborhood and location in the property. If the offer of a unit is preliminarily accepted by the applicant, the SHA representative will arrange to show the unit to the applicant, when feasible.*

*If the applicant refuses the unit, a reason for refusal is to be obtained from the applicant and determination will be made if the refusal is for good cause.*

## 8-I.C. EXECUTION OF LEASE

The lease must be executed by the tenant and SHA, except for automatic renewals of a lease.<sup>264</sup>

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one SHA unit to another.

The lease must state the composition of the household as approved by SHA (family members and any SHA-approved live-in aide).<sup>265</sup> See Section 8-I.D. for policies regarding changes in family composition during the lease term.

### SHA Policy

*An authorized SHA representative, head of household, spouse or co-head (regardless of age), and all other adult members (i.e. age 18 or above) of the household will be required to sign the public housing lease prior to admission. The head of household will be provided a copy of the executed lease and SHA will retain the original in the resident's file.*

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<sup>264</sup> 24 CFR 966.4(a)(3)

<sup>265</sup> 24 CFR 966.4(a)(1)(v)

*Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to SHA assistance. The live-in aide is only approved to live in the unit while serving as the attendant for the participant family member.*

*If at any time during the life of the lease agreement, a change in the resident's status results in the need for changing or amending any provision of the lease, SHA will:*

- *Execute a new lease agreement; or*
- *Execute a Notice of Rent Adjustment (i.e. Amendment).*

*All copies of new leases and/or amendments will be dated and signed by an authorized SHA representative and by the head of household, spouse or co-head (regardless of age). No lease will have an effective date before the unit is ready for occupancy.*

## **8-I.D. MODIFICATIONS TO THE LEASE**

The lease may be modified at any time by written agreement of the tenant and SHA.<sup>266</sup>

### **Modifications to the Lease Form**

SHA may modify its lease from time to time. However, SHA must give residents 30 days advance notice of the proposed changes and an opportunity to comment on the changes. SHA must also consider any comments before formally adopting the new lease.

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy.<sup>267</sup>

### **SHA Policy**

*The family will have 60 days to accept the revised lease. If the family does not accept the offer of the revised lease within that 60 day timeframe, the family's tenancy will be terminated for other good cause in accordance with the policies in Chapter 13.*

Schedules of special charges and rules and regulations are subject to modification or revision. Because these schedules are incorporated into the lease by reference, residents and resident organizations must be provided at least thirty days written notice of the reason(s) for any proposed modifications or revisions, and must be given an opportunity to present written comments. The notice must be delivered directly or mailed to each tenant; or posted in at least three conspicuous

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<sup>266</sup> 24 CFR 966.4(a)(3)

<sup>267</sup> 24 CFR 966.4(l)(2)(iii)(E)

places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within the project. Comments must be taken into consideration before any proposed modifications or revisions become effective.<sup>268</sup>

After the proposed revisions become effective they must be publicly posted in a conspicuous manner in the project office and must be furnished to applicants and tenants on request.<sup>269</sup>

#### SHA Policy

*When SHA proposes to modify or revise schedules of special charges or rules and regulations, SHA will post a copy of the notice in the central office, satellite property management office (if applicable), and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file and/or in a master notice file.*

#### **Other Modifications**

##### SHA Policy

*The lease will be amended to reflect all changes in family composition.*

*If, for any reason, any member of the household ceases to reside in the unit, the lease will be revised by way of an amendment to exclude the family member who has moved permanently from the unit.*

*If a new household member age 18 and above is approved by SHA to reside in the unit, a new lease will be prepared for signature. If the new household member is under the age of 18, the lease will be revised by way of an amendment.*

*Policies governing when and how changes in family composition must be reported are contained in Chapter 9, Reexaminations.*

#### 8-I.E. SECURITY DEPOSITS<sup>270</sup>

At SHA's option, the lease may require security deposits. The amount of the security deposit cannot exceed one month's rent or a reasonable fixed amount as determined by SHA. SHA may allow for gradual accumulation of the security deposit by the family, or the family may be required to pay the security deposit in full prior to occupancy. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant after vacating the unit, or used for tenant services or activities.

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<sup>268</sup> 24 CFR 966.5

<sup>269</sup> 24 CFR 966.5

<sup>270</sup> 24 CFR 966.4(b)(5)

### SHA Policy

*Residents must pay a security deposit to SHA at the time of admission. The amount of the security deposit will be as follows:*

*All units - \$350*

*Security Deposits must be paid in full on or before the first day of the second month following the commencement date of their Lease Agreement, unless a reasonable payment agreement has been executed.*

*SHA will hold the security deposit for the period the family occupies the unit. SHA will not use the security deposit for rent or other charges while the resident is living in the unit.*

*Within 30 days of move-out, SHA will refund to the resident the amount of the security deposit, less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear, and other charges due under the lease.*

*SHA will provide the resident with a written list of any charges against the security deposit within 30 calendar days of the move-out inspection. If the resident disagrees with the amount charged, they are required to contact SHA within 14 days from the date on the written list to ask for a meeting to discuss the charges.*

*If the resident transfers to another unit, SHA will transfer the security deposit to the new unit. The tenant will be billed for any maintenance or other charges due for the “old” unit.*

## 8-I.F. PAYMENTS UNDER THE LEASE

### **Rent Payments<sup>271</sup>**

Families must pay the amount of the monthly tenant rent determined by SHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and SHA must give written notice stating any change in the amount of tenant rent and when the change is effective.

### SHA Policy

*The tenant rent is due and payable on the first of every month. If the first falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.*

*If a family’s tenant rent changes, SHA will notify the family of the new amount and the effective*

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<sup>271</sup> 24 CFR 966.4(b)(1)

*date by sending an "Amendment to the Lease Agreement with the Salem Housing Authority" which will become an attachment to the lease.*

*An SHA Representative, the Head of Household; Spouse and/or Co-head (regardless of age); and all other family members age 18 and above, must sign the amendment and return to SHA within 10 business days on the date of the amendment. A copy of the amendment will be provided to the resident household.*

### **Late Fees and Nonpayment**

At SHA's option, the lease may provide for payment of penalties when the family is late in paying tenant rent.<sup>272</sup>

The lease must provide that late payment fees are not due and collectible until two weeks after SHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action.<sup>273</sup>

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under SHA's grievance procedures. SHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed.<sup>274</sup>

#### **SHA Policy**

*Late fees will be handled per the lease agreement.*

*If the family fails to pay rent upon receipt of the 72 hour warning notice, a 30/14 eviction notice will be issued.*

*Once a family receives three 72 hour warning notices in a 12-month period, a 30 day no remedy eviction notice will be issued for repeated violation of the lease.*

*When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee equal to the NSF fee charged by the applicable financial institution will be charged to the family. The fee will be due and payable 30 days after the billing is sent.*

### **Excess Utility Charges**

If SHA charges the tenant for consumption of excess utilities, the lease must state the basis for the

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<sup>272</sup> 24 CFR 966.4(b)(3)

<sup>273</sup> 24 CFR 966.4(b)(4)

<sup>274</sup> 24 CFR 966.4(e)(8)

determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if the charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.<sup>275</sup> Schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request.<sup>276</sup>

The lease must provide that charges for excess utility consumption are not due and collectible until two weeks after the PHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action.<sup>277</sup>

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under SHA grievance procedures. SHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed.<sup>278</sup>

#### SHA Policy

*Families will not be charged for excess utility charges.*

#### **Maintenance and Damage Charges**

If SHA charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges.<sup>279</sup>

Schedules of special charges for services and repairs which are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request.<sup>280</sup>

The lease must provide that charges for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after SHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action.<sup>281</sup>

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<sup>275</sup> 24 CFR 966.4(b)(2)

<sup>276</sup> 24 CFR 966.5

<sup>277</sup> 24 CFR 966.4(b)(4)

<sup>278</sup> 24 CFR 966.4(e)(8)

<sup>279</sup> 24 CFR 966.4(b)(2)

<sup>280</sup> 24 CFR 966.5

<sup>281</sup> 24 CFR 966.4(b)(4)

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under SHA grievance procedures. SHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed.<sup>282</sup>

#### SHA Policy

*When applicable, families will be charged for maintenance and/or damages according to SHA's current schedule of charges. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).*

*Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 30 calendar days after billing. If the family requests a grievance hearing within the required timeframe, SHA may not take action for nonpayment of the charges until the conclusion of the grievance process. Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.*

## **PART II: INSPECTIONS**

### 8-II.A. OVERVIEW

HUD rules require SHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, SHA may require additional inspections, in accordance with SHA Policy. This part contains SHA's policies governing inspections, notification of unit entry, and inspection results.

### 8-II.B. TYPES OF INSPECTIONS

#### **Move-In Inspections<sup>283</sup>**

The lease must require SHA and the family to inspect the dwelling unit prior to occupancy in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by SHA and the resident, must be provided to the tenant and be kept in the resident file.

#### SHA Policy

*The Head; spouse and/or co-head may attend the initial inspection and sign the inspection form for the head of household.*

#### **Move-Out Inspections<sup>284</sup>**

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<sup>282</sup> 24 CFR 966.4(e)(8)

<sup>283</sup> 24 CFR 966.4(i)

<sup>284</sup> 24 CFR 966.4(i)

SHA must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if he or she wishes, unless the tenant vacates without notice to the SHA. SHA must provide to the tenant a statement of any charges to be made for maintenance and damage beyond normal wear and tear.

The difference between the condition of the unit at move-in and move-out establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

#### SHA Policy

*SHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 30 calendar days of conducting the move- out inspection.*

#### **Annual Inspections**

Under the Public Housing Assessment System (PHAS), SHA is required to inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS).<sup>285</sup>

#### **Special Inspections**

#### SHA Policy

*SHA staff may conduct a special inspection for any of the following reasons:*

- *Housekeeping*
- *Unit condition*
- *Suspected lease violation*
- *Preventive maintenance*
- *Routine maintenance*
- *There is reasonable cause to believe an emergency exists*

#### **Other Inspections**

#### SHA Policy

*Building exteriors, grounds, common areas and systems will be inspected according to the SHA's maintenance plan.*

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<sup>285</sup> 24 CFR

## **8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS**

### **Notice of Entry**

#### ***Non-emergency Entries<sup>286</sup>***

SHA may enter the unit, with reasonable advance notification to perform routine inspections and maintenance, make improvements and repairs, or to show the unit for re-leasing. A written statement specifying the purpose if SHA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

#### **SHA Policy**

*SHA will notify the resident in writing at least 24 hours prior to any non-emergency inspection. For regular annual inspections, the family will receive at least 1 week written notice of the inspection to allow the family to prepare the unit for the inspection.*

#### ***Emergency Entries<sup>287</sup>***

SHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, SHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

### **Scheduling of Inspections**

#### **SHA Policy**

*Inspections will be conducted during business hours.*

### **Attendance at Inspections**

Residents are required to be present for move-in inspections.<sup>288</sup> There is no such requirement for other types of inspections.

#### **SHA Policy**

*Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes. If no one is at home, the inspector will enter the unit, conduct the inspection and secure the unit upon leaving.*

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<sup>286</sup> 24 CFR 966.4(j)(1)

<sup>287</sup> 24 CFR 966.4(j)(2)

<sup>288</sup> 24 CFR 966.4(i)

## **8-II.D. INSPECTION RESULTS**

SHA is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units.<sup>289</sup>

### **Emergency Repairs<sup>290</sup>**

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify SHA of the damage, and SHA must make repairs within a reasonable time frame.

If the damage was caused by a household member or guest, SHA must charge the family for the reasonable cost of repairs. SHA may also take lease enforcement action against the family.

If SHA cannot make repairs quickly, SHA must offer the family standard alternative accommodations. If SHA can neither repair the defect within a reasonable time frame nor offer alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

### **SHA Policy**

*When conditions in the unit are hazardous to life, health, or safety, SHA will make repairs or otherwise abate the situation within 24 hours.*

*Defects hazardous to life, health or safety include, but are not limited to, the following:*

- *Any condition that jeopardizes the security of the unit*
- *Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling*
- *Natural or LP gas or fuel oil leaks*
- *Any electrical problem or condition that could result in shock or fire*
- *Absence of a working heating system when outside temperature is below 50 degrees Fahrenheit*
- *Utilities not in service, including no running hot water*
- *Conditions that present the imminent possibility of injury*
- *Obstacles that prevent safe entrance or exit from the unit*
- *Absence of a functioning toilet in the unit*
- *Inoperable smoke detectors*

### **Non-emergency Repairs**

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<sup>289</sup> 24 CFR 966.4(e)

<sup>290</sup> 24 CFR 966.4(h)

### SHA Policy

*SHA will correct non-life threatening health and safety defects within 15 business days of the inspection date. If SHA is unable to make repairs within that period due to circumstances beyond SHA's control (e.g. required parts or services are not available, weather conditions, etc.) SHA will notify the family of an estimated date of completion.*

*The family must allow SHA access to the unit to make repairs.*

### **Resident-Caused Damages**

#### SHA Policy

*Damages to the unit beyond normal wear and tear will be billed to the tenant in accordance with the policies in 8-I.G., Maintenance and Damage Charges. Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.*

### **Housekeeping**

#### SHA Policy

*Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, SHA will provide proper notice of a lease violation. A reinspection will be conducted within 30 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a reinspection is considered a violation of the lease and may result in termination of tenancy in accordance with Chapter 13.*

*Notices of lease violation will also be issued to residents who purposely disengage the unit's smoke detector. Only one warning will be given. A second incidence will result in lease termination.*

## Chapter 9: REEXAMINATIONS

### INTRODUCTION<sup>291</sup>

SHA is required to monitor each family's income and composition over time, and to adjust the family's rent accordingly. SHA must adopt policies concerning the conduct of annual and interim reexaminations that are consistent with regulatory requirements, and must conduct reexaminations in accordance with such policies.<sup>292</sup>

The frequency with which SHA must reexamine income for a family depends on whether the family pays income-based or flat rent. HUD requires SHA to offer all families the choice of paying income-based rent or flat rent at least annually. SHA's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

Part I: Annual Reexaminations for Families Paying Income Based Rents. This part discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.

Part II: Reexaminations for Families Paying Flat Rents. This part contains SHA's policies for conducting full reexaminations of family income and composition for families paying flat rents. These full reexaminations are conducted at least once every 3 years. This part also contains SHA's policies for conducting annual updates of family composition for flat rent families.

Part III: Interim Reexaminations. This part includes HUD requirements and SHA policies related to when a family may and must report changes that occur between annual reexaminations.

Part IV: Recalculating Tenant Rent. After gathering and verifying required information for an annual or interim reexamination, SHA must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

Policies governing reasonable accommodation, family privacy, required family cooperation and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

### PART I: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS<sup>293</sup>

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<sup>291</sup> 24 CFR 960.257, 960.259, 966.4

<sup>292</sup> 24 CFR 960.257(c)

<sup>293</sup> 24 CFR 960.257

## 9-I.A. OVERVIEW

For those families who choose to pay income-based rent, SHA must conduct a reexamination of income and family composition at least annually.<sup>294</sup> For families who choose flat rents, SHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years.<sup>295</sup> Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, SHA must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point to determine the need for lease enforcement or eviction.

SHA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of SHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process.<sup>296</sup>

This part contains SHA's policies for conducting annual reexaminations.

## 9-I.B. SCHEDULING ANNUAL REEXAMINATIONS

SHA must establish a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12 month period.<sup>297</sup>

### SHA Policy

*SHA will schedule annual reexaminations to coincide with the family's anniversary date. SHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.*

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

*If a family transfers, SHA will not conduct a reexamination. The original anniversary date will remain.*

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<sup>294</sup> 24 CFR 960.257(a)(1)

<sup>295</sup> 24 CFR 960.257(a)(2)

<sup>296</sup> 24 CFR 960.259

<sup>297</sup> 24 CFR 960.257(a)(1)

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

SHA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of SHA.

### *SHA Policy*

*Families are required to participate in an annual reexamination interview. The interview is to be attended by the head of household, spouse, co-head and/or all other family members age 18 and above. An exception to those required to attend, may be granted by the SHA representative, if participation in an in-person interview poses a hardship due to a family member's disability, school schedule, and/or employment.*

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

*If the family is unable to attend a scheduled interview, the family is required to contact SHA 24 hours in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, SHA will send a second notification with a new interview appointment date and time.*

*If a family fails to attend two scheduled interviews without SHA approval, the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.*

*An advocate, interpreter, or other assistant may assist the family in the interview process.*

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

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition.<sup>298</sup>

### *SHA Policy*

*Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment.*

*Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.*

*If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in*

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<sup>298</sup> 24 CFR 966.4(c)(2)

accordance with the policies in Chapter 13.

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

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

### **Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. SHA may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

### **Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction.<sup>299</sup> Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

#### SHA Policy

*Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process. SHA will run LED's on all household members age 18 and above at each annual reexamination beginning with annual reexaminations effective 10/1/2010. If LED's indicates one or more family members have criminal background that was previously not disclosed or which has occurred since the last reexamination, SHA staff will follow up with the family and determine if any action needs to be taken regarding lease enforcement up to and including eviction.*

### **Compliance with Community Service**

For families who include nonexempt individuals, SHA must determine compliance with community service requirements once each 12 months.<sup>300</sup> See Chapter 11 for SHA's policies governing compliance with the community service requirement.

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<sup>299</sup> 24 CFR 5.903(e)(1)(ii)

<sup>300</sup> 24 CFR 960.257(a)(3)

## **9-I.D. EFFECTIVE DATES**

As part of the annual reexamination process, SHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.<sup>301</sup>

### **SHA Policy**

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

- *If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.*
- *If SHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.*
- *If the family causes a delay in processing the annual reexamination, increases in the family share of the rent will take effect on the family's anniversary date, regardless of whether SHA gives a 30-day notice. In this event the increase will be applied retroactively on the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.*

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

*If the family causes a delay in processing the annual reexamination, decreases in the family share of the rent will be applied from the first day of the month following completion of the reexamination processing.*

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

## **PART II: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS<sup>302</sup>**

### **9-II.A. OVERVIEW**

HUD requires that SHA offer all families the choice of paying income-based rent or flat rent at least annually. SHA's policies for offering families a choice of rents are located in Chapter 6. For families who choose flat rents, SHA must conduct a reexamination of family composition at least

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<sup>301</sup> 24 CFR 960.257(a)(1)

<sup>302</sup> 24 CFR 960.257(2)

annually, and must conduct a reexamination of family income at least once every 3 years.<sup>303</sup> SHA is only required to provide the amount of income-based rent the family might pay in those years that SHA conducts a full reexamination of income and family composition, or upon request of the family after the family submits updated income information.<sup>304</sup>

As it does for families that pay income-based rent, on an annual basis, SHA must also review community service compliance and should have each adult resident consent to a criminal background check.

This part contains SHA's policies for conducting reexaminations of families who choose to pay flat rents.

## **9-II.B. FULL REEXAMINATION OF FAMILY INCOME AND COMPOSITION FOR FAMILIES PAYING FLAT RENT**

### **Frequency of Reexamination**

#### SHA Policy

*For families paying flat rents, SHA will conduct a full reexamination of family income and composition on an annual basis.*

### **Reexamination Policies**

#### SHA Policy

*In conducting full reexaminations for families paying flat rents, SHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.*

## **9-II.C. REEXAMINATION OF FAMILY COMPOSITION (“ANNUAL UPDATE”) FOR FAMILIES PAYING A FLAT RENT**

As noted above, full reexaminations are conducted every 3 years for families paying flat rents. In the years between full reexaminations, regulations require SHA to conduct a reexamination of family composition (“annual update”).<sup>305</sup>

The annual update process is similar to the annual reexamination process, except that SHA does not collect information about the family's income and expenses, and the family's rent is not recalculated following an annual update.

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<sup>303</sup> 24 CFR 960.257(a)(2)

<sup>304</sup> 24 CFR 960.253(e)(2)

<sup>305</sup> 24 CFR 960.257(a)(2)

## **Scheduling**

SHA must establish a policy to ensure that the reexamination of family composition for families choosing to pay the flat rent is completed at least annually.<sup>306</sup>

### **SHA Policy**

*SHA will conduct full reexaminations on an annual basis for households paying a flat rent.*

*In conducting full reexaminations for families paying flat rents, SHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.*

## **Conducting Annual Updates**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition.<sup>307</sup>

### **SHA Policy**

*For families paying flat rents, SHA will conduct a full reexamination of family income and composition on an annual basis.*

*In conducting full reexaminations for families paying flat rents, SHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.*

## **PART III: INTERIM REEXAMINATIONS<sup>308</sup>**

### **9-III.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD and SHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances SHA must process interim reexaminations to reflect those changes. HUD regulations also permit SHA to conduct interim reexaminations of income or family composition at any time.

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition

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<sup>306</sup> 24 CFR 960.257(a)(2)

<sup>307</sup> 24 CFR 966.4(c)(2)

<sup>308</sup> 24 CFR 960.257; 24 CFR 966.4

change. SHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and SHA policies describing what changes families are required to report, what changes families may choose to report, and how SHA will process both SHA and family-initiated interim reexaminations.

### **9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

SHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to provisions of the public housing lease, SHA has limited discretion in this area.

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

#### **SHA Policy**

*All families must report all changes in family and household composition that occur between annual reexaminations.*

*Any family seeking to add a new family member must request approval in writing before the new member moves in, except for natural births to or adoptions by family members, or court awarded custody.*

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

*Residents who fail to notify SHA of additions to the household or who permit persons to join the household without approval from SHA, are violating the lease. Persons added without SHA approval are considered unauthorized occupants and the entire household will be subject to eviction.*

#### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require SHA approval. However, the family is required to promptly notify SHA of the addition.<sup>309</sup>

#### **SHA Policy**

*The family must inform SHA of the birth, adoption or court-awarded custody of a child within 10 business days.*

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<sup>309</sup> 24 CFR 966.4(a)(1)(v)

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

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request SHA approval to add a new family member<sup>310</sup> or other household member (live-in aide or foster child).<sup>311</sup> SHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which SHA consent will be given or denied. Under such policies, the factors considered by SHA may include:<sup>312</sup>

- Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.
- SHA's obligation to make reasonable accommodation for handicapped persons.

### **SHA Policy**

*Families must request SHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 calendar days during any 12 month period, and therefore no longer qualifies as a "guest" (per Chapter 3, 3-I-J.)*

*Requests must be made in writing and approved by SHA prior to the individual moving into the unit.*

*Family must provide SHA with proper verification from the appropriate state agency when requesting to add foster children and/or foster adults.*

*SHA will not approve the addition of new family or household members other than by birth, adoption, court-awarded custody, or marriage, if it will require the family to transfer to a larger size unit (under the transfer policy in Chapter 12), unless the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by SHA. Exceptions will be made on a case-by-case basis.*

*SHA will not approve the addition of a new family or household member unless the individual meets SHA's eligibility criteria (see Chapter 3).*

*Roomers and lodgers shall not be permitted to move in with any family. Violation of this requirement is grounds for termination of the lease.*

*Residents will not be given permission to allow a former resident of SHA who has been evicted to*

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<sup>310</sup> 24 CFR 966.4(a)(1)(v)

<sup>311</sup> 24 CFR 966.4(d)(3)

<sup>312</sup> 24 CFR 966.4(d)(3)(i)

*occupy the unit for any period of time. Violation of this requirement is grounds for termination of the lease.*

*Family members over age 17 or emancipated minors who move from the dwelling unit to establish new households shall be removed from the lease.*

- *The head of household shall report the move-out within 30 days of its occurrence.*
- *These individuals may not be readmitted to the unit and must apply as a new applicant household for placement on the waiting list.*
- *Medical hardships, or other extenuating circumstances shall be considered by SHA in making determinations under this section.*

*If SHA determines that an individual does not meet SHA's eligibility criteria as defined in Chapter 3, SHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial. SHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.*

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

#### *SHA Policy*

*If a family member ceases to reside in the unit, the family must inform SHA within 10 business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.*

*If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform SHA within 10 business days.*

### **9-III.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because SHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, SHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

#### *SHA Policy*

*Families paying income-based or flat rent are not required to report changes in income or expenses.*

### **SHA-Initiated Interim Reexaminations**

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

### SHA Policy

*SHA will conduct interim reexaminations in each of the following instances:*

- *SHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.*
- *Family-Initiated Interim Reexaminations*

SHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses.<sup>313</sup> In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination.<sup>314</sup>

### ***Required Reporting***

HUD regulations give SHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination.<sup>315</sup> SHA must process the request if the family reports a change that will result in a reduced family income.<sup>316</sup>

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced.<sup>317</sup> For more information regarding the requirement to impute welfare income see Chapter 6.

### SHA Policy

*If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, SHA will note the information in the tenant file, but will not conduct an interim reexamination.*

*If a family reports a change that it was not required to report and that would result in a decrease*

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<sup>313</sup> 24 CFR 960.257(c)

<sup>314</sup> 24 CFR 960.257(b)

<sup>315</sup> 24 CFR 960.257(b)

<sup>316</sup> PH Occ GB, p. 159

<sup>317</sup> 24 CFR 5.615

*in the tenant rent, SHA will conduct an interim reexamination. See Section 9- III.D. for effective dates.*

*Families may report changes in income or expenses at any time. See policy under Effective Dates of this section regarding the deadline for reporting changes in order for the change to take effect the first of the following month.*

## **9-III.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### *SHA Policy*

*The family may notify the SHA of changes either orally or in writing. If the family provides oral notice, SHA may also require the family to submit the changes in writing.*

*For families who report a change in income or expenses before the 23<sup>rd</sup> of each month, the change in rent (i.e. decrease) will be made effective the first of the following month.*

*If it is determined that the change in income and/or expenses is going to take place after the first of the following month, the change will be made effective the first of the month following the effective date of the change.*

*For families who report a change in income or expenses after the 22nd of each month, the change in rent (i.e. decrease) will be made effective the first of the 2<sup>nd</sup> month following the reporting of the change by the family.*

*The family will be required to attend an interview for an interim reexamination.*

*Based on the type of change reported, SHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from SHA. This time frame may be extended for good cause with SHA approval. SHA will accept required documentation by mail, by fax, or in person.*

*SHA is under no obligation to complete an interim reexamination until the actual change has occurred; to ensure that the change does in fact take place.*

### **Effective Dates**

*SHA must make the interim reexamination within a reasonable time after the family request.<sup>318</sup>*

#### *SHA Policy*

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<sup>318</sup> 24

CFR 960.257(b)

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

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

*If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.*

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

*The decrease will be effective on the first day of the month following the month in which the change was reported and verified. Families who report a change income or expenses after the 22nd of each month, the change in rent (decrease) will be made effective the first of the following month.*

## **PART IV: RECALCULATING TENANT RENT**

### **9-IV.A. OVERVIEW**

For those families paying income-based rent, SHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### **9-IV.B. CHANGES IN UTILITY ALLOWANCES**<sup>319</sup>

The tenant rent calculations must reflect any changes in SHA's utility allowance schedule.<sup>320</sup> Chapter 16 discusses how utility allowance schedules are established.

#### **SHA Policy**

*Unless SHA is required by HUD regulations to revise utility allowances retroactively or across the board, revised utility allowances will be applied to a family's rent calculations at the first annual; interim reexamination or transfer to new unit with an effective date which is after the new allowance is adopted.*

### **9-IV.C. NOTIFICATION OF NEW TENANT RENT**

The public housing lease requires SHA to give the tenant written notice stating any change in the

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<sup>319</sup> 24 CFR 965.507, 24 CFR 966.4

<sup>320</sup> 24 CFR 960.253(c)(3)

amount of tenant rent, and when the change is effective.<sup>321</sup>

When SHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of SHA's schedule of Utility Allowances for families in SHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, SHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of SHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under SHA's grievance procedure.<sup>322</sup>

#### SHA Policy

*The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.*

#### 9-IV.D. DISCREPANCIES

During an annual or interim reexamination, SHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, SHA may discover errors made by SHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

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<sup>321</sup> 24 CFR 966.4(b)(1)(ii)

<sup>322</sup> 24 CFR 966.4(c)(4)

## **Chapter 10: PETS**

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

### **INTRODUCTION**

This chapter explains SHA's policies on the keeping of pets and any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of SHA to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of SHA.

The chapter is organized as follows:

**Part I: Assistance Animals.** This part explains the difference between assistance animals and pets and contains policies related to the designation of an assistance animal as well as their care and handling (See Exhibit 10-1).

**Part II: Pet policies for all developments.** This part includes pet policies that are common to both elderly/disabled developments and general occupancy developments. (See Exhibit 10-2).

**Part III: Pet deposits and fees for general occupancy developments.** This part contains policies for pet deposits and fees that are applicable to general occupancy developments.

### **PART I: ASSISTANCE ANIMALS<sup>323</sup>**

#### **10-I.A. OVERVIEW**

This part discusses situations under which permission for an assistance animal may be approved and/or denied, and also establishes standards for the care of assistance animals.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or that provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals, often referred to as "service animals," "assistive animals," "support animals," or "therapy animals," perform many disability-related functions, including but not limited to the following:

- Guiding individuals who are blind or have low vision
- Alerting individuals who are deaf or hearing impaired
- Providing minimal protection or rescue assistance
- Pulling a wheelchair
- Fetching items
- Alerting persons to impending seizures
- Providing emotional support to persons with disabilities who have a disability-

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<sup>323</sup> Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303

related need for such support

Assistance animals that are needed as a reasonable accommodation for persons with disabilities are not considered pets, and thus, are not subject to SHA's pet policies described in Parts II through IV of this chapter<sup>324</sup> and per Exhibit 10-1.

### **10-I.B. APPROVAL OF ASSISTANCE ANIMALS**

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal.<sup>325</sup>

SHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability.<sup>326</sup>

SHA's refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless:<sup>327</sup>

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation, or
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

SHA has the authority to regulate assistance animals under applicable federal, state, and local law.<sup>328</sup>

#### **SHA Policy**

*For an animal to be excluded from the pet policy and be considered an assistance animal, there must be a person with disabilities (i.e. person with disabilities as defined by Section 504 of the Rehabilitation Act and/or the Fair Housing Act) in the household, and the family must request and SHA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.*

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<sup>324</sup> 24 CFR 5.303; 960.705

<sup>325</sup> PH Occ GB, p. 179

<sup>326</sup> PH Occ GB, p. 178

<sup>327</sup> PH Occ GB, p. 179

<sup>328</sup> 24 CFR 5.303(b)(3); 960.705(b)(3)

*Households who are approved to have an assistance animal(s) must adhere to SHA's Assistance Animal Guideline for Tenants. See Exhibit 10-1.*

### **10-I.C. CARE AND HANDLING**

HUD regulations do not affect any authority SHA may have to regulate assistance animals under federal, state, and local law.<sup>329</sup>

#### **SHA Policy**

*Residents must care for assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.*

*Residents must ensure that assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.*

*When a resident's care or handling of an assistance animal violates these policies, SHA will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If SHA determines that no such accommodation can be made, SHA may withdraw the approval of a particular assistance animal.*

## **PART II: PET POLICIES FOR ALL DEVELOPMENTS<sup>330</sup>**

### **10-II.A. OVERVIEW**

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

### **10-II.B. MANAGEMENT APPROVAL OF PETS**

#### **Registration of Pets**

SHA may require registration of the pet with SHA.<sup>331</sup>

#### **SHA Policy**

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<sup>329</sup> 24 CFR 5.303; 24 CFR 960.705

<sup>330</sup> 24 CFR 5, Subpart C; 24 CFR 960, Subpart G

<sup>331</sup> 24 CFR 960.707(b)(5)

*Pets must be registered with SHA before they are brought onto the premises. Registration includes documentation signed by a licensed veterinarian or state/local authority that the pet has received all inoculations required by state or local law, and that the pet has no communicable disease(s) and is pest-free. This registration must be renewed annually and will be coordinated with the annual reexamination date.*

*Pets will not be approved to reside in a unit until completion of the registration requirements. (See Exhibit 10-2)*

## **Refusal to Register Pets**

### *SHA Policy*

*SHA will refuse to register a pet if:*

- *The pet is not a common household pet as defined in Section 10-II.C. below*
- *Keeping the pet would violate any pet restrictions listed in this policy*
- *The pet owner fails to provide complete pet registration information, or fails to update the registration annually*
- *The applicant has previously been charged with animal cruelty under state or local law; or has been evicted, had to relinquish a pet or been prohibited from future pet ownership due to pet rule violations or a court order*
- *SHA reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament and behavior may be considered as a factor in determining the pet owner's ability to comply with provisions of the lease.*

*If SHA refuses to register a pet, a written notification will be sent to the pet owner within 10 business days of the decision. The notice will state the reason for refusing to register the pet and will inform the family of their right to appeal the decision in accordance with SHA's grievance procedures.*

### *SHA Policy*

*Residents who have been approved to have a pet must enter into an addendum to the lease agreement with SHA, or the approval of the pet will be withdrawn.*

*The pet lease addendum is the resident's certification that he or she has received a copy of SHA's pet policy and that he or she has read the policy and understands them, and agrees to comply with them.*

*The resident further certifies by signing the pet lease addendum that he or she understands that noncompliance with SHA's pet policy may result in the withdrawal of SHA approval of the pet or termination of tenancy.*

### **10-II.C. STANDARDS FOR PETS<sup>332</sup>**

SHA may establish reasonable requirements related to pet ownership including, but not limited to:

- Limitations on the number of animals in a unit, based on unit size
- Prohibitions on types of animals that SHA classifies as dangerous, provided that such classifications are consistent with applicable state and local law
- Prohibitions on individual animals, based on certain factors, including the size and weight of the animal
- Requiring pet owners to have their pets spayed or neutered

SHA's may not require pet owners to have any pet's vocal cords removed.

#### **SHA Policy**

*Common household pet means a domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), turtle or fish that is traditionally kept in the home for pleasure rather than for commercial purposes. This definition does not include animals that are used to assist persons with disabilities.<sup>333</sup>*

*The following animals are not considered common household pets:*

- *Reptiles (i.e. snakes)*
- *Rodents (excluding hamsters, gerbils and rabbits)*
- *Insects*
- *Arachnids*
- *Wild animals or feral animals*
- *Pot-bellied pigs*
- *Animals used for commercial breeding*

#### **Pet Restrictions**

#### **SHA Policy**

*The following animals are not permitted:*

- *Any animal whose adult weight will exceed 25 pounds*

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<sup>332</sup> 24 CFR 5.318; 960.707(b)

<sup>333</sup> 24 CFR 5.306

- *Dogs of the pit bull, Rottweiler, Doberman or chow breeds*
- *Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites or lacerations*
- *Any animal not permitted under state or local law or code*

## **Number of Pets**

### *SHA Policy*

*Residents may own a maximum of 2 pets, only 1 of which may be a dog. In the case of fish, residents may keep no more than can be maintained in a safe and healthy manner in a tank holding up to 20 gallons. Such a tank or aquarium will be counted as 1 pet.*

## **Other Requirements**

### *SHA Policy*

*Dogs and cats must be spayed or neutered at the time of registration or, in the case of underage animals, within 30 days of the pet reaching 6 months of age. Exceptions may be made upon veterinary certification that subjecting this particular pet to the procedure would be temporarily or permanently medically unsafe or unnecessary.*

*Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration and annually, in conjunction with the resident's annual reexamination.*

## **10-II.D. PET RULES**

Pet owners must maintain pets responsibly, in accordance with SHA policies, and in compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations.<sup>334</sup>

## **Pet Area Restrictions**

### *SHA Policy*

*Pets must be maintained within the resident's unit. When outside of the unit (within the building or on the grounds) dogs and cats must be kept on a leash or carried and under the control of the resident or other responsible individual at all times. Pets are not allowed to be chained, roped, or otherwise tethered outside the unit or building at any time.*

*Pets other than dogs or cats must be kept in a cage or carrier when outside of the unit.*

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<sup>334</sup> 24 CFR 5.315; 24 CFR 960.707(a)

*Pets are not permitted in the common areas including lobbies, community rooms and laundry areas except for those common areas which are entrances to and exits from the building.*

*Pet owners are permitted to exercise pets on project premises; however, they are responsible for disposing of the pets waste.*

### **Designated Pet/No-Pet Areas<sup>335</sup>**

SHA may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Pet rules may also designate buildings, floors of building, or sections of building for residency by pet-owning tenants.

SHA may direct initial tenant moves as may be necessary to establish pet and no-pet areas. SHA may not refuse to admit, or delay admission of, an applicant on the grounds that the applicant's admission would violate a pet or no-pet area. SHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary to accommodate such applicants for tenancy or to meet the changing needs of the existing tenants.

SHA may not designate an entire development as a no-pet area, since regulations permit residents to own pets.

### **SHA Policy**

*With the exception of common areas as described in the previous policy, SHA has not designated any buildings, floors of buildings, or sections of buildings as no-pet areas. In addition, SHA has not designated any buildings, floors of buildings, or sections of buildings for residency of pet-owning tenants.*

### **Cleanliness**

#### **SHA Policy**

*The pet owner shall be responsible for the removal of waste from any outside common area, including decks or patios, by placing it in a sealed plastic bag and disposing of it in a trash receptacle.*

*The pet owner shall take adequate precautions to eliminate any pet odors within or around the unit and to maintain the unit in a sanitary condition at all times.*

*Pet owners must promptly dispose of waste from litter boxes and must maintain litter boxes in a sanitary manner. Litter shall not be disposed of by being flushed through a toilet. Litter boxes shall be kept inside the resident's dwelling unit.*

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<sup>335</sup> 24 CFR 5.318(g), PH Occ GB, p. 182

## **Alterations to Unit**

### *SHA Policy*

*Pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal.*

*Installation of pet doors is prohibited.*

## **Noise**

### *SHA Policy*

*Pet owners must agree to control the noise of pets so that such noise does not constitute a nuisance to other residents or interrupt their peaceful enjoyment of their housing unit or premises. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities.*

## **Pet Care**

### *SHA Policy*

*Each pet owner shall be responsible for adequate care, nutrition, exercise and medical attention for his/her pet. Each pet owner shall be responsible for appropriately training and caring for his/her pet to ensure that the pet is not a nuisance or danger to other residents and does not damage SHA property. No animals may be tethered or chained inside or outside the dwelling unit at any time.*

## **Responsible Parties**

### *SHA Policy*

*The pet owner will be required to designate two responsible parties for the care of the pet if the health or safety of the pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet.*

*A resident who cares for another resident's pet must notify SHA and sign a statement that they agree to abide by all of the pet rules.*

## **Pets Temporarily on the Premises**

### *SHA Policy*

*Pets that are not owned by a tenant are not allowed on the premises. Residents are prohibited from*

*feeding or harboring stray animals.*

*This rule does not apply to visiting pet programs sponsored by a humane society or other non-profit organizations, and approved by SHA.*

## **Pet Rule Violations**

### *SHA Policy*

*All complaints of cruelty and all dog bites will be referred to animal control or an applicable agency for investigation and enforcement.*

*If a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, written notice will be served. The notice will contain a brief statement of the factual basis for the determination and the pet rule(s) that were violated. The notice will also state:*

- *That the pet owner has 10 business days from the effective date of the service of notice to correct the violation or make written request for a meeting to discuss the violation*
- *That the pet owner is entitled to be accompanied by another person of his or her choice at the meeting*
- *That the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy*

## **Notice for Pet Removal**

### *SHA Policy*

*If the pet owner and SHA are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by SHA, SHA may serve notice to remove the pet.*

*The notice will contain:*

- *A brief statement of the factual basis for SHA's determination of the pet rule that has been violated*
- *The requirement that the resident /pet owner must remove the pet within 30 calendar days of the notice*
- *A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures*

## **Pet Removal**

### SHA Policy

*If the death or incapacity of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the responsible party designated by the pet owner.*

*If the responsible party is unwilling or unable to care for the pet, or if SHA after reasonable efforts cannot contact the responsible party, SHA may contact the appropriate state or local agency and request the removal of the pet and/or SHA reserves the right to remove the pet from the premises and deliver the pet to the appropriate state or local agency.*

*If it is necessary for SHA to place the pet in a shelter facility, the cost will be the responsibility of the pet owner.*

## **Termination of Tenancy**

### SHA Policy

*SHA may initiate procedures for termination of tenancy based on a pet rule violation if:*

- *The pet owner has failed to remove the pet or correct a pet rule violation within the time period specified*
- *The pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease*

## **Emergencies**

### SHA Policy

*SHA will take all necessary steps to ensure that pets that become vicious, display symptoms of severe illness, or demonstrate behavior that constitutes an immediate threat to the health or safety of others, are immediately removed from the premises by referring the situation to the appropriate state or local entity authorized to remove such animals.*

*If it is necessary for SHA to place the pet in a shelter facility, the cost will be the responsibility of the pet owner.*

*If the pet is removed as a result of any aggressive act on the part of the pet, the pet will not be allowed back on the premises.*

## **PART III: PET DEPOSITS AND FEES IN GENERAL OCCUPANCY DEVELOPMENTS**

### **10-III.A. OVERVIEW**

This part describes the SHA's policies for pet deposits and fees for those who reside in general occupancy developments.

### **10-III.B. PET DEPOSITS**

SHA may require a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered.<sup>336</sup>

A PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. SHA must comply with such laws as to retention of the deposit, interest, and return of the deposit to the resident, and any other applicable requirements.<sup>337</sup>

#### **Payment of Deposit**

##### **SHA Policy**

*Pet owners are required to pay a refundable pet deposit of \$300 in addition to any other required deposits, if the approved pet is a cat or dog.*

*The deposit must be paid in full before the pet is brought on the premises, tenant will be required to pay the \$300 refundable pet deposit in full. The pet deposit is not part of rent payable by the resident.*

#### **Refund of Deposit**

##### **SHA Policy**

*SHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit.*

*The resident will be billed for any amount that exceeds the pet deposit.*

*SHA will provide the resident with a written list of any charges against the pet deposit within 30 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, SHA will provide a meeting to discuss the charges.*

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<sup>336</sup> 24 CFR 960.707(b)(1)

<sup>337</sup> 24 CFR 960.707(d)

### 10-III.C. NON-REFUNDABLE NOMINAL PET FEE

SHA may require payment of a non-refundable nominal pet fee to cover the reasonable operating costs to the development relating to the presence of pets.<sup>338</sup>

#### SHA Policy

*SHA does not charge a non-refundable nominal fee as of the adoption of this revised policy.*

### 10-III.D. OTHER CHARGES

#### **Pet-Related Damages During Occupancy**

##### SHA Policy

*All reasonable expenses incurred by SHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:*

- *The cost of repairs and replacements to the resident's dwelling unit*
- *Fumigation of the dwelling unit*
- *Repairs to common areas of the project*

*The expense of flea elimination shall also be the responsibility of the resident.*

*If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.*

*Charges for pet-related damage are not part of rent payable by the resident.*

#### **Pet Waste Removal Charge**

The regulations do not address SHA's ability to impose charges for house pet rule violations. However, charges for violation of SHA pet rules may be treated like charges for other violations of the lease and SHA tenancy rules.

##### SHA Policy

*A separate pet waste removal charge of \$5.00 per occurrence will be assessed against pet owners who fail to remove pet waste from any common space on the property and in accordance with this policy.*

*Notices of pet waste removal charges will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 30 calendar days after billing. If the family requests a*

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<sup>338</sup> 24 CFR 960.707(b)(1)

*grievance hearing within the required timeframe, SHA may not take action for nonpayment of the charge until the conclusion of the grievance process.*

*Charges for pet waste removal are not part of rent payable by the resident.*

### **Exhibit 10.1 SHA ASSISTANCE ANIMAL GUIDELINES FOR TENANTS**

Salem Housing Authority (SHA) will not deny applications nor terminate assistance based on the representation that an applicant or tenant owns an assistance animal, providing that the conditions of this guideline are met.

Prior to a tenant keeping an assistance animal in a unit, the assistance animal must be registered by SHA and the lease must be amended to allow the specific assistance animal that will adhere to the requirements of this Assistance Animal Guideline for Reasonable Accommodation.

Permission to keep assistance animals on this property is granted solely by, and at the discretion of the SHA.

#### **REQUEST FOR A SERVICE/COMPANION ANIMAL ACCOMMODATION:**

The tenant who needs a service/companion animal must submit a request in writing to their Tenant Relations Coordinator (TRC) requesting an accommodation for the tenant's disability and describing the requested animal. The tenant is not required to disclose the nature of his/her disability.

#### **VERIFICATION OF DISABILITY AND NEED FOR A SERVICE/COMPANION ANIMAL:**

The tenant must provide written verification, in a form/format approved by SHA, that s/he has a disability and that the accommodation is necessary to give the tenant equal opportunity to use and enjoy the community. The tenant must obtain a signed reasonable accommodation request form from his/her healthcare or mental health provider answering the following questions:

- Is the person disabled as defined by the fair housing laws?
- In the health care provider's professional opinion, does the person need the requested accommodation (use of a service/companion animal) to have the same opportunity as a non- disabled person to use and enjoy the housing community?

#### **DEPOSITS AND FEES:**

A service/companion animal is not a pet, therefore tenants who are disabled and who receive approval for a service/companion animal, will not be required to make a pet deposit or pay a pet-related move-in cleaning fee. The tenant is liable for any damage the animal actually causes.

## **REMOVAL OF A SERVICE ANIMAL:**

If a service/companion animal is unruly or disruptive (i.e. aggressively jumping on people, nipping, or other harmful behavior), SHA management may require them to remove the service/companion animal.

### **FOR THE PURPOSE OF THIS GUIDELINE, THERE ARE TWO CATEGORIES OF ASSISTANCE ANIMALS BUT NOT LIMITED TO:**

Category I: Animals such as birds, fish, turtles, hamsters, gerbils, guinea pigs, rabbits  
Category II: Cat, Dog or Fish/Turtle Tank larger than 10 gallons

#### **Category I. (Birds, fish, turtles, hamsters, gerbils, guinea pigs, rabbits)**

A tenant must abide by the following rules:

1. Fish and /or turtles must be kept in an aquarium that holds no more than 10 gallons of water.
2. Other animals in this category must be kept in a portable cage that can be easily moved by the tenant.
3. For the purpose of this guideline the fish or animals that can reasonably be kept in an aquarium or a cage constitutes "one assistance animal."
4. Any aquarium or cage must be kept clean and free of odor.

#### **Category II. (Cat, Dog, or Fish/Turtle Tank larger than 10 gallons)**

A tenant may be approved for one assistance animal and must abide by the following rules, unless on a case by case basis, exception to this guide is approved by SHA.

1. Assistance animals must be under the control of a responsible person when on SHA premises or being transported to and from the residence.
2. Cats must be trained to use a litter box which must be plastic and kept in the Tenant's unit.
3. Litter must be disposed of often enough to keep the unit free of odors, but not less than twice a week, in a sealed plastic bag and placed in the on-site garbage compactor/bin/receptacle/dumpster.
4. An assistance animal is not to be left unattended for more than 8 hours. Tenant must designate who will care for the assistance animal in his/her absence. The designee must sign a statement that he/she will be responsible for the assistance animal and will abide by the rules of this guideline.
5. An assistance animal may not be chained, roped, or otherwise tethered outside the unit or building at any time.
6. An assistance animal may be exercised only in areas designated by SHA. The Tenant is responsible to remove all animal waste, place it in a sealed plastic bag and dispose of it in a container specified by SHA. A \$5.00 waste removal fee for each occurrence will be charged to the TENANT if the owner is required to pickup up assistance animal's waste. At no time will assistance animal waste be dumped down the toilet/ sink.

7. Any conduct in violation of animal cruelty laws may be grounds for requiring that the assistance animal be removed from the home and revoking authorization to keep an assistance animal.
8. Tenant must furnish certification from veterinarian at least annually that the assistance animal is in good health free from fleas, ticks or other vermin and has had all necessary shots and/or vaccinations. Tenants are responsible for keeping all areas where assistance animals are housed clean, safe and free of parasites.
9. Tenant must register the assistance animal annually with SHA in order to keep the assistance animal for another year. Tenant will need to provide updated information on assistance animal requirements. A picture of the assistance animal must be provided at the time of registration. SHA can refuse to register the assistance animal if the assistance animal is in violation of any applicable assistance animal rule or if tenant fails to update registration.

#### RULES APPLYING TO CATEGORIES I AND II

Tenant must be able to take care of assistance animal regularly or must make appropriate arrangements with designee for as long as needed.

If the health or safety of an assistance animal is threatened by the death or incapacity of the tenant to care for the assistance animal, SHA may contact the responsible party listed in the registration.

If SHA is unable to contact the responsible party or the responsible party is unable to care for the assistance animal, SHA may enter the tenant's unit and remove the assistance animal.

SHA will place the assistance animal in a facility that will provide care and shelter until the tenant or a representative of the tenant is able to assume responsibility for the assistance animal, but not longer than 30 days.

The cost of the animal care facility provided shall be borne by the tenant.

If the assistance animal disturbs other tenants by making noise or with threatening behavior or becomes destructive, authorization to keep the assistance animal may be revoked.

If the tenant does not abide by the Assistance Animal Guideline as a Reasonable Accommodation guideline, authorization to keep an assistance animal may be revoked. SHA may require the tenant to remove the assistance animal from the home or to vacate the unit.

Tenant must allow SHA to inspect the unit for the purpose of determining compliance with the Assistance Animal Guideline.

**The tenant must agree to pay the cost of any assistance animal-caused damage including, but not limited to, the cost of repairs and replacement to, and fumigation of, the tenant's dwelling unit, and the cost of animal care facilities.**

The tenant shall be liable for any damage or injury whatsoever caused by assistance animal(s) and

shall pay SHA or the designated agents immediately for any costs incurred as a result of damage or injury caused.

The tenant accepts full responsibility and indemnifies the landlord for any claims by or injuries to third parties or their property caused by or as a result of actions by their assistance animal.

After the tenant no longer owns an assistance animal or vacates the unit, SHA will bill the tenant for costs to repair assistance animal-caused damage.

**Scheduled/authorized inspections:** Whenever a authorized inspection of the residence has been scheduled by SHA, if the tenant is not going to be present at time of scheduled inspection(s), the tenant must keep their assistance animal in a kennel, if applicable.

No vicious, dangerous or poisonous assistance animals are permitted to be kept by tenants. Tenant must furnish proof of licenses required for assistance animals in Salem, Oregon.

#### **Exhibit 10.2 SHA ASSISTED ANIMAL REGISTRATION FORM**

TENANT NAME: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

**TYPE OF ASSISTANCE ANIMAL:** \_\_\_\_\_ **CATEGORY I:** \_\_\_\_\_ **CATEGORY II:** \_\_\_\_\_

Assistance animal's Name: \_\_\_\_\_ Breed: \_\_\_\_\_

Weight: \_\_\_\_\_ Color: \_\_\_\_\_

Sex: \_\_\_\_\_ Age: \_\_\_\_\_

Does the assistance animal have any health problems? \_\_\_\_\_

#### **THE FOLLOWING CERTIFICATIONS MUST BE ATTACHED TO THIS APPLICATION OF REGISTRATION:**

- 1) A signed statement from the person agreeing to be responsible for the care of the assistance animal if the tenant is unable to care for the assistance animal, showing name, address and both home and work telephone numbers.
- 2) Certification from the veterinarian that the assistance animal has had all shots and vaccinations, and is in good health.
- 3) Proof the assistance animal is licensed within Salem, Oregon. (Cats exempt)
- 4) A picture of the assistance animal.

I, \_\_\_\_\_, do hereby state the information provided here is true and accurate. I have received a copy of the ASSISTANCE ANIMAL GUIDELINE as established by SHA. I

have read and fully understand and agree to all of the terms of the SHA ASSISTANCE ANIMAL GUIDELINE.

SIGNED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: / /  
SHA representative

Exhibit 10.3 ASSISTANCE ANIMAL ADDENDUM TO THE PUBLIC HOUSING LEASE

Assistance animals - This addendum is part of the Lease and may be changed by other conditions pertaining to assistance animals in accordance with any changes in the Salem Housing Authority Assistance Animal Guideline or other regulations specified by the State of Oregon.

Salem Housing Authority gives permission to \_\_\_\_\_

Of \_\_\_\_\_ Salem, Oregon

To possess the following described assistance animal: \_\_\_\_\_

Salem Housing Authority Assistance Animal Guideline regarding assistance animals in units owned and/or managed by the Salem Housing Authority is hereby incorporated into this Lease. Tenant has received a copy of this Assistance Animal Guideline and will comply with the requirements.

Tenant agrees to abide by the Assistance Animal Guideline established by Salem Housing Authority. In the event that during the term of this Lease Agreement, a Tenant fails to comply with the requirements set out in the Assistance Animal Guideline, the Landlord may terminate the Lease Agreement.

\_\_\_\_\_  
Printed Name of Head of Household

\_\_\_\_\_  
Signature of Head of Household

\_\_\_\_\_  
Date

\_\_\_\_\_  
Salem Housing Authority Representative

\_\_\_\_\_  
Date

**Exhibit 10.4 PET REGISTRATION FORM PUBLIC HOUSING PROGRAM**

TENANT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF PET:

Pet's Name:

Breed:

Weight:

Color:

Sex:

Age:

Does the pet have any health problems? If yes, please explain:

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**THE FOLLOWING INFORMATION/CERTIFICATIONS MUST BE ATTACHED TO THIS APPLICATION OF REGISTRATION:**

- 1) The names, addresses, home and work telephone numbers for two persons who are designated to be responsible for the care of the pet if the tenant is unable to care for the pet.
- 2) Certification from the veterinarian that the pet has had all shots and vaccinations, the pet has been spayed or neutered (in the case of a dog or cat), and is in good health.
- 3) Proof the pet is licensed within the Salem urban growth boundary (cats exempt).
- 4) A picture of the pet.

I, \_\_\_\_\_, do hereby state the information provided here is true and accurate. I have received a copy of the PET POLICY as established by the Salem Housing Authority via Chapter 10 of the SHA Public Housing Admissions and Continued Occupancy Policy, and I have read and fully understand and agree to all of the terms of the above reference Policy.

**A \$300.00 refundable deposit is required for a dog or cat.**

**Full Deposit of \$300 paid on: \_\_\_\_\_**

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Signature of Head of Household

Date:

After review of the application and documentation required, the Salem Housing Authority will process this registration application.

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APPROVED BY / SHA Representative Signature

Date

**Exhibit 10.5 SHA PET ADDENDUM TO THE PUBLIC HOUSING LEASE**

This addendum is part of the Lease and may be changed by other conditions pertaining to pets in accordance with any changes in the Salem Housing Authority's Public Housing Admissions and Continued Occupancy Policy (ACOP), Chapter 10. Pets, or other regulations specified by the State of Oregon.

The Salem Housing Authority gives permission to \_\_\_\_\_

Of \_\_\_\_\_ Salem, Oregon  
Street address

To possess the following described pet:

The Salem Housing Authority's Public Housing Admissions and Continued Occupancy Policy, Chapter 10. Pets, regarding pets in Public Housing managed by the Housing Authority of the City of Salem is hereby incorporated into this Lease. The Tenant has received a copy of the above referenced Chapter 10 and has complied with the requirements.

Tenant agrees to abide by the requirements set forth in Chapter 10 of the above referenced ACOP established by the Salem Housing Authority. In the event that during the term of this Lease Agreement, a Tenant fails to comply with the requirements set out in Chapter 10 of the ACOP, Salem Housing Authority as the Landlord may terminate the Lease Agreement.

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Printed Name of Head of Household

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Signature of Head of Household

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Date

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Salem Housing Authority Representative

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Date

## **Chapter 11: COMMUNITY SERVICE**

### **INTRODUCTION**

This chapter explains HUD regulations requiring SHA to implement a community service program for all non-exempt adults living in public housing.

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

**Part I: Community Service Self Sufficiency Requirements.** This part describes who is subject to the community service requirement, who is exempt, and HUD's definition of economic self-sufficiency.

**Part II: PHA Implementation of Community Service and Self Sufficiency Requirements.** This part provides SHA policy regarding PHA implementation and program design.

### **PART I: COMMUNITY SERVICE AND SELF SUFFICIENCY REQUIREMENT**

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

HUD regulations pertaining to the community service and self-sufficiency requirement (“CSSR”) are contained in 24 CFR 960 Subpart F (960.600 through 960.609). SHA and its residents must comply with the community service requirement, effective with SHA fiscal years that commenced on or after October 1, 2000. Per 903.7(l)(1)(iii), the SHA Plan must contain a statement of the how SHA will comply with the community service requirement, including any cooperative agreement that SHA has entered into or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.<sup>339</sup>

In administering community service requirements, SHA must comply with all nondiscrimination and equal opportunity requirements.<sup>340</sup>

#### **11-I.B. REQUIREMENTS**

Each adult resident of a SHA public housing unit who is not exempt must:<sup>341</sup>

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<sup>339</sup> 24 CFR 960.601(b)

<sup>340</sup> 24 CFR 960.605(c)(5)

<sup>341</sup> 24 CFR 960.603(a)

- Contribute 96 hours per year of community service; or
- Participate in an economic self-sufficiency program (as defined in the regulations) 96 hours per year; or
- Perform 96 hours per year of combined activities (community service and economic self-sufficiency programs).

## Definitions

### ***Exempt Individual***<sup>342</sup>

Exempt individuals include persons who are:

- A. 62 years or older;
- B. 1. Blind or disabled, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. Section 416(i)(1); Section 1382c), and who certify that, because of this disability, she or he is unable to comply with the service provisions of this subpart, or  
2. is a primary caretaker of such individual;
- C. Engaged in work activities (see Notice PIH 2003-17 (HA)). In order for an individual to be exempt from the CSSR requirement because he/she is “engaged in work activities,” the person must be participating in an activity that meets one of the following definitions of “work activity” contained in Section 407(d) of the Social Security Act (42 U.S.C. Section 607(d)):
  1. Unsubsidized employment;
  2. Subsidized private-sector employment;
  3. Subsidized public-sector employment;
  4. Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
  5. On-the-job-training;
  6. Job-search;
  7. Community service programs;
  8. Vocational educational training (not to exceed 12 months with respect to any individual);
  9. Job-skills training directly related to employment;
  10. Education directly related to employment in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
  11. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalency, in the case of a recipient who has not completed secondary school or received such a certificate;
- D. Able to meet requirements under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. Section 601 et seq.) or under any other welfare program of the State in which PHA is located including a State-administered Welfare-to-Work program; or,
- E. A member of a family receiving assistance, benefits, or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. Section 601 et seq.), or under any other welfare program of the State, including SNAP assistance or food stamps, in which the PHA is located, including a State-administered Welfare-to-Work

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<sup>342</sup> 24 CFR 960.601(b)

program, and has not been found by the State or other administering entity to be in noncompliance with such a program.

#### *SHA Policy*

*SHA will consider 20 hours per week as the minimum number of hours needed to qualify for a work activity exemption.*

#### ***Community Service<sup>343</sup>***

Eligible community service activities include, but are not limited to, serving at:

- B. Local public or nonprofit institutions, such as schools, Head Start Programs, before-or after-school programs, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult daycare programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing);
- C. Nonprofit organizations serving PHA residents or their children, such as: Boy or Girl Scouts, Boys or Girls Club, 4-H Clubs, Police Activities League (PAL), organized children's recreation, mentoring, or education programs, Big Brothers or Big Sisters, Garden Centers, community clean-up programs, beautification programs;
- D. Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels;
- E. Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods or performing arts;
- F. PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board, outreach and assistance with PHA-run self-sufficiency activities including supporting computer learning centers; and,
- F. Care for the children of other residents so parents may volunteer.

NOTE: Political activity and home schooling a resident's child(ren) is excluded for purposes of eligible community service activities

Pursuant to 24 CFR 960.609, no PHA may substitute community service activity performed by a resident for work ordinarily performed by a PHA employee. However, residents may do community service on PHA property or with or through PHA programs to assist with or enhance work done by a PHA employee.

#### ***Economic Self-Sufficiency Program<sup>344</sup>***

Eligible self-sufficiency activities include, but are not limited to:

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<sup>343</sup> PH Occ GB, p. 174

<sup>344</sup> 24 CFR 5.603(b)

- A. Job readiness or job training while not employed;
- B. Training programs through local One-Stop Career Centers, Workforce Investment Boards (local entities administered through the U.S. Department of Labor), or other training providers;
- C. Higher education (junior college or college);
- D. Apprenticeships (formal or informal);
- E. Substance abuse or mental health counseling;
- F. Reading, financial and/or computer literacy classes;
- G. English as a second language and/or English proficiency classes;
- H. Budgeting and credit counseling.

**SHA Policy**

*SHA's Family Self-Sufficiency Coordinators may sign CSSR logs for public housing residents contributing hours toward economic self-sufficiency in pursuit of Family Self-Sufficiency program goals.*

**Notification Requirements<sup>345</sup>**

At lease execution or re-examination, all adult members (18 or older) of a public housing resident family must:

- A. Provide documentation, if applicable, that they qualify for an exemption; (Documentation provided by the tenant will be used by the PHA to determine whether the tenant is exempt from the CSSR) and,
- B. Sign a certification (examples provided in Attachments A and B) that they have received and read the policy and understand that if they are not exempt, failure to comply with the community service requirement will result in nonrenewal of their lease, per 24 CFR 966.4(l)(2)(iii)(D).

When a non-exempt person becomes exempt, it is his or her responsibility to report this to the PHA and provide documentation. When an exempt person becomes non-exempt, it is his or her responsibility to report this to the PHA as soon as possible.

**SHA Policy**

*SHA will provide the household with a copy of the Community Service and Self-Sufficiency Policy (Exhibit 11-2 CSSR Lease Attachment), at lease-up and/or when an adult family member is added to the lease. At reexamination, SHA will verify CSSR exempt or non-exempt status of all adult family members.*

*If the family includes non-exempt individuals, the notice will a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours*

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<sup>345</sup> 24 CFR 960.605(c)(2)

*completed.*

## **11-I.C. DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE<sup>346</sup>**

SHA must review and verify family compliance with service requirements annually at least thirty days before the end of the twelve month lease term. The policy for documentation and verification of compliance with service requirements may be found at Section 11-I.D., Documentation and Verification.

### **Determination of Exemption Status**

An exempt individual is excused from the community service requirement.<sup>347</sup>

#### *SHA Policy*

*At least 60 days prior to lease renewal, SHA will review and verify the exemption status of all adult family members. This verification will only be done on an annual basis unless the family reports a change or SHA has reason to believe that an individual's exemption status has changed.*

*For individuals who are exempt due to being 62 years of age and older, verification of exemption status will be conducted at initial placement into the Public Housing Program, or at the time they attain age 62 while participating in the Public Housing Program.*

*Upon completion of the verification process, SHA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.*

### **Determination of Compliance**

SHA must review resident family compliance with service requirements annually at least thirty days before the end of the twelve month lease term.<sup>348</sup> As part of this review, SHA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

#### *SHA Policy*

*Approximately 60 days prior to the end of the lease term, SHA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have 10 business days to submit SHA required documentation form(s).*

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<sup>346</sup> 24 CFR 960.605(c)(3)

<sup>347</sup> 24 CFR 960.603(a)

<sup>348</sup> 24 CFR 960.605(c)(3)

*If the family fails to submit the required documentation within the required timeframe, or SHA approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Section 11-I.E., Noncompliance.*

## **Change in Status Between Annual Determinations**

### *SHA Policy*

#### *Exempt to Non-Exempt Status*

- *If an exempt individual becomes non-exempt during the twelve month lease term, it is the family's responsibility to report this change to SHA within 10 business days.*
- *Within 10 business days of a family reporting such a change, or SHA determining such a change is necessary, SHA will provide written notice of the effective date of the requirement, a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.*
- *The effective date of the community service requirement will be the first of the month following 30 day notice.*

#### *Non-Exempt to Exempt Status*

- *If a non-exempt person becomes exempt during the twelve month lease term, it is the family's responsibility to report this change to SHA within 10 business days. Any claim of exemption will be verified by SHA in accordance with the policy at 11-I.D., Documentation and Verification of Exemption Status.*
- *Within 10 business days of a family reporting such a change, or SHA determining such a change is necessary, SHA will provide the family written notice that the family member is no longer subject to the community service requirement, if SHA is able to verify the exemption. The exemption will be effective immediately.*

## **11-I.D. DOCUMENTATION AND VERIFICATION<sup>349</sup>**

SHA must retain reasonable documentation of service requirement performance or exemption in participant files.

## **Documentation and Verification of Exemption Status**

### *SHA Policy*

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<sup>349</sup> 24 CFR 960.605(c)(4)

*All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification form found in Exhibit 11-3. SHA will provide a completed copy to the family and will keep the original in the tenant file.*

*SHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.*

*SHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with SHA's determination, s/he can dispute the decision through SHA's grievance procedures (see Chapter 14).*

*Family members age 62 or older need only certify exemption at the initial certification, or at the time they become exempt by attaining age 62 while participating in the Public Housing program.*

## **Documentation and Verification of Compliance**

If qualifying community service activities are administered by an organization other than the SHA, a family member who is required to fulfill a service requirement must provide certification to SHA, signed by the organization, that the family member has performed the qualifying activities.<sup>350</sup>

### **SHA Policy**

*If anyone in the family is subject to the community service requirement, SHA will provide the family with community service documentation forms at admission, at lease renewal, when a family member becomes subject to the community service requirement during the lease term, or upon request by the family.*

*Each individual who is subject to the requirement will be required to record their community service or self-sufficiency activities and the number of hours contributed on the required form. The certification form will also include places for signatures and phone numbers of supervisors, instructors, and counselors certifying to the number of hours contributed.*

*Families will be required to submit the documentation to SHA, upon request by SHA. If SHA has reasonable cause to believe that the certification provided by the family is false or fraudulent, SHA has the right to require third-party verification.*

*Community Service hours will only be accepted from a verifiable business or organization.*

## **11-I.E. NONCOMPLIANCE**

### **Initial Noncompliance**

The lease specifies that it is renewed automatically for all purposes, unless the family fails to

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<sup>350</sup> 24 CFR 960.607

comply with the CSSR. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term.<sup>351</sup>

If the tenant or another family member has violated the community service requirement, SHA may not renew the lease upon expiration of the twelve-month term of the lease, unless the tenant and any other noncompliant family member enter into a written agreement with SHA. Under this agreement the tenant or noncompliant family member must agree to cure the noncompliance by completing the additional hours of community service or economic self-sufficiency needed to make up the total number of hours required, over the twelve-month term of the new lease. In addition, all other members of the family who are subject to the service requirement must be currently complying with the service requirement or must no longer be residing in the unit.<sup>352</sup>

#### ***Notice of Initial Noncompliance<sup>353</sup>***

If SHA determines that there is a family member who is required to fulfill a service requirement, but who has failed to comply with this obligation (noncompliant resident), SHA must notify the tenant of this determination.

The notice to the tenant must briefly describe the noncompliance. The notice must state that SHA will not renew the lease at the end of the twelve-month lease term unless the tenant, and any other noncompliant resident, enter into a written agreement with SHA to cure the noncompliance, or the family provides written assurance satisfactory to SHA that the tenant or other noncompliant resident no longer resides in the unit.

The notice must also state that the tenant may request a grievance hearing on SHA's determination, in accordance with SHA's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for SHA's nonrenewal of the lease because of the SHA's determination.

#### **SHA Policy**

*The notice of initial noncompliance will be sent at least 45 days prior to the end of the lease term.*

*The family will have 10 business days from the date of the notice of noncompliance to enter into a written agreement to cure the noncompliance over the 12 month term of the new lease, provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.*

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<sup>351</sup> 24 CFR 960.603(b)

<sup>352</sup> 24 CFR 960.607(c)

<sup>353</sup> 24 CFR 960.607(b)

*If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before SHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them.*

*If the family does not request a grievance hearing, or does not take either corrective action required by the notice of noncompliance within the required 10 business day timeframe, SHA will terminate tenancy in accordance with the policies in Section 13- IV.D.*

### **Continued Noncompliance<sup>354</sup>**

If, after the 12 month cure period, the family member is still not compliant, SHA must terminate tenancy of the entire family, according to SHA's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

#### *SHA Policy*

*Notices of continued noncompliance will be sent at least 30 days prior to the end of the lease term and will also serve as the family's termination notice. The notice will meet the requirements for termination notices described in Section 13-IV.D, Form, Delivery, and Content of the Notice.*

*The family will have 10 business days from the date of the notice of non-compliance to provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.*

*If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before SHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the noncompliant family member that previously resided with them.*

*If the family does not request a grievance hearing, or provide such documentation within the required 10 business day timeframe, the family's lease and tenancy will automatically terminate at the end of the current lease term without further notice.*

## **PART II: IMPLEMENTATION OF CSSR**

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

SHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in SHA's best interests to develop a viable,

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<sup>354</sup> 24 CFR 960.607(b)

effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

### **Resident Responsibilities at Lease Execution or Re-examination**

At lease execution or re-examination, all adult members (18 or older) of a public housing resident family must:

- A. Provide documentation, if applicable, that they qualify for an exemption; (Documentation provided by the tenant will be used by the PHA to determine whether the tenant is exempt from the CSSR) and,
- B. Sign a certification (examples provided in Attachments A and B) that they have received and read the policy and understand that if they are not exempt, failure to comply with the community service requirement will result in nonrenewal of their lease, per 24 CFR 966.4(l)(2)(iii)(D).

When a non-exempt person becomes exempt, it is his or her responsibility to report this to the PHA and provide documentation. When an exempt person becomes non-exempt, it is his or her responsibility to report this to the PHA as soon as possible.

#### **SHA Policy**

*If a disabled resident certifies that s/he is able to perform community service, SHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.*

### **PHA Program Design**

SHA may administer qualifying community service or economic self-sufficiency activities directly, or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions.<sup>355</sup>

#### **SHA Policy**

*SHA will attempt to provide the broadest choice possible to residents as they choose community service activities. To the greatest extent possible, SHA will provide names and contacts at agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations.*

*Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in SHA's Plan. SHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.*

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<sup>355</sup> 24 CFR 960.605(b)

**EXHIBIT 11-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(1) AND SECTION 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE**

**Social Security Act 216(i)(1):**

Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means

- (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or
- (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

**Section 1416 (excerpt):**

For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

- (A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and
- (B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or
  - (ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.
- (2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.
- (3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

## EXHIBIT 11-2: SHA CSSR LEASE ATTACHMENT

### **SHA Community Service & Self-Sufficiency Requirement Policy**

**Statutory/Regulatory Requirements:** Community Service is "The performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities." (See 24 CFR 960.601(b)).

Community service and economic self-sufficiency requirements mandate that each nonexempt adult household member (18 years or older) shall either contribute 8 hours per month of community service, or participate in an economic self-sufficiency program for 8 hours per month (see 24 CFR 960.603(a)). The requirements can also be met by performing a combination of 8 hours of community service and participation in an economic self-sufficiency program. The required community service or self-sufficiency activity may be completed at 8 hours each month or may be aggregated across a year. Any blocking of hours is acceptable as long as 96 hours is completed by each annual certification.

Eligible activities include, but are not limited to:

- Volunteering at local public or nonprofit institutions, such as schools, Head Start, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult daycare programs, homeless shelters, feeding programs, food banks, clothing donation programs;
- Volunteering at public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special needs populations, or with missions that enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts;
- Volunteering at nonprofit organizations such as Boy or Girl Scouts, Boys and Girls Club, 4H, mentoring programs, or community clean-up programs;
- Volunteering with programs funded under the Older Americans Act, such as Meals on Wheels or Center 50+
- Improving the grounds, providing gardens, or working with resident organizations;
- Caring for the children of other residents while those parents volunteer;
- Job readiness, job training, apprenticeships, or higher education (community college or college);
- Reading, financial, or computer literacy classes;
- English as a Second Language or English proficiency classes;
- Substance abuse or mental health counseling;
- Budgeting and credit counseling;
- Family Self-Sufficiency Program activities outlined in Individual Training and Service Plans.

## **SHA Community Service & Self-Sufficiency Requirement Policy**

### **Exempt Status & Certification**

**I meet one of the following exemptions** (check which applies)

- I am 62 years or older.
- I am blind or disabled (as defined under 216(i)(1) or 1614 of the Social Security Act), and I certify that because of this disability, I am unable to comply with the Community Service & Self-Sufficiency Requirement; or I am a caretaker of such an individual.
- I am engaged in work activities:
  - I am working at least 20 hours a week; OR
  - I am participating in an economic self-sufficiency program at least 20 hours a week, which can include job training, skill training, employment counseling, job search, work placement, basic skills training, education directly related to employment, satisfactory attendance at a secondary school, or vocational educational training.
- Program Name: \_\_\_\_\_
- I meet the exemption requirement under a welfare program of the State, including TANF and welfare-to-work.
  - Program Name: \_\_\_\_\_
- I am a member of a family receiving assistance, benefits, or services under a State program funded under part A of title IV of the Social Security Act, or under any other welfare program of the State of Oregon, including SNAP assistance (food stamps) and welfare-to-work, and the family has not been found to be in noncompliance with the program.
  - Program Name: \_\_\_\_\_

**I do not meet an exemption**, and I understand that as a resident of public housing, I am required by law to contribute 8 hours per month (or 96 hours over the course of a year) of community service or participate in an economic self-sufficiency program for 8 hours per month (or 96 hours over the course of a year). I further understand that failure to comply with the Community Service and Self-Sufficiency Requirement is grounds for lease nonrenewal. My signature below certifies I received notice of this requirement at the time of initial program participation.

**I further understand that if my status changes** from exempt to non-exempt, or non-exempt to exempt, I must notify Salem Housing Authority within 10 business days of the change.

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Signature

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Date of Signature

## Chapter 12: TRANSFER POLICY

### INTRODUCTION

This chapter explains HUD regulations and SHA policies related to transfers in four parts:

Part I: Emergency Transfers. This part describes emergency transfers, emergency transfer procedures, and payment of transfer costs.

Part II: PHA Required Transfers. This part describes types of transfers that may be required by SHA, notice requirements, and payment of transfer costs.

Part III: Transfers Requested by Residents. This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.

Part IV: Transfer Processing. This part describes creating a waiting list, prioritizing transfer requests, the unit offer policy, examples of good cause, deconcentration, transferring to another development and reexamination.

Transfers will be made according to unit availability regardless of the AMP in which the resident currently resides as well as the AMP in which an appropriate unit is located.

SHA may require the resident to move from the unit under some circumstances. There are also emergency circumstances under which alternate accommodations for the resident must be provided, that may or may not require a transfer.

The resident may also request a transfer, such as a request for a new unit as a reasonable accommodation.

SHA must have specific policies in place to deal with acceptable transfer requests.

#### SHA Policy

*Transfers will be made without regard to race; color; religion; sex; source of income; familial status; national origin; or actual or perceived sexual orientation, gender identity, marital status and/or domestic partnership.*

*Residents will receive one offer of a transfer. Refusal of that offer without good cause will result in lease termination for mandatory transfers or the removal of the household from the transfer list for incentive transfers.*

*The following transfers of current resident households will take priority over new admissions from the waiting list:*

- *Emergency Transfers*
- *Required Transfers (Occupancy Standard)*

- *Reasonable Accommodation Transfers; and/or*
- *Incentive Transfers*

## **PART I: EMERGENCY TRANSFERS**

### 12-I.A. OVERVIEW

HUD categorizes certain actions as emergency transfers.<sup>356</sup> The emergency transfer differs from a typical transfer in that it requires immediate action by SHA.

In the case of a genuine emergency, it may be unlikely that SHA will have the time or resources to immediately transfer a resident. Due to the immediate need to vacate the unit, placing the resident on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, SHA will find alternate accommodations for the resident until the emergency passes, or a permanent solution such as a return to the unit or transfer to another unit, is reached.

### 12-I.B. EMERGENCY TRANSFERS

If the dwelling unit is damaged to the extent that conditions that become hazardous to life, health, or safety of the occupants, SHA must offer standard alternative accommodations, if available, when necessary repairs cannot be made within a reasonable time.<sup>357</sup>

The following circumstance requires an immediate transfer of the resident or family: maintenance conditions in the resident's unit, building or at the site pose an immediate, verifiable threat to the life, health, or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of emergency conditions include: a gas leak; no heat in the building during the winter; no water; toxic contamination; and serious water leaks.

### 12-I.C. EMERGENCY TRANSFER PROCEDURES

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, SHA will provide temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, SHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers are mandatory and must take priority over new admissions from the waiting list.

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<sup>356</sup> PH Occ GB, p. 147

<sup>357</sup> 24 CFR 966.4(h)

## **12-I.D. COSTS OF TRANSFER DUE TO EMERGENCY CONDITIONS**

SHA shall pay the upfront cost of emergency moves/transfers and bear the cost if, in the judgment of SHA, the emergency was no fault of the resident. If the emergency was the fault of the resident, SHA will require reimbursement via a SHA approved payment agreement.

The reasonable cost of transfers includes the cost of packing, moving, and unloading as well as cost of disconnecting and reconnecting any existing resident paid services such as telephone; utilities and cable television, if applicable.<sup>358</sup>

SHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, SHA will collect information from companies in the community that provide these services.

SHA will reimburse the family for eligible out-of-pocket moving expenses up to the SHA's established moving allowance.

## **12-I.E. VAWA EMERGENCY TRANSFERS**

### **Eligibility for VAWA Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

### **Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify SHA's management office and submit a written request for a transfer. SHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under

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<sup>358</sup> PH Occ GB pg 150

SHA's program; OR

2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

### **Confidentiality**

SHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives SHA written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants for more information about SHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

### **VAWA Emergency Transfer Timing and Availability**

SHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. SHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. SHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If SHA has no safe and available units for which a tenant who needs an emergency is eligible, SHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, SHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

## **PART II: PHA REQUIRED TRANSFERS**

### **12-II.A. OVERVIEW**

HUD regulations allow SHA discretion to develop reasonable policies for required transfers. SHA may require that a resident transfer to another unit under some circumstances. For example, SHA may require a resident to transfer to make an accessible unit available to a disabled family. SHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, SHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by SHA is an adverse action, and is subject to the notice requirements

for adverse actions.<sup>359</sup>

## **12-II.B. TYPES OF PHA REQUIRED TRANSFERS**

The types of transfers that may be required by SHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

### **Transfers required by SHA are mandatory for the resident**

Residents who are required to transfer must meet the incentive transfer policy in order to transfer to a scattered site unit. If unable to meet the incentive transfer policy, residents who are required to transfer will be offered an apartment unit.

#### **Transfers to Make an Accessible Unit Available**

When a family is initially given an accessible unit, but does not require the accessible features, SHA may require the family to agree to move to a non-accessible unit when it becomes available.<sup>360</sup>

When a family is placed in an accessible unit, and does not require the features of the accessible unit, the family will be required to sign an addendum to their lease acknowledging that if an applicant requires the accessibility features of their unit, they will be given notice to move to a non-accessible unit.

When a non-accessible unit becomes available, SHA will require the family to transfer from the accessible unit. SHA may wait until a disabled resident requires the accessible unit before transferring the family from the accessible unit.

#### **Occupancy Standards Transfers**

SHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to.<sup>361</sup> SHA has discretion to place a resident, or retain a resident in a non-standard size unit to meet leasing objectives. The public housing lease must include the resident's agreement to transfer to an appropriately sized unit based on family composition.<sup>362</sup>

SHA will transfer a family when the family size has changed and the family is now too large

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<sup>359</sup> 24 CFR 966.4(e)(8)(i)

<sup>360</sup> 24 CFR 8.27(b)

<sup>361</sup> 24 CFR 960.257(a)(4)

<sup>362</sup> 24 CFR 966.4(c)(3)

(overcrowded) or too small (over-housed) for the unit occupied. The determination as to whether a family is required to transfer is at the sole discretion of SHA. For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

**Overcrowded.** The number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Section 5-I.B.

**Over housed.** The family no longer qualifies for the bedroom size in which they are living based on SHA's occupancy standards as described in Section 5-I.B.

SHA will properly notify a family that is required to move because of family size and will place the family on a transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Section 5-I.C. will only be required to transfer if it is necessary to comply with the approved exception.

SHA may consider issuing a Housing Choice Voucher in order to continue assistance to families required to transfer in the following situations:

- Remaining family member is a single person under age 62
- SHA does not have a suitable unit available for transfer.
- In the event that a remaining family member is a single person who is under The decision to offer a Housing Choice Voucher to a remaining family member is at SHA's discretion.

### **Demolition, Disposition, Revitalizations, or Rehabilitation Transfers**

Resident transfers may be necessary to permit SHA to demolish, sell or do major capital or rehabilitation work at a building site

SHA will relocate residents when their dwelling unit or property site is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. SHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if

allowed under Relocation Act<sup>363</sup> provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

### 12-II.C. ADVERSE ACTION<sup>364</sup>

A SHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, SHA may not take action on the transfer until the grievance process is concluded.

### 12-II.D. COST OF TRANSFER FOR SHA REQUIRED TRANSFERS

Resident families are required to move in order to make an accessible unit available for disabled households and will be required to bear the cost of the move.

Resident families who are required to move because they no longer meet occupancy standards will be required to bear the cost of the move.

#### **Demolition, Disposition, Revitalization, or Rehabilitation Transfers**

SHA will bear the reasonable costs of transfers that fall within this category.

The reasonable cost of transfers includes the cost of packing, moving, and unloading as well as cost of disconnecting and reconnecting any existing resident paid services such as telephone; utilities and cable television, if applicable.<sup>365</sup>

SHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, SHA will collect information from companies in the community that provide these services.

SHA will reimburse the family for eligible out-of-pocket moving expenses up to the SHA's established moving allowance.

## **PART III: TRANSFERS REQUESTED BY RESIDENTS**

### 12-III.A. OVERVIEW

HUD provides SHA with discretion to consider transfer requests from residents. The only requests that SHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of SHA. To avoid administrative costs and burdens, this policy limits

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<sup>363</sup> 24 CFR 983.7

<sup>364</sup> 24 CFR 966.4(e)(8)(i)

<sup>365</sup> PH Occ GB pg 150

the types of requests that will be considered by SHA.

Some transfers that are requested by residents should be treated as higher priorities than others due to the more urgent need for the transfer.

## 12-III.B. TYPES OF RESIDENT REQUESTED TRANSFERS

### SHA Policy

*The types of requests for transfers that SHA will consider are limited to:*

- *Requests for transfers to alleviate a serious or life threatening medical condition;*
- *Transfers due to a threat of physical harm (i.e. domestic violence, dating violence, sexual assault, and/or stalking);*
- *Reasonable accommodation request that does not require a move to an accessible unit;*
- *Reasonable accommodation request that requires the need for an accessible unit; and*
- *Incentive transfer requests.*

*No other transfer requests will be considered by SHA.*

SHA will consider the following as high priority transfer requests:

- When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature.
- When there has been a verified threat of physical harm. Such circumstances may, at SHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime, or domestic violence, dating violence, sexual assault, or stalking.
- When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features.
- When a family requests an Incentive Transfer – they will be required to fill out an “Incentive Transfer Request” form. Incentive transfers may be offered to current residents who have good rental history and want to move to units other than those they currently occupy.

SHA staff may also recommend current residents for an incentive transfer when the following conditions are met:

- Residency in a SHA development for a minimum of 12 months;
- 12 months of resident history indicating: 1) no shut off periods for all utilities for which they are responsible; and 2) no more than two 72-hour eviction notices. All balances with SHA must be verified to be paid in full at the time of application to the incentive transfer list.
- No history of disturbances, serious lease violations and/or violence against staff and/or neighbors that resulted in formal written lease violation notice(s) in residents file, and no more than 2 minor lease violation warnings (such as an unkempt porch or patio); and
- Good housekeeping practices and responsible payment history demonstrated by resident. A stable source of household income for the most recent six months verified/document to be adequate to maintain additional costs associated with a scattered site unit (such as yard maintenance and higher utility bills).

#### Incentive Transfer Procedures

1. Residents requesting to transfer must fill out and submit to SHA an “Incentive Transfer Request” form.
2. The Asset/Property Managers approve or deny applications for incentive transfer and will notify residents of the outcome.
3. Approved requests are then placed on an incentive transfer list, by date of their move-in to the Public Housing Program.
4. When a unit becomes available, SHA sends a notification to the resident that there is a unit available, and that they will be considered for the unit once a housekeeping inspection is completed.

#### Offering Units to Approved Transfers

*Required Transfers.* Two units shall be offered to all resident families approved for a required transfer. Once the family rejects two offers of available units, without good cause, they will be required to vacate their present unit.

*Incentive and/or Family Initiated Transfers.* If the family initiated the transfer, once the family rejects two offers of available units the family will be ineligible for a transfer and their name will be removed from the approved transfer list. The family will be notified that they may reapply for an incentive and/or family initiated transfer six (6) months after the second rejection of an offered unit.

When a unit becomes available for transfer, if SHA determines that estimated charges for a family pending transfer exceed the security deposit paid, the transfer may be denied.

### **12-III.C. ELIGIBILITY FOR TRANSFER**

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, SHA may establish other standards for considering a transfer request.<sup>366</sup>

Except when reasonable accommodation is being requested, SHA will only consider transfer requests from residents that meet the following requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff;
- Owe no back rent or other charges; or have no pattern of late payment;
- Have no housekeeping lease violations or history of damaging property;
- Have no utility shut off notices; and/or
- Can get utilities turned on in the name of the head of household (applicable only to properties with resident-paid utilities)

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the above standards may be made at the discretion of the Supervisor assigned to the Asset and Property Managers.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

### **12-III.D. SECURITY DEPOSITS**

When a family transfers from one unit to another, SHA will transfer their security deposit to the new unit. The resident will be billed for any maintenance or other charges due for the “old” unit.

### **12-III.E. COST OF TRANSFER**

#### **Reasonable Accommodation Transfer Requests**

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<sup>366</sup> PH Occ GB, p. 150

### *Accessible Unit Not Required*

Resident families are required to bear the cost of the move for reasonable accommodation transfers that do not require the need for a move to an accessible unit.

### *Accessible Unit Required*

SHA will bear the reasonable costs of transfers that fall within this category.

The reasonable costs includes the cost of packing, moving, and unloading, as well as cost of disconnecting and reconnecting any existing resident paid services such as telephone; utilities and cable television, if applicable.

SHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, SHA will collect information from companies in the community that provide these services.

SHA will reimburse the family for eligible out-of-pocket moving expenses up to the SHA's established moving allowance.

### **Incentive Transfers**

Resident families are required to bear all costs of moving related to incentive transfers.

### **12-III.F. HANDLING REQUESTS**

Residents requesting a transfer to another unit or development will be required to submit an incentive transfer request form.

In the case of a reasonable accommodation transfer, SHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, SHA will consider a transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

SHA will respond by approving the transfer and putting the resident family on the transfer list, by denying the transfer, or by requiring more information or documentation.

If the resident family does not meet the "good record" requirements under Section 12-III.C., the manager will address the problem and, until resolved, the request for transfer will be denied.

SHA will respond within 30 business days of the submission of the resident's request. If SHA denies the request for transfer, the resident will be informed of its grievance rights.

## **PART IV: TRANSFER PROCESSING**

## 12-IV.A. OVERVIEW

Generally, resident transfer procedures will be uniform across all properties. Residents on the transfer list will be processed in the appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience disparate treatment.

## 12-IV.B. TRANSFER LIST

SHA will maintain a centralized transfer list. Emergency transfers will not automatically go on the transfer list, but will be handled immediately, on a case by case basis. If the emergency cannot be finally resolved by a temporary accommodation, and the resident requires a permanent transfer, that resident will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions)
2. High-priority transfers (verified medical condition, threat of harm, and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standard transfers
6. Incentive Transfers per 12.III.B.

Within each category noted above, transfers, with the exception of incentive transfers, will be processed in order of the date a family was placed on the transfer list, starting with the earliest date. Incentive transfers will be placed in the order of their move-in to the Public Housing Program, with the oldest date being considered first.

Demolition and renovation transfers will gain the highest priority as necessary to allow SHA to meet the demolition or renovation schedule.

Transfers will take precedence over waiting list admissions.

The Housing Administrator may at their discretion, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

## 12-IV.C. TRANSFER OFFERS

Residents will receive two offers of a transfer.

When the transfer is required by SHA, refusal of two offers without good cause will result in lease termination.

When the transfer has been requested by the resident, refusal of two offers without good cause will result in the removal of the household from the transfer list and the family must wait six months to reapply for another transfer.

#### 12-IV.D. GOOD CAUSE FOR UNIT REFUSAL

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- Inaccessibility to source of employment, education, or job training, children's day care, or an educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.
- The family demonstrates to SHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.
- The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.

SHA will require documentation of good cause for unit refusals.

#### 12-IV.E. DECONCENTRATION

If subject to deconcentration requirements, SHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve SHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

#### 12-IV.F. REEXAMINATION POLICIES FOR TRANSFERS

SHA will not conduct a reexamination for all transfers and the next reexamination date will remain the same as the original placement annual recertification date.

- Current Public Housing residents who are required to transfer will first be offered a Public Housing unit of the appropriate size in the AMP in which they currently reside, if a unit is available.

- If there are no units available within the AMP in which they reside, the family will be offered a unit of the appropriate size in another SHA AMP.
- If there are no appropriate units available, the family's name will be placed on a required transfer waiting list until a Public Housing unit of the appropriate size comes available regardless of the AMP in which the unit is located.
- If SHA does not have the appropriate unit size in its Public Housing portfolio, the resident will be considered for placement in another SHA subsidized program, such as the Housing Choice Voucher Program.

#### 12-IV.G. RESIDENT RENT CHARGES WHEN TRANSFERRING FROM ONE PUBLIC HOUSING UNIT TO ANOTHER

Families are allowed to keep the keys to their old unit for up to 5 calendar days from the date they move into the new unit.

Rent charged for the old unit will be based on the resident rent established in that unit for up to 5 calendar days.

If the resident does not turn the keys to the old unit into SHA by the 5<sup>th</sup> day after the move to the new unit, resident rent in the old unit will then be charged based on the flat rent for the old unit.

The flat rent will be used to charge rent from the 6<sup>th</sup> day the resident continues to hold the keys for the old unit, until the keys are turned into Management.

## Chapter 13: LEASE TERMINATIONS

### INTRODUCTION

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing which is in good repair. SHA may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which SHA can terminate a family's lease, and give SHA authority to determine other reasons.

When determining SHA policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

This chapter explains the policies that govern both the family's and SHA's termination of the lease, in four parts:

**Part I: Termination by Tenant.** This part discusses the family's voluntary termination of the lease and the requirements SHA places upon families who wish to terminate their lease.

**Part II: Termination by PHA - Mandatory.** This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by SHA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

**Part III: Termination by PHA – Other Authorized Reasons.** This part describes SHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes SHA to terminate. For some of these options HUD requires SHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options SHA has full discretion whether to consider the options as just cause to terminate as long as SHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that SHA may consider in lieu of termination, and the criteria SHA will use when deciding what actions to take.

**Part IV: Notification Requirements.** This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and SHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

**PART V. Debts owed to PHA's & terminations.** This part presents the ability for a PHA to enter debt and termination information into the EIV system.

## **PART I: TERMINATION BY TENANT**

### **13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE<sup>367</sup>**

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or SHA central office or sent by pre-paid first-class mail, properly addressed.

#### **SHA Policy**

*If a family desires to move and terminate their tenancy with SHA, they must give at least 30 calendar days written notice to SHA of intent to vacate. SHA may use discretion to waive the 30-day requirement when a family must give less than 30 days' notice due to circumstances beyond their control.*

*The notice of lease termination must be signed by the head of household, spouse, or co- head.*

## **PART II: TERMINATION BY PHA – MANDATORY**

### **13-II.A. OVERVIEW**

HUD requires SHA to terminate the lease in certain circumstances. In other circumstances HUD requires SHA to establish provisions for lease termination, and SHA has discretion to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, SHA has no discretion. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires SHA to terminate the lease.

### **13-II.B. FAILURE TO PROVIDE CONSENT<sup>368</sup>**

SHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

### **13-II.C. FAILURE TO DOCUMENT CITIZENSHIP<sup>369</sup>**

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<sup>367</sup> 24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)

<sup>368</sup> 24 CFR 960.259(a) and (b)

<sup>369</sup> 24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)

SHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by SHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter 7 for a complete discussion of documentation requirements.

#### 13-II.D. FAILURE TO PROVIDE SOCIAL SECURITY DOCUMENTATION<sup>370</sup>

**SHA must terminate the lease if a resident family fails to provide the documentation or certification required for any current or new family member who is assigned or re-assigned a social security number per 3.II.C. and/or 7.II.B. See Chapters 3 and 7 for a complete discussion of documentation and certification requirements.**

##### SHA Policy

*SHA will terminate the lease at the next scheduled annual recertification if any member of the resident family is found to be using an unauthorized, invalid, bogus and/or unofficial social security number.*

#### 13-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION<sup>371</sup>

SHA must terminate the lease if the family fails to accept SHA's offer of a lease revision to existing lease, provided SHA has done the following:

- The revision is on a form adopted by SHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- SHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- SHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to SHA policies for offering lease revisions.

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<sup>370</sup> 24 CFR 5.218(c) and 24 CFR 960.259(a)(3)

<sup>371</sup> 24 CFR 966.4(l)(2)(ii)(E)

## 13-II.F. METHAMPHETAMINE CONVICTION<sup>372</sup>

SHA must immediately terminate the lease if SHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises*.

### SHA Policy

*SHA will immediately terminate the lease if SHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine in any housing unit, even if manufacture or production was not on the premises of federally-assisted housing.*

## 13-II.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS<sup>373</sup>

SHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

## **PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS**

### 13-III.A. OVERVIEW

Besides requiring SHA to terminate the lease under the circumstances described in Part II, HUD requires SHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require SHA to terminate for such violations in all cases. SHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and SHA may, as an alternative to termination, require the exclusion of the culpable household member. SHA must make policy decisions concerning these options.

In addition, HUD authorizes SHA to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. SHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of SHA's lease. In the development of the terms of the lease, SHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords SHA wide discretion in some areas, a broad range of policies could be acceptable.

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<sup>372</sup> 24 CFR 966.4(l)(5)(i)(A)

<sup>373</sup> 24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)

SHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

SHA may consider alternatives to termination and must establish policies describing the criteria SHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps SHA must take when terminating a family's lease.

### **13-III.B. MANDATORY LEASE PROVISIONS**<sup>374</sup>

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require SHA to terminate for such violations in all cases, therefore SHA policies are needed.

#### ***Definitions***<sup>375</sup>

The following definitions will be used for this and other parts of this chapter:

*Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

*Dating violence* is defined in Chapter 17.

*Domestic violence* is defined in Chapter 17.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act.<sup>376</sup>

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

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit.<sup>377</sup>

*Immediate family member* is defined in Chapter 17.

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<sup>374</sup> 24 CFR 966.4(l)(5)

<sup>375</sup> 24 CFR 5.100

<sup>376</sup> 21 U.S.C. 802

<sup>377</sup> HUD-50058, Instruction Booklet, p. 65

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

*Premises* mean the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

*Smoking* means inhaling, exhaling, breathing, carrying, or possessing any lighted cigar, cigarette, pipe, other tobacco product or similar lighted product in any manner or in any form.

*Stalking* is defined in Chapter 17.

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

### **Drug Crime On or Off the Premises<sup>378</sup>**

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

#### *SHA Policy*

*SHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household, guest, or anyone under the tenant's control.*

*SHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.*

*In making its decision to terminate the lease, SHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, SHA may, on a case-by-case basis, choose not to terminate the lease.*

### **Illegal Use of a Drug<sup>379</sup>**

The lease must provide that SHA may evict a family when SHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

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<sup>378</sup> 24 CFR 966.4(l)(5)(i)(B)

<sup>379</sup> 24 CFR 966.4(l)(5)(i)(B)

### SHA Policy

*SHA will terminate the lease when SHA determines that a household member is illegally using a drug or SHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.*

*A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous 18 months.*

*SHA will terminate the lease when SHA determines that a household member is using marijuana, regardless of whether they have been issued a Medical Marijuana card recognized by the State of Oregon or any other state.*

*SHA will terminate the lease of a participating household that grows marijuana on behalf of others regardless of whether the household holds a providers license that is recognized by the State of Oregon or any other State.*

*SHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.*

*In making its decision to terminate the lease, SHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, SHA may, on a case-by-case basis, choose not to terminate the lease, including cases of drug or alcohol abuse where the family member is a participant in “Drug Court” or other related programs tied to the Marion or Polk County Courts or to the Marion or Polk County Parole and Probation Department, SHA may waive termination of the lease under certain conditions such as the seriousness of the crime committed and the family member’s successful participation in the programs.*

*In the case of drug abuse or other criminal activity when a family member has been incarcerated and when the family member is a participant in the “Home for Good” program or other related programs tied to the Marion or Polk County courts, or to the Marion or Polk county Parole and Probation Department, SHA may waive termination of the lease under certain conditions such as the seriousness of the crime committed and the family’s participation in transitional housing programs.*

### **Non-Smoking Policy**

**HUD statutes, regulations, notices, handbooks and other issuances permit SHA to establish a non-smoking policy.**

### SHA Policy

*SHA has adopted a no smoking policy at all assisted housing sites.*

*All tenants are required to sign a No Smoking addendum to their lease.*

*Tenants who do not abide by the No Smoking lease addendum and/or policy will be in violation of their lease and SHA will take steps to terminate the lease.*

This policy applies to all tenant residents, guests, visitors, service personnel and employees. Tenants who do not abide by the No Smoking policy will be in violation of their lease and SHA will take steps to terminate the lease.

### **Threat to Other Residents<sup>380</sup>**

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including SHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises are grounds for termination of tenancy.

#### *SHA Policy*

*SHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including SHA staff) or by persons residing in the immediate vicinity of the premises.*

*Immediate vicinity means within a three-block radius of the premises. SHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.*

*In making its decision to terminate the lease, SHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, SHA may, on a case-by-case basis, choose not to terminate the lease.*

### **Alcohol Abuse<sup>381</sup>**

SHA must establish standards that allow termination of tenancy if SHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### *SHA Policy*

*SHA will terminate the lease if SHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents. A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous 12 months.*

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<sup>380</sup> 24 CFR 966.4(l)(5)(ii)(A)

<sup>381</sup> 24 CFR 966.4(l)(5)(vi)(A)

*SHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.*

*In making its decision to terminate the lease, SHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, SHA may, on a case-by-case basis, choose not to terminate the lease.*

### **Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation<sup>382</sup>**

SHA must establish standards that allow termination of tenancy if SHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

#### *SHA Policy*

*SHA will terminate the lease if SHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.*

*SHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.*

*In making its decision to terminate the lease, SHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, SHA may, on a case-by-case basis, choose not to terminate the lease.*

### **Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions<sup>383</sup>**

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.<sup>384</sup>

#### *SHA Policy*

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<sup>382</sup> 24 CFR 966.4(l)(5)(vi)(B)

<sup>383</sup> 24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)

<sup>384</sup> Pub.L. 109-162

*SHA will terminate the lease for the following violations of tenant obligations under the lease:*

*Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due); repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.*

*Failure to fulfill the following household obligations:*

- *Tenant must not assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.*
- *Tenant must not provide accommodations for boarders or lodgers*
- *Tenant must use the assisted unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose*
- *Tenant must abide by necessary and reasonable regulations set by SHA for the benefit and well-being of the housing project and the tenants*
- *Tenant must comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety*
- *Tenant must keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition*
- *Tenant must dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner*
- *Tenant must use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators*
- *Tenant must refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project*
- *Tenant must pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest*
- *Tenant must act, and cause household members or guests to act, in a manner which*

*will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition*

*In making its decision to terminate the lease, SHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, SHA may, on a case-by-case basis, choose not to terminate the lease.*

### **13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION<sup>385</sup>**

HUD authorizes SHA to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

#### **Other Good Cause<sup>386</sup>**

HUD regulations state that SHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit SHA to only those examples. The Violence against Women Reauthorization Act of 2005 explicitly prohibits SHA from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking as "other good cause" for terminating the tenancy or occupancy rights of the victim of such violence.

#### **SHA Policy**

*SHA will terminate the lease for the following reasons:*

- *Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees.*
- *Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.*
- *Discovery after admission of facts that made the tenant ineligible*
- *Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income*
- *Failure to furnish such information and certifications regarding family composition and income as may be necessary for SHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size*

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<sup>385</sup> 24 CFR 966.4(l)(2) and (5)(ii)(B)

<sup>386</sup> 24 CFR 966.4(l)(2)(ii)(B) and (C)

- *Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by SHA that such a dwelling unit is available*
- *Failure to permit access to the unit by SHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists*
- *Failure to promptly inform SHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.*
- *Failure to abide by the provisions of SHA pet policy and/or Assistance Animal Policy*
- *If the family refuses to enter into a repayment agreement, or has breached the terms of a repayment agreement entered into with SHA*
- *If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.*
- *If a household member has engaged in or threatened violent or abusive behavior toward SHA personnel. Abusive or violent behavior towards SHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior. Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.*
- *Failure to abide by the “No Smoking” policy for all Public Housing units.*
- *Allowing visitors/guests to be in their unit longer than allowed per Chapter 3.*
- *If one or more family members are found to have committed one or more violations per the Violation Chart (See Chapter 3, 3- III.C.) during their tenancy.*
- *If one or more family members are found to be engaging in the use of marijuana, as allowed by Oregon State law; however which is prohibited by Federal Law (See Chapter 3, 3-23) during their tenancy.*

*In making its decision to terminate the lease, SHA will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, SHA may, on a case-by-case basis, choose not to terminate the lease.*

### ***Family Absence from Unit<sup>387</sup>***

It is reasonable that the family may be absent from the public housing unit for brief periods. However, SHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

#### **SHA Policy**

*The family must supply any information or certification requested by SHA to verify that the family is living in the unit, or relating to family absence from the unit, including any SHA-requested information or certification on the purposes of family absences. The family must cooperate with SHA for this purpose.*

*The family must promptly notify SHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.*

*If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, SHA will terminate the lease for other good cause.*

*Abandonment: If the family appears to have vacated the unit without giving proper notice, SHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, SHA will secure the unit immediately to prevent vandalism and other criminal activity.*

### ***Over-Income Families<sup>388</sup>***

Subject to certain restrictions, HUD authorizes SHA to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, SHA may not evict or terminate the tenancy of a family solely because the family is over income if: (1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or (2) the family is currently receiving the earned income disallowance. This rule does not require SHA evict over-income residents, but rather gives SHA the discretion to do so thereby making units available for applicants who are income-eligible.

#### **SHA Policy**

*SHA will take the proper steps to evict or terminate the tenancies of families who, at their second consecutive annual recertification, verify to have income over the applicable low (80%) AMI for their family size. Exception to this policy will be made if a family member of the resident household is pursuing self-sufficiency (through the FSS Program or actively purchasing a home)*

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<sup>387</sup> 24 CFR 982.551(i)

<sup>388</sup> 24 CFR 960.261 and FR 11/26/04, p. 68786

*and/or receiving a mandatory earned income disregard.*

### **13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY**

#### **Exclusion of Culpable Household Member<sup>389</sup>**

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that SHA may consider exclusion of the culpable household member. Such an alternative can be used, by SHA policy, for any other reason where such a solution appears viable.

##### **SHA Policy**

*SHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.*

*As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon SHA request.*

#### **Repayment of Family Debts**

##### **SHA Policy**

*If a family owes amounts to SHA, as a condition of continued occupancy, SHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from SHA of the amount owed. See Chapter 16 for policies on repayment agreements.*

### **13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY**

Although SHA may have grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter. SHA may consider all of the circumstances relevant to a particular case before making a decision.

#### **Evidence<sup>390</sup>**

For criminal activity, HUD permits SHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

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<sup>389</sup> 24 CFR 966.4(l)(5)(vii)(C)

<sup>390</sup> 24 CFR 982.553(c)

### SHA Policy

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

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

### **Consideration of Circumstances<sup>391</sup>**

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that SHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease. Such relevant circumstances can also be considered when terminating the lease for any other reason.

### SHA Policy

*SHA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:*

- *The seriousness of the offending action, especially with respect to how it would affect other residents*
- *The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in Chapter 17 a victim of domestic violence, dating violence, sexual assault, or stalking*
- *The effects that the eviction will have on other family members who were not involved in the action or failure to act*
- *The effect of the termination on the community, or of SHA's failure to terminate the tenancy*
- *The effect of SHA's decision on the integrity of the public housing program*
- *The demand for housing by eligible families who will adhere to lease responsibilities*
- *The extent to which the leaseholder has shown personal responsibility and whether*

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<sup>391</sup> 24 CFR 966.4(l)(5)(vii)(B)

*they have taken all reasonable steps to prevent or mitigate the offending action*

- *The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future*
- *In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family*

## **Consideration of Rehabilitation<sup>392</sup>**

HUD authorizes SHA to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

### **SHA Policy**

*In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, SHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.*

*For this purpose SHA will require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.*

## **Reasonable Accommodation<sup>393</sup>**

If the family includes a person with disabilities, SHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

### **SHA Policy**

*If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, SHA will determine whether the behavior is related to the disability. If so, upon the family's request, SHA will determine whether alternative measures are appropriate as a reasonable accommodation. SHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter 2 for a discussion of reasonable accommodation.*

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<sup>392</sup> 24 CFR 966.4(l)(5)(vii)(D)

<sup>393</sup> 24 CFR 966.7

## **Nondiscrimination Limitation<sup>394</sup>**

SHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

## **13-III.F. PROHIBITION AGAINST TERMINATING TENANCY OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING<sup>395</sup>**

See Chapter 17. Violence Against Women Act

## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13-IV.A. OVERVIEW**

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### **13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS<sup>396</sup>**

HUD authorizes SHA to conduct criminal records checks on public housing residents for lease enforcement and eviction. SHA policy determines when SHA will conduct such checks.

#### **SHA Policy**

*SHA will conduct criminal records checks when it has come to the attention of the SHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis. add here that SHA will now run OJIN at each AR effective 7/1/10.*

SHA may not pass along to the tenant the costs of a criminal records check.

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<sup>394</sup> 24 CFR 966.4(l)(5)(vii)(F)

<sup>395</sup> Pub.L. 109-162 and 109-271

<sup>396</sup> 24 CFR 5.903(e)(ii) and 24 CFR 960.259

## 13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY<sup>397</sup>

In conducting criminal records checks, if SHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if SHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, SHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

### SHA Policy

*In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, SHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.*

*The family will be given 10 business days from the date of SHA's notice, to dispute the accuracy and relevance of the information. If the family does not contact SHA to dispute the information within that 10 business day period, SHA will proceed with the termination action.*

*Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.*

## 13-IV.D. LEASE TERMINATION NOTICE

### **Form, Delivery, and Content of the Notice<sup>398</sup>**

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine SHA documents directly relevant to the termination or eviction. If SHA does not make the documents available for examination upon request by the tenant, SHA may not proceed with the eviction.<sup>399</sup>

When SHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with SHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

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<sup>397</sup> 24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)

<sup>398</sup> 24 CFR 966.4(l)(3)

<sup>399</sup> 24 CFR 996.4(m)

When SHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by SHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of SHA, or for a drug-related criminal activity on or off the premises.

#### SHA Policy

*All notices of lease termination will be sent by first-class mail and will include a statement of the protection against termination provided by VAWA for victims of domestic violence, dating violence, sexual assault, or stalking. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in Section 13-III.F.*

#### **Timing of the Notice<sup>400</sup>**

SHA must give written notice of lease termination of:

- 14 calendar days in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)
- If the health or safety of other residents, SHA employees, or persons residing in the immediate vicinity of the premises is threatened
- If any member of the household has engaged in any drug-related criminal activity or violent criminal activity
- If any member of the household has been convicted of a felony
- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

#### SHA Policy

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<sup>400</sup> 24 CFR 966.4(l)(3)(i)

*SHA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations SHA will give a 30-day written notice or, if state or local law allows less than 30 days, such shorter notice will be given.*

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

### **Notice of Nonrenewal Due to Community Service Noncompliance<sup>401</sup>**

When SHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

#### *SHA Policy*

*If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.*

*If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.*

### **Notice of Termination Based on Citizenship Status<sup>402</sup>**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for SHA's informal hearing procedures.

## **13-IV.E. EVICTION**

### **[24 CFR 966.4(l)(4) and 966.4(m)]**

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or

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<sup>401</sup> 24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)

<sup>402</sup> 24 CFR 5.514 (c) and (d)

local law to commence an eviction action. SHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

#### SHA Policy

*When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, SHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.*

*If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, SHA will seek the assistance of the court to remove the family from the premises as per state and local law.*

SHA may not proceed with an eviction action if SHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

#### 13-IV.F. NOTIFICATION TO POST OFFICE<sup>403</sup>

When SHA evicts an individual or family for criminal activity, including drug-related criminal activity, SHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

#### 13-IV.G. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

#### SHA Policy

*A written record of every termination and/or eviction will be maintained by SHA in the applicable tenant file and will contain the following information:*

- *Name of resident, number and identification of unit occupied*
- *Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently*
- *Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)*

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<sup>403</sup> 24CFR 966.4(l)(5)(iii)(B)

- *Date and method of notifying the resident*
- *Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions*

## **PART V. DEBTS OWED TO PHAS & TERMINATIONS**

This part presents the requirement by HUD for SHA to enter debt and termination information in to the EIV system.

SHA is required to enter debt owed and termination information (e.g. adverse status of end of participations) for tenants who voluntarily or involuntarily leave the Public Housing rental assistance program.

In accordance with 24 CFR 960.203, SHA will deny admission to a program if the family is not suitable for tenancy for such reasons (but not limited to): unacceptable past performance in meeting financial obligations, history of criminal activity, eviction from Federally assisted housing in the last 5 years, family has committed fraud, bribery, or any other corrupt or criminal act in connection with a Federal housing program or if a family current owes rent or other amounts to SHA or to another PHA in connection with a Federally assisted Housing Program under the U.S. Housing Act of 1937.

HUD is requiring the collection of the following information from all PHA's:

1. Amount of debt owed to a PHA by a former tenant;
2. If applicable, indication of executed repayment agreement;
3. If applicable, indication of bankruptcy filing;
4. If applicable, the reason for any adverse termination of the family from a federally assisted housing program.

This information is collected electronically from SHA and all other PHA's via HUD's EIV system. This information will be used by HUD to create a national repository of families that owe a debt to a PHA and/or have been terminated from a federally assisted housing program. The national repository is available within the EIV system for all PHAs to access during the time of application for rental assistance. SHA is required to access this information to determine a family's suitability for rental assistance, and avoid providing limited Federal housing assistance to families who have previously been unable to comply with HUD program requirements. This information is available to HUD employees, PHA employees and contractors of HUD and PHAs.

Access to this information is available during the time of application for rental assistance. If the reported information is accurate, the tenants request for future HUD rental assistance may be denied for a period of up to ten years from the date the tenant moved out of an assisted unit or from the date they were terminated from a housing program.

Prior to entering debt and/or termination information in to the EIV system; HUD requires that the following actions be taken:

- Applicants/tenants receive the HUD notice that describes a PHA's ability to enter debt owed and/or termination data into the above EIV module.
- SHA will notify the individual(s) of proposed action; and
- SHA will provide the individual(s) with at least 60 days to present evidence that all or part of such debt is not owed or legally enforceable and/or the termination information is invalid; and
- SHA has considered any evidence presented by the individual(s) and determined that the amount of debt owed to the PHA (including SHA) is owed and legally enforceable as well as the validation of termination information.

Upon entering the data into the EIV system, the staff member responsible for entering such data, certifies and agrees to the following:

- The information being entered is complete and accurate to the best of their knowledge and they have supporting documentation to support the information entered into the system; and
- Any information determined to be inaccurate will be updated or deleted within 30 days of notification and verification of disputed inaccurate information.

#### SHA Policy

*SHA will provide all applicants/tenants with a copy of the HUD notice form HUD- 52675 that describes SHA's ability to enter debts owed and/or termination data (e.g. eviction information) into the above EIV module; as well as instructions for what the applicant can do if they dispute the debt or termination information that has been reported in EIV.*

*Information that SHA will enter into the Debts Owed/Termination module of EIV are:*

- *Amount of debt owed by a former tenant to SHA;*
- *If applicable, indication of executed repayment agreement;*
- *If applicable, indication of bankruptcy filing;*
- *If applicable, the reason for any adverse termination of the family by SHA from a Federally assisted housing program.*

*The following information will be entered into the Debt Owed/Termination Module:*

- *Full name; and*
- *Date of Birth;*
- *Social Security Number*
- *Amount of any balance owed to SHA (up to \$500,000);*
- *Whether or not tenant has entered into a repayment agreement for the amount owed*

- *to SHA;*
- *Whether or not tenant has filed for bankruptcy; and/or*
- *The negative reason for tenant's end of participation in the housing program (for example; abandoned unit, fraud, criminal activity, failure to comply with lease, etc.)*

On a quarterly basis, SHA staff will determine if the debts are still owed for those individual(s) with debt and/or termination information inhered into the module and if no longer applicable, the entry will be removed from the Debt Owed/Termination module.

## Chapter 14: GRIEVANCES AND APPEALS

### INTRODUCTION

This chapter discusses grievances and appeals pertaining to SHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

## PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

### 14-I.A. OVERVIEW

When SHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses SHA policies necessary to respond to applicant appeals through the informal hearing process.

In accordance with the Federal Privacy Act of 1974, as amended<sup>404</sup> and HUD regulations pertaining to the implementation of the Federal Privacy Act of 1974,<sup>405</sup> the applicant has the following rights:

- To have access to their records maintained by HUD.
- To have an administrative review of HUD's initial denial of your request to have access to your records maintained by HUD.
- To have incorrect information in your record corrected upon written request.
- To file an appeal request of an initial adverse determination on correction or amendment of record request within 30 calendar days after the issuance of the written denial.
- To have your record disclosed to a third party upon receipt of your written and signed request.

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<sup>404</sup> 5 USC 552a

<sup>405</sup> 24 CFR Part 16

The debt owed and/or termination information was reported by SHA. If you dispute the information, you must contact SHA in writing regarding your disagreeing with the reported information. Inform SHA why you dispute the information and provide any documentation that supports your dispute. Your filing of bankruptcy will not result in the removal of debt owed or termination from HUD's EIV system. However, if you have included the debt in your bankruptcy filing and/or this debt has been discharged by the bankruptcy court, your record will be updated to include the bankruptcy indicator. SHA will notify you of its action regarding your dispute. If SHA determines that the disputed information is correct, SHA will provide a written explanation as to why the information is correct.

Upon your request, SHA must give you the information that pertains to you and is maintained in HUD's EIV system.

All PHAs that administer the Public Housing and Housing Choice Voucher Programs have access to debts owed and termination information for all former program participants.

If an applicant tells SHA that their record contains inaccurate information, SHA will promptly investigate the matter and inform you in writing of the outcome of the investigation. SHA must correct, or as the case may be, delete inaccurate debt owed or termination information contained in the EIV system.

Debt owed and/or termination information will be maintained in EIV for a period of ten (10) years from the end of participation date.

Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the PIH Program.

#### 14-I.B. INFORMAL HEARING PROCESS<sup>406</sup>

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project.<sup>407</sup> Applicants to public housing are not entitled to the same hearing process afforded tenants in SHA's grievance procedure.<sup>408</sup>

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

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<sup>406</sup> 24 CFR 960.208(a) and PH Occ GB, p. 58

<sup>407</sup> 24 CFR 960.208(a)

<sup>408</sup> 24 CFR 966.53(a) and PH Occ GB, p. 58

## Use of Informal Hearing Process

While SHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, SHA could make the informal hearing process available to applicants who wish to dispute other SHA actions that adversely affect them.

### SHA Policy

*SHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.*

### **Notice of Denial<sup>409</sup>**

SHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for SHA's decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

### **Scheduling an Informal Hearing**

### SHA Policy

*A request for an informal hearing must be made in writing and delivered to SHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of SHA's notification of denial of admission.*

*Except as provided in Section 3-III.F, SHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.*

### **Conducting an Informal Hearing<sup>410</sup>**

### SHA Policy

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

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<sup>409</sup> 24 CFR 960.208(a)

<sup>410</sup> PH Occ GB, p. 58

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

*The person conducting the informal hearing will make a recommendation to SHA, but SHA is responsible for making the final decision as to whether admission should be granted or denied.*

### **Informal Hearing Decision<sup>411</sup>**

#### *SHA Policy*

*SHA will notify the applicant of SHA's final decision, including a brief statement of the reasons for the final decision.*

*In rendering a decision, SHA will evaluate the following matters:*

- *Whether or not the grounds for denial were stated factually in the notice,*
- *The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in SHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.*
- *The validity of the evidence. SHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, SHA will uphold the decision to deny admission.*
- *If the facts prove the grounds for denial, and the denial is discretionary, SHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.*

*SHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.*

*If the informal hearing decision overturns the denial, processing for admission will resume.*

*If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.*

### **Reasonable Accommodation for Persons with Disabilities<sup>412</sup>**

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<sup>411</sup> PH Occ GB, p. 58

<sup>412</sup> 24 CFR 966.7

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and SHA must consider such accommodations. SHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

## **PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS**

### **14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS**<sup>413</sup>

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

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

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

### **Notice of Denial or Termination of Assistance**<sup>414</sup>

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families.<sup>415</sup>
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS

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<sup>413</sup> 24 CFR 5.514

<sup>414</sup> 24 CFR 5.514(d)

<sup>415</sup> 24 CFR 5.514 and 5.518

appeal process, but assistance may be delayed during the period of the informal hearing process.

### **United States Citizenship and Immigration Services Appeal Process<sup>416</sup>**

When SHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, SHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing.

#### *SHA Policy*

*SHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.*

*The family must provide SHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.*

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

The USCIS will notify the family, with a copy to SHA, of its decision. When the USCIS notifies SHA of the decision, SHA must notify the family of its right to request an informal hearing.

#### *SHA Policy*

*SHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.*

### **Informal Hearing Procedures for Applicants<sup>417</sup>**

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

The informal hearing procedures for applicant families are described below.

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<sup>416</sup> 24 CFR 5.514(e)

<sup>417</sup> 24 CFR 5.514(f)

### ***Informal Hearing Officer***

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

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of SHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

#### **SHA Policy**

*The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of SHA documents no later than 12:00 p.m. on the business day prior to the hearing.*

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

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

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

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

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or SHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, SHA is still obligated to provide oral translation services in accordance with its LEP Plan.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. SHA may, but is not required to provide a transcript of the hearing.

#### **SHA Policy**

*SHA will not provide a transcript of an audio taped informal hearing.*

### ***Hearing Decision***

SHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

### **Retention of Documents<sup>418</sup>**

SHA must retain for a minimum of 5 years the following documents that may have been submitted to SHA by the family, or provided to SHA as part of the USCIS appeal or SHA informal hearing process:

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

### **Informal Hearing Procedures for Residents<sup>419</sup>**

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

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

## **PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS**

### **14-III.A. REQUIREMENTS<sup>420</sup>**

SHA must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any SHA action or failure to act involving the lease or SHA

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<sup>418</sup> 24 CFR 5.514(h)

<sup>419</sup> 24 CFR 5.514(f)

<sup>420</sup> 24 CFR 966.52

policies which adversely affect their rights, duties, welfare, or status. SHA grievance procedure must be included in, or incorporated by reference in, the lease.

#### SHA Policy

*SHA grievance procedure will be incorporated by reference in the tenant lease.*

SHA must provide at least 30 days' notice to tenants and resident organizations setting forth proposed changes in SHA's grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by SHA before adoption of any grievance procedure changes by SHA.

#### SHA Policy

*Residents will have 30 calendar days from the date they are notified by SHA of any proposed changes in SHA's grievance procedure, to submit written comments to SHA.*

SHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

#### 14-III.B. DEFINITIONS<sup>421</sup>

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance:** any dispute which a tenant may have with respect to SHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status
- **Complainant:** any tenant whose grievance is presented to SHA or at the project management office
- **Due Process Determination:** a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Elements of Due Process:** an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by SHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
  - A decision on the merits
- **Hearing Officer/Panel:** a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto

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<sup>421</sup> 24 CFR 966.53; 24 CFR 966.51(a)(2)(i)

- **Tenant:** the adult person (or persons) (other than a live-in aide)
  - Who resides in the unit, and who executed the lease with SHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization:** includes a resident management corporation

#### 14-III.C. APPLICABILITY<sup>422</sup>

Potential grievances could address most aspects of SHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to SHA. It is not applicable to disputes between tenants not involving SHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of SHA.

If HUD has issued a due process determination, SHA may exclude from its grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of SHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, SHA must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described in Section 14-III.E. below, to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, SHA may evict through the state/local judicial eviction procedures. In this case, SHA is not required to provide the opportunity for a hearing under SHA's grievance procedure as described above.

#### SHA Policy

*SHA is not located in a due process state, therefore it must grant opportunity for grievance hearings for all lease terminations, regardless of cause.*

See Chapter 13 for related policies on the content of termination notices.

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<sup>422</sup> 24 CFR 966.51

#### 14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE<sup>423</sup>

HUD regulations state that any grievance must be personally presented, either orally or in writing, to SHA's office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

##### SHA Policy

*SHA will accept requests for an informal settlement of a grievance either orally or in writing, to SHA's office within 10 business days of the grievable event. Within 10 business days of receipt of the request SHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.*

*If a tenant fails to attend the scheduled meeting without prior notice, SHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.*

*Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.*

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in SHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

##### SHA Policy

*SHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in SHA's tenant file.*

#### 14-III.E. PROCEDURES TO OBTAIN A HEARING<sup>424</sup>

##### **Requests for Hearing and Failure to Request<sup>425</sup>**

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision.<sup>426</sup>

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<sup>423</sup> 24 CFR 966.54

<sup>424</sup> 24 CFR 966.55

<sup>425</sup> 24 CFR 966.55(a), (c), and (d)

<sup>426</sup> 24 CFR 966.55(d)

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion.<sup>427</sup> The request must specify the reasons for the grievance and the action or relief sought.

**SHA Policy**

*The resident must submit a written request for a grievance hearing to SHA within 5 business days of the tenant's receipt of the summary of the informal settlement.*

If the complainant does not request a hearing, SHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest SHA's action in disposing of the complaint in an appropriate judicial proceeding.<sup>428</sup>

**Escrow Deposits<sup>429</sup>**

Before a hearing is scheduled in any grievance involving the amount of rent that SHA claims is due, the family must pay an escrow deposit to SHA. When a family is required to make an escrow deposit, the amount is the amount of rent SHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

SHA must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income.<sup>430</sup>

Unless SHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest SHA's disposition of the grievance in any appropriate judicial proceeding.

**SHA Policy**

*SHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation. A family is required to make an escrow deposit in the amount of rent SHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place, and the escrow deposit must be paid at least one hour prior to the scheduled hearing date and time.*

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<sup>427</sup> 24 CFR 966.55(a)

<sup>428</sup> 24 CFR 966.55(c)

<sup>429</sup> 24 CFR 966.55(e)

<sup>430</sup> 24 CFR 5.630(b)(3)

*After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.*

*If payment is not made per the above policy, SHA will terminate the grievance procedure.*

### **Scheduling of Hearings<sup>431</sup>**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and SHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate SHA official.

#### *SHA Policy*

*Within 10 business days of receiving a written request for a hearing, SHA will schedule and send written notice of the hearing to the complainant, assigned hearings office and SHA staff.*

SHA may wish to permit the tenant to request to reschedule a hearing for good cause.

#### *SHA Policy*

*The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.*

*Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, SHA may request documentation of the "good cause" prior to rescheduling the hearing.*

### **Expedited Grievance Procedure<sup>432</sup>**

SHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of SHA, or
- Any drug-related criminal activity on or near such premises

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

SHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

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<sup>431</sup> 24 CFR 966.55(f)

<sup>432</sup> 24 CFR 966.55(g)

SHA Policy

*SHA will follow expedited grievance procedures for any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of SHA, or any drug-related criminal activity on or near such premises.*

*Such procedures will provide for an expedited notice of hearing request, an expedited scheduling of the hearing, and for an expedited decision on the grievance. The tenant will have 3 business days to make their hearing request. SHA will have 3 business days to schedule the hearing, and 3 business days to render a decision. All other aspects of the expedited grievance process shall be the same as for other grievances.*

14-III.F. SELECTION OF HEARING OFFICER/PANEL<sup>433</sup>

The grievance hearing must be conducted by an impartial person or persons appointed by SHA, other than the person who made or approved SHA's action under review, or a subordinate of such person.

SHA Policy

*SHA grievance hearings will be conducted by a single hearing officer and not a panel.*

*SHA will appoint a person who has been selected in the manner required under the grievance procedure. Efforts will be made to assure that the person selected is not a friend, nor enemy, of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.*

14-III.G. PROCEDURES GOVERNING THE HEARING<sup>434</sup>

**Rights of Complainant<sup>435</sup>**

The complainant will be given an opportunity to examine before the grievance hearing any SHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If SHA does not make the document available for examination upon request by the complainant, SHA may not rely on such document at the grievance hearing.

SHA Policy

*The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page.*

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<sup>433</sup> 24 CFR 966.55(b)

<sup>434</sup> 24 CFR 966.56

<sup>435</sup> 24 CFR 966.56(b)

*The family must request discovery of SHA documents no later than 12:00 p.m. on the business day prior to the hearing.*

The complainant has the right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf; the right to a private hearing unless the complainant requests a public hearing; the right to present evidence and arguments in support of the tenant's complaint; to controvert evidence relied on by SHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information SHA or project management relies; and the right to a decision based solely and exclusively upon the facts presented at the hearing.

#### *SHA Policy*

*Hearings may be attended by the following applicable persons:*

- *A SHA representative(s) and any witnesses for SHA*
- *The tenant and any witnesses for the tenant*
- *The tenant's counsel or other representative*
- *Any other person approved by SHA as a reasonable accommodation for a person with a disability*

#### **Decision without Hearing<sup>436</sup>**

The hearing officer/panel may render a decision without proceeding with the hearing if the hearing officer/panel determines that the issue has been previously decided in another proceeding.

#### **Failure to Appear<sup>437</sup>**

If the complainant or SHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the SHA must be notified of the determination by the hearing officer/panel, provided that a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest SHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

#### *SHA Policy*

*If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up*

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<sup>436</sup> 24 CFR 966.56(c)

<sup>437</sup> 24 CFR 966.56(d)

*to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 minutes of the scheduled time, they will be considered to have failed to appear.*

*If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact SHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.*

*“Good cause” is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.*

### **General Procedures<sup>438</sup>**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter SHA must sustain the burden of justifying SHA action or failure to act against which the complaint is directed.<sup>439</sup>

The hearing must be conducted informally by the hearing officer/panel. SHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.<sup>440</sup>

### **SHA Policy**

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

- *Oral evidence: the testimony of witnesses*
- *Documentary evidence: a writing which is relevant to the case, for example, a letter written to SHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.*
- *Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.*
- *Real evidence: A tangible item relating directly to the case.*

*Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying*

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<sup>438</sup> 24 CFR 966.56(e), (f), and (g)

<sup>439</sup> 24 CFR 966.56(e)

<sup>440</sup> 24 CFR 966.56(f)

*at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.*

*If SHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine SHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.*

*Other than the failure of SHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.*

The hearing officer/panel must require SHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.<sup>441</sup>

The complainant or SHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.<sup>442</sup>

#### **Accommodations of Persons with Disabilities<sup>443</sup>**

SHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of SHA's responsibilities pertaining to reasonable accommodation.

#### **14-III.H. DECISION OF THE HEARING OFFICER/PANEL<sup>444</sup>**

The hearing officer/panel must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and SHA. SHA must retain a copy of the decision in the tenant's

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<sup>441</sup> 24 CFR 966.56(f)

<sup>442</sup> 24 CFR 966.56(g)

<sup>443</sup> 24 CFR 966.56(h)

<sup>444</sup> 24 CFR 966.57

folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by SHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel.<sup>445</sup>

### SHA Policy

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

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

*The hearing officer will issue a written decision to the family and SHA no later than 10 business days after the hearing. The report will contain the following information:*

#### **Hearing information:**

Name of the complainant  
Date, time and place of the hearing  
Name of the hearing officer  
Name of SHA representative(s)  
Name of family representative (if any) Names of witnesses (if any)

**Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

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<sup>445</sup> 24 CFR 966.57(a)

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold SHA's decision.

**Order:** The hearing report will include a statement of whether SHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct SHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct SHA to restore the family's status.

## Procedures for Further Hearing

### SHA Policy

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

## Final Decision<sup>446</sup>

The decision of the hearing officer/panel is binding on SHA which must take the action, or refrain from taking the action cited in the decision unless SHA's Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern SHA action or failure to act in accordance with or involving the complainant's lease on SHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer/panel is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and SHA

### SHA Policy

*When SHA considers the decision of the hearing officer to be invalid due to the reasons stated*

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<sup>446</sup> 24 CFR 966.57(b)

*above, it will present the matter to SHA's Housing Administrator within 10 business days of the date of the hearing officer's decision. The Housing Administrator has 30 calendar days to consider the decision. If the Housing Administrator decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.*

A decision by the hearing officer/panel, or Board of Commissioners in favor of SHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court.<sup>447</sup>

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<sup>447</sup> 24 CFR 966.57(c)

## **Chapter 15: PROGRAM INTEGRITY**

### **INTRODUCTION**

SHA is committed to ensuring that funds made available to SHA are spent in accordance with HUD requirements.

This chapter covers HUD and SHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents SHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures SHA must and may take when errors or program abuses are found.

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

#### **15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

##### **SHA Policy**

*SHA anticipates that the vast majority of families and SHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.*

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

- *SHA will provide each applicant and resident with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.*
- *SHA will provide each applicant and resident household with the HUD provided *EIV Informational brochure*.*
- *SHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. SHA will discuss program compliance and integrity issues.*
- *SHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.*
- *SHA staff will be required to review and explain the contents of all HUD- and SHA-required forms prior to requesting family member signatures.*
- *SHA will place a warning statement about the penalties for fraud (as described in*

*the False Statement Act, U.S.C. 1001 and 1010) on key SHA forms and form letters that request information from a family member.*

- *SHA will provide each SHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.*

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

### **15-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, SHA will use a variety of activities to detect errors and program abuse.

#### **Quality Control and Analysis of Data**

##### SHA Policy

*SHA will employ a variety of methods to detect errors and program abuse, including:*

- *SHA routinely will use available sources of up-front income verification to compare with family-provided information, including but not limited to the use of the HUD EIV system.*
- *At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination, as well as being compared to the EIV reports noted in Chapter 7 to identify inconsistencies and incomplete information.*
- *SHA will compare family-reported income and expenditures to detect possible unreported income.*

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

OMB Circular A-133 requires PHA's that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of SHA activities and notifies SHA of errors and potential cases of program abuse.

##### SHA Policy

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

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

### SHA Policy

*SHA will encourage staff, residents, and the public to report possible program abuse.*

## 15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

### **When SHA Will Investigate**

#### SHA Policy

*SHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for SHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.*

*SHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.*

### **Consent to Release of Information<sup>448</sup>**

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

### **Analysis and Findings**

#### SHA Policy

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

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

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

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

### **Consideration of Remedies**

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<sup>448</sup> 24 CFR 960.259

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

#### SHA Policy

*In the case of family-caused errors or program abuse, SHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.*

#### **Notice and Appeals**

##### SHA Policy

*SHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which SHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).*

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

### 15-II.A. UNDER- OR OVERPAYMENT

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement.

#### **Corrections**

Whether the incorrect rental determination is an overpayment or underpayment, SHA must promptly correct the tenant rent and any utility reimbursement prospectively.

##### SHA Policy

*Increases in the tenant rent will be implemented only after the family has received 30 days' notice, when the error is determined to not be tenant caused. Any decreases in tenant rent will become effective the first of the month following the discovery of the error, when the error is determined to not be tenant caused.*

#### **Reimbursement**

Whether the family is required to reimburse SHA or SHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken

was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

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

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members. An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows SHA to use incorrect information provided by a third party.

### **Family Reimbursement to SHA**

#### *SHA Policy*

*In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. SHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, SHA will terminate the family's lease in accordance with the policies in Chapter 13.*

### **SHA Reimbursement to Family**

#### *SHA Policy*

*SHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.*

### **Prohibited Actions**

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to SHA.<sup>449</sup>
- Provide incomplete or false information to SHA.<sup>450</sup>
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income.<sup>451</sup>

#### *SHA Policy*

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<sup>449</sup> Title 18 U.S.C. Section 1001

<sup>450</sup> 24 CFR 960.259(a)(4)

<sup>451</sup> 24 CFR 966.4(l)(2)(iii)(C)

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

- *Offering bribes or illegal gratuities to SHA's Board of Commissioners, employees, contractors, or other SHA representatives*
- *Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to SHA on the family's behalf*
- *Use of a false name or the use of falsified, forged, or altered documents*
- *Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)*
- *Omitted facts that were obviously known by a family member (e.g., not reporting employment income)*
- *Admission of program abuse by an adult family member*

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

### **Penalties for Program Abuse**

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

- SHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to SHA).
- SHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 13 (for residents).
- SHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- SHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

### **15-II.C. SHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of SHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a SHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the SHA personnel policy. SHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

#### **Repayment to SHA**

The family is not required to repay an underpayment of rent if the error or program abuse is caused by SHA staff.

#### **SHA Reimbursement to Family**

### SHA Policy

*SHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.*

### **Prohibited Activities**

#### SHA Policy

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

- *Failing to comply with any public housing program requirements for personal gain*
- *Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident*
- *Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to SHA*
- *Disclosing confidential or proprietary information to outside parties*
- *Gaining profit as a result of insider knowledge of SHA activities, policies, or practices*
- *Misappropriating or misusing public housing funds*
- *Destroying, concealing, removing, or inappropriately using any records related to the public housing program*
- *Viewing and/or obtaining data in the EIV system when there is not a signed Authorization for Release of Information and Privacy Act Notice (Form HUD-9886 or equivalent consent form satisfying requirements under 24 CFR 5.230 in the households file for the head of household, spouse and/or co-head regardless of age, and for each adult member of the household). Each staff member of SHA who has access to and is authorized to review EIV data has been properly trained and agrees to not disclose EIV data except as allowed by law and the EIV agreements they have signed.*
- *Committing any other corrupt or criminal act in connection with any federal housing program*

### 15-II.D. CRIMINAL PROSECUTION

#### SHA Policy

*When SHA determines that program abuse by a family or SHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, SHA will refer the matter to the appropriate entity for prosecution.*

*When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).*

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

#### **15-II.E. FRAUD AND PROGRAM ABUSE RECOVERIES**

PHA's who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that they recover.<sup>452</sup>

If SHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through SHA's grievance process.

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<sup>452</sup> Notice PIH 2005-7 (HA)

## **Chapter 16: PROGRAM ADMINISTRATION**

### **INTRODUCTION**

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

**Part I: Setting Utility Allowances.** This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of SHA-furnished utilities.

**Part II: Establishing Flat Rents and Public Housing Maximum Rents.** This part describes the requirements and policies related to establishing and updating flat rent amounts and public housing maximum rents.

**Part III: Repayment of Family Debts.** This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which SHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

**Part IV: Public Housing Assessment System (PHAS).** This part describes PHAS indicators, how SHA is scored under PHAS, and how those scores affect SHA.

**Part V: Record-Keeping.** All aspects of the program involve certain types of record- keeping. This part outlines the privacy rights of applicants and participants and record retention policies SHA will follow.

**Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level.** This part describes SHA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

**Part VII: Notification to Applicants and Tenants regarding Protections under the Violence against Women Reauthorization Act of 2005 (VAWA).** This part includes policies for notifying applicants and tenants of VAWA requirements.

### **PART I: SETTING UTILITY ALLOWANCES<sup>453</sup>**

#### **16-I.A. OVERVIEW**

SHA must establish allowances for SHA-furnished utilities for all check metered utilities and for

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<sup>453</sup> 24 CFR 965 Subpart E

resident-purchased utilities for all utilities purchased directly by residents from a utility supplier.<sup>454</sup>

SHA must also establish surcharges for excess consumption of SHA-furnished utilities.<sup>455</sup>

SHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents.<sup>456</sup>

## **16-I.B UTILITY ALLOWANCES**

SHA must establish separate allowances for each utility and for each category of dwelling units SHA determines to be reasonably comparable as to factors affecting utility usage.<sup>457</sup>

The objective of SHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.<sup>458</sup>

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if SHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide.<sup>459</sup> Costs for telephone, cable/satellite TV, and internet services are not considered utilities.<sup>460</sup>

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage.<sup>461</sup> Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to SHA about establishing utility allowances.

### **Air-Conditioning**

“If SHA installs air conditioning, it shall provide, to the maximum extent economically feasible,

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<sup>454</sup> 24 CFR 965.502(a)

<sup>455</sup> 24 CFR 965.506

<sup>456</sup> 24 CFR 965.502(b)

<sup>457</sup> 24 CFR 965.503

<sup>458</sup> 24 CFR 965.505

<sup>459</sup> 24 CFR 965.505

<sup>460</sup> PH Occ GB, p. 138

<sup>461</sup> Ibid.

systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.”<sup>462</sup>

#### SHA Policy

*SHA has not installed air-conditioning.*

#### **Utility Allowance Revisions<sup>463</sup>**

SHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

SHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective.

#### SHA Policy

*Between annual reviews of utility allowances, SHA will only revise its utility allowances due to a rate change, when required to by the regulation.*

#### 16-I.C. SURCHARGES FOR PHA-FURNISHED UTILITIES<sup>464</sup>

For dwelling units subject to allowances for SHA-furnished utilities where check meters have been installed, SHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on SHA’s average utility rate. The basis for calculating the surcharges must be described in SHA’s schedule of allowances. Changes in the amount of surcharges based directly on changes in SHA’s average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

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<sup>462</sup> 24 CFR 965.505(e)

<sup>463</sup> 24 CFR 965.507

<sup>464</sup> 24 CFR 965.506

For dwelling units served by SHA-furnished utilities where check meters have not been installed, SHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of SHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of SHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to SHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

#### 16-I.D. NOTICE REQUIREMENTS [965.502]

SHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
- Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
- Notify residents of the place where SHA's documentation on which allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

#### 16-I.E. REASONABLE ACCOMMODATION<sup>465</sup>

On request from a family that includes a disabled or elderly person, SHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family.<sup>466</sup>

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability.<sup>467</sup>

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

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<sup>465</sup> 24 CFR 965.508

<sup>466</sup> PH Occ GB, p. 172

<sup>467</sup> Ibid.

## **PART II: ESTABLISHING FLAT RENTS AND PUBLIC HOUSING MAXIMUM RENTS**

### **16-II.A. OVERVIEW**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient. Public housing maximum rents are needed to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status.<sup>468</sup>

This part discusses how SHA establishes and updates flat rents and public housing maximum rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and public housing maximum rents are discussed in Chapter 6.

### **16-II.B. FLAT RENTS<sup>469</sup>**

#### **Establishing Flat Rents**

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which SHA could promptly lease the public housing unit after preparation for occupancy. SHA must use a reasonable method to determine flat rents. In determining flat rents, SHA must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of property
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by SHA
- Utilities provided by SHA

#### **Reviewing Flat Rents**

SHA must ensure that flat rents continue to mirror market rent values.<sup>470</sup>

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<sup>468</sup> 24 CFR 5.504

<sup>469</sup> 24 CFR 960.253(b)

<sup>470</sup> 24 CFR 960.253(b)

### SHA Policy

*SHA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values.*

### **Posting Flat Rents**

#### SHA Policy

*SHA will publicly post the schedule of flat rents in a conspicuous manner in SHA's office.*

### **Documentation of Flat Rents<sup>471</sup>**

SHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by SHA in accordance with this method.

## 16-II.C. PUBLIC HOUSING MAXIMUM RENTS

### **Establishing Public Housing Maximum Rents**

SHA is prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status.<sup>472</sup> Therefore, in order to assist mixed families, SHA must prorate assistance. Public housing maximum rents are needed in order to calculate the tenant rent for a mixed family.

The public housing maximum rent is based on value of the 95th percentile of the total tenant payment (TTP) for each tenant within SHA. SHA may calculate a maximum rent on either a SHA- or project wide basis. A separate maximum rent can be provided for each separate project or projects may be combined into logical groups, if appropriate. HUD recommends that a single project basis be avoided for a project unless at least 50 dwelling units are involved.

SHA may use the "direct comparison" or the "unit distribution" method for establishing the public housing maximum rents for each unit size. Appendix H, of Guidebook 7465.G, Restrictions on Assistance to Noncitizens provides detailed guidance on how to establish public housing maximum rents using the methodologies identified above.

### **Review of Public Housing Maximum Rents**

#### SHA Policy

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<sup>471</sup> 24 CFR 960.253(b)(5)

<sup>472</sup> 24 CFR

*SHA will recalculate the public housing maximum rents on an annual basis.*

### **Posting of Public Housing Maximum Rents**

#### *SHA Policy*

*SHA will publicly post the schedule of public housing maximum rents in a conspicuous manner in SHA's office.*

### **Documentation of Public Housing Maximum Rents**

#### *SHA Policy*

*SHA will maintain records that document how SHA determined the 95th percentile of TTP, whether the maximum rent was determined SHA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.*

## **PART III: FAMILY DEBTS TO THE PHA**

### 16-III.A. OVERVIEW

This part describes SHA's policies for recovery of monies that have been underpaid by families. HUD regulations<sup>473</sup> require Tenants to reimburse the PHA if they were charged less rent than required by HUD's rent formula due to the tenant's underreporting or failure to report income. The tenant is required to reimburse the PHA for the difference between the tenant rent that should have been paid and the tenant rent that was charged. This rent underpayment is commonly referred to as retroactive rent. If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new payment agreement, the PHA must terminate the family's tenancy. HUD does not authorize any PHA-sponsored amnesty or debt forgiveness programs.

All repayment agreements must be in writing, dated, signed by both the tenant and the PHA, include the total retroactive rent amount owed, amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. At a minimum the repayment agreement must contain the following provisions:

- a. Reference to the paragraphs in the Public Housing lease whereby the tenant is in non-compliance and may be subject to termination of tenancy.
- b. The monthly retroactive rent repayment amount in addition to the family's regular rent contribution and is payable to the PHA.
- c. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
- d. Late and missed payments constitute default of the repayment agreement and may

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<sup>473</sup> 24 CFR 5.233

result in termination of tenancy.

PHA's are required to determine retroactive rent amounts as far back as the PHA has documentation of family reported income. For example, if the PHA determines that the family has not reported income for a period of five years and only has documentation for the last three years; the PHA is only able to determine retroactive rent for the three years for which documentation is available.

The monthly retroactive rent payment plus the amount of rent the tenant pays plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family's monthly adjusted income. PHA's have the discretion to establish thresholds and policies for repayment agreements in addition to the HUD required procedures.

Example:

- Family's monthly adjusted income is \$1,230
- Family's monthly rent payment is \$369 (30% of family's monthly adjusted income)
- 40% of the family's monthly adjusted income is \$492
- The monthly payment for the repayment agreement should not exceed \$123 per month  
(\$369 monthly rent + \$123 = \$492, 40% of the family's monthly adjusted income)

**Repayment Time Period.** The period in which the retroactive rent balance will be repaid is based on the monthly payments and the original retroactive balance.

Example: Tenant agrees to repay \$1,000 by making monthly payments of \$25 for 40 months.

**Repayment Options.** Tenants have the option to repay the retroactive rent balance as follows:

1. In a lump sum payment; or
2. Monthly installments; or
3. A combination of 1 and 2 above.

For example, a tenant may owe \$1,000, make a lump sum payment of \$300 and enter into a repayment agreement for the remaining balance of \$700.

#### **SHA Policy**

*When an action or inaction of a resident family results in the underpayment of rent or other amounts, SHA holds the family liable to return any underpayments to the SHA.*

*SHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. The term repayment agreement refers to a formal document signed by a tenant and provided to SHA in which a tenant acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.*

*When a family refuses to enter into a repayment agreement or repay monies owed to SHA, SHA will utilize other available collection alternatives including, but not limited to, the*

*following:*

- *Collection agencies*
- *Small claims court*
- *Civil law suit*
- *State income tax set-off program*

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

### **Family Debts to the SHA**

#### *SHA Policy*

*Any amount due to SHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, SHA will offer to enter into a repayment agreement in accordance with the policies contained in this chapter.*

*If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, SHA will terminate the family's tenancy in accordance with the policies in Chapter 13. SHA will also pursue other modes of collection.*

#### **Repayment Agreement Guidelines**

##### **Debts due to Retroactive Rent**

#### *SHA Policy*

*Debts will be paid per the HUD regulations cited in this chapter.*

##### **Debts other than Retroactive Rent**

##### **Down Payment Requirement**

#### *SHA Policy*

*Prior to the execution of a repayment agreement, for debts other than retroactive rent, the family must pay 10 percent of the balance owed to SHA.*

##### **Payment Thresholds**

#### *SHA Policy*

- *Amounts between \$3,000 and the Federal or State threshold for criminal prosecution must be repaid within 36 months.*
- *Amounts between \$2,000 and \$2,999 must be repaid within 30 months.*

- *Amounts between \$1,000 and \$1,999 must be repaid within 24 months.*
- *Amounts under \$1,000 must be repaid within 12 months.*

## **Execution of the Agreement**

### *SHA Policy*

*The head of household and spouse/cohead (if applicable) must sign the repayment agreement.*

## **Due Dates**

### *SHA Policy*

*All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.*

## **Non-Payment**

### *SHA Policy*

*If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by SHA, SHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and SHA will terminate tenancy in accordance with the policies in Chapter 13.*

*If a family receives three delinquency notices for unexcused late payments in a 12 month period, the repayment agreement will be considered in default, and SHA will terminate tenancy in accordance with the policies in Chapter 13.*

## **No Offer of Repayment Agreement**

### *SHA Policy*

*SHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family, or the amounts owed by the family exceed the Federal or State threshold for criminal prosecution.*

## **PART IV: RECORD KEEPING**

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

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

request.

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

## 16-IV.B. RECORD RETENTION

### SHA Policy

*During the term of each public housing tenancy, and for at least three years thereafter, SHA will keep all documents related to a family's eligibility, tenancy, and termination.*

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

- *An application from each ineligible family and notice that the applicant is not eligible*
- *Lead-based paint records as required by 24 CFR 35, Subpart B*
- *Documentation supporting the establishment of flat rents and the public housing maximum rent*
- *Documentation supporting the establishment of utility allowances and surcharges*
- *Documentation supporting PHAS scores*
- *Accounts and other records supporting PHA budget and financial statements for the program*
- *Other records as determined by SHA or as required by HUD*

*If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.*

## 16-IV.C. RECORDS MANAGEMENT

SHA must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### SHA Policy

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

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

### **Privacy Act Requirements<sup>474</sup>**

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<sup>474</sup> 24 CFR 5.212 and Form-9886

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

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

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

SHA accesses UIV data through HUD's Enterprise Income Verification (EIV) System and is required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data.

#### **Penalties for Willful disclosure or Inspection of EIV data.**

1. Unauthorized Disclosure - felony conviction and fine up to \$5,000 or imprisonment up to five (5) years, as well as civil damages;
2. Unauthorized Inspection - misdemeanor penalty of up to \$1,000 and/or one (1) year imprisonment, as well as civil damages.

Penalties for Noncompliance with mandated EIV System Use. PHA's may be subject to sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations or both. It should be noted that HUD may impose a sanction on any PHA who does not have access to the EIV system or the PHA has access to the system, however, has not used the system within the last six months. To avoid sanctions or disallowed costs, PHAs should follow all formal and informal guidance provided to PHAs via webcast trainings, PIH Rental Housing Integrity Improvement Project (RHIOP) periodic electronic mailings, and any other HUD Headquarters' - generated guidance.

#### **SHA Policy**

*SHA has adopted and implemented EIV security procedures as required by HUD.*

*Staff receive initial training as well as annual training, regarding the inability to view and/or obtain data in the EIV system when there is not a signed Authorization for Release of Information and Privacy Act Notice (Form HUD-9886) or equivalent consent form satisfying requirements under 24 CFR 5.230, in the households file for the head of household; spouse and/or co-head regardless of age, and for each adult member of the household.*

*Each staff member of SHA who has access to and/or is authorized to review EIV data has been properly trained and agrees to not disclose EIV data except as allowed by law and the EIV agreements they have signed.*

## **Criminal Records**

SHA may only disclose the criminal conviction records which SHA receives from a law enforcement agency to officers or employees of SHA, or to authorized representatives of SHA who have a job-related need to have access to the information.<sup>475</sup>

SHA must establish and implement a system of records management that ensures that any criminal record received by SHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the SHA action without institution of a challenge or final disposition of any such litigation.<sup>476</sup>

SHA must establish and implement a system of records management that ensures that any sex offender registration information received by the SHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to SHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a SHA other than under 24 CFR 5.905.

## **Terminations/Evictions<sup>477</sup>**

A written record of every termination and/or eviction shall be maintained by SHA and shall contain the following:

- Name of resident, race and ethnicity, number and identification of unit occupied;
- Date of the Notice of Lease Termination and any other state or local notices required, which may be in the same form and run concurrently;
- Specific reason(s) for the Notice(s), with section of the lease violated, and other facts pertaining to the issuing of the Notice(s) described in detail;
- Date and method of notifying resident; and
- Summaries of any conferences held with resident including dates, names of conference participants and conclusions.

## **Medical/Disability Records**

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<sup>475</sup> 24 CFR 5.903(e)

<sup>476</sup> 24 CFR 5.903(g)

<sup>477</sup> HUD PH Guidebook pg 275

SHA's are not permitted to inquire about the nature or extent of a person's disability. SHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If SHA receives a verification document that provides such information, SHA should not place this information in the tenant file. SHA should destroy the document.

## **PART V: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-V.A. REPORTING REQUIREMENTS**

**[24 CFR 35.1130(e)]**

SHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

SHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. SHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

#### **SHA Policy**

*SHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.*

*SHA will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within 5 business days of receiving the information.*

## **PART VI: NOTIFICATION TO APPLICANTS AND TENANTS REGARDING PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005 (VAWA)**

### **16-VI.A. NOTIFICATION TO APPLICANTS**

#### **SHA Policy**

*SHA will include in all notices of denial a statement explaining the protection against denial provided by VAWA (see section 3-III.F).*

### **16-VI.B. NOTIFICATION TO TENANTS<sup>478</sup>**

VAWA requires SHA to notify tenants assisted under public housing of their rights under this law, including their right to confidentiality and the limits thereof.

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<sup>478</sup> Pub.L. 109-162

*SHA Policy*

*SHA will provide all tenants with notification of their protections and rights under VAWA at the time of determining eligibility for admission and at annual reexamination.*

*The notice will explain the protections afforded under the law, inform the tenant of SHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.*

*SHA will also include in all lease termination notices a statement explaining the protection against termination or eviction provided by VAWA (see Section 13-IV.D).*

## **Chapter 17: VIOLENCE AGAINST WOMEN ACT**

### **INTRODUCTION**

The Violence Against Women Act (VAWA) (42 U.S.C. 1437f and 42 U.S.C. 1437d) provides statutory protections for victims of domestic violence, dating violence, sexual assault, or stalking.

Such protections apply to families receiving rental assistance under HUD's public housing and tenant-based and project-based Section 8 Programs.

This Chapter contains four parts:

**Part I:** Prohibition against denial of assistance to victims of domestic violence, dating violence, sexual assault, or stalking<sup>479</sup>

**Part II:** VAWA Protections

**PART III:** Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.

**PART IV:** Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking in HUD-assisted housing.

#### **PART I. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING<sup>480</sup>**

##### **17-1.A. OVERVIEW**

The Violence against Women Reauthorization Act of 2005 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. Specifically, Section 607(2) of VAWA adds the following provision to Section 6 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the public housing program:

Every contract for contributions shall provide that the public housing agency shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

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<sup>479</sup> Pub. L. 109-162

<sup>480</sup> Pub.L. 109-162

## 17-I.B. DEFINITIONS USED IN VAWA<sup>481</sup>

- The term *bifurcate* means, with respect to a Public Housing lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *immediate family member* means, with respect to a person: (1) a spouse, parent, brother, or sister or child of that person to whom that person stands in loco parentis; or (2) any other person living in the household of that person and related to that person by blood or marriage.
- The term *sexual assault* means any type of sexual contact or behavior that occurs by force or without consent of the recipient of the unwanted sexual activity. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, sodomy, child molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.
- The term *stalking* means:
  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner

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<sup>481</sup> 24 CFR 5.2003

of that person.

- The term VAWA means: The Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, approved August 28, 2006), as amended by the U.S. Housing Act of 1937 (42 U.S.C, 1437d and 42 U.S. 1437f).

## PART II: VAWA PROTECTIONS

### 17-II.A. VAWA PROTECTIONS<sup>482</sup>

#### **Notice of VAWA Protections**

- SHA must provide notice to public housing tenants of their rights under VAWA including their right to confidentiality and the exceptions; and
- The Public Housing Lease and/or lease addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking.

#### **Applicants**

Admission to the program shall not be denied on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant otherwise qualifies for assistance or admission.

#### SHA Policy

*SHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history that would warrant denial under SHA's policies.*

*Therefore, if SHA makes a determination to deny admission to an applicant family on the basis of an unfavorable history, SHA will include in its notice of denial a statement of the protection against denial provided by VAWA and will offer the applicant the opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.*

#### **Tenants**

An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking, or as good cause to terminate the tenancy of, occupancy rights of, or assistance to the victim.

Criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's

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<sup>482</sup> 24 CFR 5.2005

control, shall not be cause for termination of tenancy of, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim.

### **Limitations of VAWA Protections**

Nothing in the VAWA regulations limits the authority of SHA to evict a tenant or terminate assistance for a lease violation unrelated to domestic violence, dating violence, sexual assault, or stalking, provided that SHA does not subject such a tenant to a more demanding standard than other tenants in making the determination whether to evict or to terminate assistance or occupancy rights.

Nothing in the VAWA regulations may be construed to limit the authority of SHA to evict or terminate assistance to any tenant or lawful occupant if SHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to public housing if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions or other indicators will be considered an “actual imminent threat” if they meet the standards provided below.

Any eviction or termination of assistance will be utilized by SHA only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeing other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

### **Actual and Imminent Threat**

An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

## **PART III: DOCUMENTING THE OCCURRENCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSUALT, OR STALKING**

### **17-III.A. DOCUMENTING OCCURRENCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSUALT, OR STALKING**

#### **Request for Documentation**

When SHA is presented with a claim for continued or initial tenancy or assistance based on status

as a victim of domestic violence, dating violence, sexual assault, or stalking or criminal activity related to domestic violence, dating violence, sexual assault, or stalking SHA will request that the individual making the claim document the abuse.

The request for documentation will be in writing, and the tenant or applicant will be required to submit documentation within 14 business days after the date the individual received the request for documentation. SHA, at its own discretion, on a case by case basis, may extend the time period for submitting the documentation.

## **Forms of Documentation**

The required documentation may:

- 1) Consist of a HUD-approved certification form indicating that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse. Such certification must include the name of the perpetrator, and may be based solely on the personal signed attestation of the victim; or
- 2) Consist of a Federal, State, tribal, territorial, or local police report or court record; or
- 3) Consist of documentation signed by an employee, agent, or volunteer of an employee, agent or volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence or stalking, or the effects of abuse, in which the professional attests under penalty of perjury under 28 U.S.C. 1746 to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, sexual assault, or stalking has signed or attested to the documentation; and
- 4) Shall be kept confidential by SHA. SHA shall not:
  - i) Enter the information contained in the documentation into any shared database;
  - ii) Allow SHA employees or those within their employ (e.g. contractors) to have access to such information unless explicitly authorized by SHA for reasons that specifically call for these employees or those within their employ to have access to this information; and
  - iii) Disclose this information to any other entity or individual, except to the extent that disclosure is:
    - A) Requested or consented to by the individual making the documentation in writing;
    - B) Required for use in an eviction proceeding, or
    - C) Otherwise required by applicable law.

## **Failure to Provide Documentation**

In order to deny relief for protection under VAWA, SHA must provide the individual with a written request for documentation of the abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt of SHA's written request, or such longer time as SHA at their discretion may allow, VAWA protections do not limit the authority of SHA to evict the tenant or a family member for violations of the lease that would otherwise constitute good cause to evict. The 14-business day window for submission of documentation does not begin until the individual receives the written request. SHA has discretionary authority to extend the statutory 14-day period.

### **Discretion to Provide Relief**

At its discretion, SHA may provide benefits to an individual based solely on the individual's verbal statement or other corroborating evidence. SHA's compliance with this section, whether based solely on the individual's verbal statements or other corroborating evidence, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by SHA or an employee of SHA.

### **Response to Conflicting Certification**

In cases where SHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, SHA may determine which is the true victim by requiring third party documentation as described in this section and in accordance with any HUD guidance as to how such determinations will be made. SHA shall honor any court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household.

## **PART IV: REMEDIES AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING IN HUD-ASSISTED HOUSING**

### **17 - IV.A. REMEDIES<sup>483</sup>**

#### **Lease Bifurcation**

Notwithstanding any Federal, State, or local law to the contrary, SHA may bifurcate a lease, or remove a household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupancy who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, or local law for termination of leases under the public

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<sup>483</sup> 24 CFR 5.2009

housing program.

### **Court Orders**

Nothing in the final rule may be construed to limit the authority of SHA, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up.

### **Effect on Other Laws**

Nothing in the final rule shall be construed to supersede any provisions of any Federal, State or local law that provides greater protection than the final rule for victims of domestic violence, dating violence, sexual assault, or stalking.

## Chapter 18: GLOSSARY

### INTRODUCTION

**Glossary of Terms:** The definitions below have been taken from various HUD regulations and the references are cited where applicable. However, in the public housing industry there are some commonly used terms that by definition are generally accepted even though there is no HUD regulation to reference. Please note that where SHA lists a definition without a HUD reference, it is a generally accepted definition of the term.

**ACCESSIBLE UNIT.** A unit that can be approached, entered and used by individuals with physical disabilities (24 CFR 8.32)

**ADJUSTED INCOME.** Annual income, less allowable HUD deductions (24 CFR 5.611)

**ADMISSION.** Admission to the program is the effective date of the lease.

**ADULT.** A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State or tribal law. (HUD PH Guidebook, page 238)

**ANNUAL INCOME.** The anticipated total annual income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations (24 CFR 5.609)

**APPLICANT.** A person or a family that has applied for admission to a program, but is not yet admitted.

**ASSETS.** (See Net Family Assets.) (24 CFR 5.603)

**AUXILIARY AIDS.** Services or devices that enable persons with impaired sensory, manual or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs and activities.

**CARE ATTENDENT.** A person that regularly visits the unit of a PHA resident to provide supportive or medical services. Care attendants are not live-in aides, since they have their own place of residence (and if requested by PHA must demonstrate separate residence) and do not live in the public housing unit. Care attendants have no rights to tenancy.

**CHILD CARE EXPENSES.** Amounts paid by the family for the care of minors under the age of 13 where such care is necessary to enable a family member to be employed, to actively seek employment, or further their education. (24 CFR 5.603)

**CITIZEN.** A citizen or national of the United States.

**CO-HEAD.** An individual in the household who is equally responsible for the lease with the Head

of Household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent.

**CONSENT FORM.** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and Swig's; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

**COVERED FAMILIES.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**COVERED PERSON.** For the purpose of screening and terminating tenancy for criminal activity, a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

**DATING VIOLENCE.** (Pub. L. 109-162, Section 3) Means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- Length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

**DEPENDENT.** A member of the household, other than the head, spouse, sole member, foster child or Live-in Aide, who is under 18 years of age, or 18 years of age or older and disabled or a full time student, and qualifies for a \$480 deduction when computing income-based rent. (24 CFR 5.603)

**DISABILITY ASSISTANCE EXPENSE.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source. (24 CFR 5.603).

**DISABLED FAMILY.** A family whose head, spouse or sole member is a person with disabilities. (Person with disabilities is defined later in this section.) The term includes two or more persons with disabilities living together and one or more such persons living with one or more persons including live-in aides determined to be essential to the care and well-being of the person or persons with disabilities. A disabled family may include persons with disabilities who are elderly.

(24 CFR 5.403)

**DISABLED PERSON.** (See Individual with Disabilities).

**DISPLACED FAMILY.** A family in which each member, or sole member is a displaced person as defined below.

**DISPLACED PERSON.** “Displaced person” means a person displaced by government action or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal Disaster Relief Laws.

**DIVESTITURE INCOME.** Imputed income from assets, including business assets, disposed of by applicant or resident in the last two years at less than fair market value. (See the definition of Net Family Assets (24 CFR 5.603) in this section).

**DOMESTIC VIOLENCE.** Includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

**DRUG.** A controlled substance as defined in the Controlled Substance Act. (24 CFR 5.100)

**DRUG-RELATED CRIMINAL ACTIVITY.** The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug. (24 CFR 5.100)

**ECONOMIC SELF-SUFFICIENCY PROGRAM.** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such a treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607 (d)). (24 CFR 5.603)

**EFFECTIVE DATE.** The “Effective Date” of an examination or reexamination refers to: (i) in the case of an examination for admission, the date of initial occupancy and (ii) in the case of reexamination of an existing tenant, the date the redetermined rent becomes effective.

**ELDERLY FAMILY.** A family whose head or spouse (or sole member) is at least 62 years of age. It may include two or more elderly persons living together, and one or more such persons living with one or more persons, including live-in aides, determined to be essential to the care and well-being of the elderly person or persons. An elderly family may include elderly persons with

disabilities and other family members who are not elderly. (24 CFR 5.403)

**ELDERLY PERSON.** An individual who is at least 62 years of age. (1937 Housing Act) (42 U.S.C. 1437 a (b) (3))

**ELIGIBLE FAMILIES.** Families who are eligible for residence in public housing assisted under the U.S. Housing Act of 1937. (24 CFR 5.603)

**EXTREMELY LOW INCOME FAMILY.** A family whose annual income does not exceed the higher of the federal poverty level or 30% of the median area income, as determined by HUD, with adjustments for smaller and larger families. (24 CFR 5.603)

**FAIR HOUSING ACT.** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

**FAMILY SELF-SUFFICIENCY PROGRAM (FSS).** The program established by a PHA to promote self-sufficiency of assisted families, including the provision of supportive services. (24 CFR 984)

**FLAT RENT.** Established by the PHA for each public housing unit; a rent based on the market rent charged for comparable units in the unassisted rental market, designed so that the rent does not create a disincentive for continued residency by families who are attempting to become economically self-sufficient.

**FOSTER CHILD CARE PAYMENT.** Payment to eligible households by state, local or private agencies appointed by the State, to administer payments for the care of foster children.

**FULL-TIME STUDENT.** A person who is attending school or vocational training on a full- time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (24 CFR 5.603)

**GUEST.** For the purposes of determining whether an individual's criminal activity is the responsibility of the tenant, a guest is a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of the lease apply to guest as so defined. (HUD PH Guidebook, page 240)

**HEAD OF HOUSEHOLD.** The family member (identified by the family) who is held responsible and accountable for the family. (HUD PH Guidebook, page 240)

**IMMEDIATE FAMILY MEMBER.** Means, with respect to a person:

- A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent
- Any other person living in the household of that person and related to that person by

blood or marriage

**IMPUTED ASSET.** Asset disposed of for less than fair market value during two years preceding examination or reexamination.

**IMPUTED INCOME.** HUD passbook rate multiplied by total cash value of assets. Calculated when assets exceed \$5,000. (HUD-50058).

**IMPUTED WELFARE INCOME.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

**INCOME.** Income from all sources for each family member of the household as determined in accordance with criteria established by HUD. (24 CFR 5609)

**INCOME-BASED RENT.** A tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

**INCOME FOR ELIGIBILITY.** Annual Income.

**INDIVIDUAL WITH DISABILITIES.** See 24 CFR 8.3

**LANDLORD.** Either the owner of the property or his or her representative or the managing agent or his representative.

**LEASE.** A written agreement between an owner and an eligible family for the leasing of a housing unit.

**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 well-being of the person, (2) is not obligated for the support of the person, and (3) would not be living in the unit except to provide necessary supportive services.

**LOCAL PREFERENCE.** A preference used by the PHA to select among applicant families.

**LOW INCOME FAMILY.** A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs or unusually high or low incomes. (1937 Housing Act)

**MEDICAL EXPENSE ALLOWANCE.** For purposes of calculating adjusted income for elderly or disabled families only, medical expenses mean the medical expense in excess of 3% of Annual Income, where these expenses are not compensated for or covered by insurance. (24 CFR 5.603)

**MINIMUM RENT.** An amount established by the PHA between zero and \$50.

**MINOR.** A member of the family household other than the family head; spouse or co-head who is under 18 years of age. An unborn child will not be considered a minor.

**MIXED FAMILY.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**MONTHLY ADJUSTED INCOME.** 1/12 of the Adjusted Income. (24 CFR 5.603)

**MONTHLY INCOME.** 1/12 OF THE Annual Income. (24 CFR 5.603)

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

**NEAR-ELDERLY FAMILY.** Means a family whose head, spouse or sole member is a near-elderly person (at least 50 but less than 62 years of age), who may be a person with disability. The term includes two or more near-elderly persons living together, and one or more such persons living with one or more persons who are determined to be essential to the care or well-being of the near-elderly person or persons. A near-elderly family may include other family members who are not near-elderly. (24 CFR 5.403)

**NEAR-ELDERLY PERSON.** Means a person who is at least 50 years of age but below 62, who may be a person with disability. (42 U.S.C. 1437 a (b) (3))

**NET FAMILY ASSETS.** (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (24 CFR 5.603)

**NONCITIZEN.** A person who is neither a citizen nor national of the United States.

**OCCUPANCY STANDARD.** Standards established by a PHA to determine appropriate number of bedrooms for families of different sizes and compositions.

**OTHER PERSON UNDER TENANTS CONTROL.** The person, although not staying as a guest in the unit is or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control (e.g. the Pizza Delivery person).

**OVER-INCOME FAMILY.** A family or individual who is not a low-income family at the time of initial occupancy.

**PREMISES.** The building or complex or development in which the public housing dwelling is located, including common areas and grounds. (HUD PH Guidebook, page 244)

**PUBLIC HOUSING AGENCY.** Any state, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families.

**RECERTIFICATION.** Sometimes called reexamination. The process of securing documentation 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 recertifications.

**REMAINING MEMBER OF A TENANT FAMILY.** A family member who was listed on the lease of a public housing unit and is the only family member still remaining in the unit.

**RESPONSIBLE ENTITY.** For the public housing program, the PHA administering the program under an ACC with HUD. (24 CFR 5.603)

**SECRETARY.** The Secretary of Housing and Urban Development.

**SECURITY DEPOSIT.** A dollar amount (maximum set according to the regulation0 which can be used for unpaid rent or damages to the owner upon termination of the lease.

**SEXUAL ASSAULT.** Any type of sexual contact or behavior that occurs by force or without consent of the recipient of the unwanted sexual activity. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, sodomy, child molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.

**SINGLE PERSON.** A person who is not an elderly person, a person with disabilities, a displaced person, or the remaining member of a resident family. (HUD PH Guidebook, Page 244)

**SOCIAL SECURITY NUMBER (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**SPOUSE.** Spouse means the husband or wife of the head of household. (HUD PH Guidebook, Page 244)

**STALKING.** Means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
- To place under surveillance with the intent to kill, injure, harass, or intimidate

- another person; and
- In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person. (Pub. L.109-162, Section 607 (5))

**STATE WAGE INFORMATION COLLECTION AGENCY (SWICA).** The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

**TENANT RENT.** The amount payable monthly by the family as rent to the unit owner. (24 CFR 5.603)

**TOTAL TENANT PAYMENT.** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities. (24 CFR 5.613)

**UNIT.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from 0 bedrooms (studio/efficiency) to 6 bedrooms.

**UP-FRONT INCOME VERIFICATION (UIV).** UIV is the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals.

**UTILITIES.** Utilities means water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection and sewage services. Telephone service is not included as a utility. (24 CFR 990.102)

**UTILITY ALLOWANCE.** The PHA's estimate of the average monthly utility bills (except telephone) for an energy-conscious household. If all utilities are included in the rent, there is no utility allowance. Utility allowances vary by unit type and size and are listed on the PHA's Utility Allowance Schedule. (24 CFR 5.603)

**UTILITY REIMBURSEMENT PAYMENT.** The amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the family occupying the unit. (24 CFR 5.603)

**VERY LOW-INCOME FAMILY.** A lower income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. (1937 Housing Act)

**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.

**VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA) OF 2005.**

Prohibits denying admission to the project to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. (Pub. L.109-162)

**VIOLENT CRIMINAL ACTIVITY.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**WAITING LIST.** A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available.

**WELFARE ASSISTANCE.** Welfare or other payments to families or individuals, based on need, that are made under program funded, separately or jointly, by Federal, state, or local governments. (24 CFR 5.603)