

67336-0

67336-0

NO. 67336-0-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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JACQUELYN NICHOLS,

Respondent,

v.

SEATTLE HOUSING AUTHORITY,

Appellant.

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**BRIEF OF APPELLANT**

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
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## **INTRODUCTION**

The Seattle Housing Authority (SHA) is not bound by a hearing officer's decision if he exceeded his authority under the hearing procedures. 24 C.F.R. 982.555(f). SHA's informal hearing procedures require hearing officers to determine all "material factual issues" and to follow all relevant legal authority. But the first hearing officer, M. Varn Chandola, failed to address SHA's key argument that it properly terminated Respondent Jacquelyn Nichols' Section 8 rent-subsidy voucher, where Nichols admittedly failed to report her increased income within 10 days (or ever to disclose her daughter's increased income) as required by federal, state, and SHA regulations. A second informal hearing officer, Joan Kalhorn, correctly ruled that she could decide the key argument that Chandola failed to address and that SHA properly terminated Nichols' voucher for her failures to report income.

The Superior Court granted an extraordinary writ of review, voiding SHA's decision not to be bound by Chandola's decision and Kalhorn's decision. The court's ruling that Chandola did not exceed his authority is in error, rendering its writ and remaining rulings incorrect as well. This Court should reverse the trial court's writ and order on review and reinstate Kalhorn's decision.

## **ASSIGNMENTS OF ERROR**

1. The Superior Court erred in granting the Writ of Review and Stay of Proceedings and in entering its Order on Review. CP 439-40, 684-87.
2. The Superior Court erred in ruling that the first hearing officer (Chandola) did not exceed his authority by failing to address the key facts and law that SHA presented. CP 686.
3. The Superior Court erred in ruling that SHA was bound by Chandola's ruling and that its decision not to be bound is "void." *Id.*
4. The Superior Court erred in ruling that the second hearing officer (Kalhorn) had no authority to consider SHA's arguments and that Kalhorn's decision was thus "void." *Id.*

## **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether hearing officer Chandola exceeded his authority by failing to consider or rule upon SHA's key factual and legal reasons for terminating Nichols' voucher?
2. Whether SHA was not bound by Chandola's decision?
3. Whether the second hearing officer (Kalhorn) had authority to decide that SHA properly terminated Nichols' voucher due to her failures to report increased family income?

## STATEMENT OF THE CASE

### A. Through its Section 8 Program, SHA provides vouchers to help subsidize participants' rent.

SHA is a local governmental agency subsidizing low-income housing in Seattle.<sup>1</sup> CP 3-4. It receives funds from the federal Department of Housing and Urban Development (HUD) to administer the Section 8 Housing Choice Voucher Program (Section 8 Program). 42 U.S.C. § 1437f, *et seq*; CP 3-4. The Section 8 Program provides “participants” with a “voucher” for the difference between the market rent and 30% of the participants’ “family income.” 24 C.F.R. 982.1, .4 & .516; ADMIN. PLAN, Ch. 13-2 & -3. It is therefore crucial that participants accurately report their “family income.” 24 C.F.R. 982.516, .551(b)(2), & .552(c)(1)(i); ADMIN. PLAN, Ch. 14 & 17-2.

“Family income” includes income from everyone in the participant’s household, including minors. 24 C.F.R. 982.516(e); CP 61 (Findings of Fact (“F/F”) 19).<sup>2</sup> Participants must report any

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<sup>1</sup>See SEATTLE HOUS. AUTH., ADMIN. PLAN FOR THE SEATTLE HOUS. AUTH. HOUS. CHOICE VOUCHER PROGRAM, at 2 (2011) (ADMIN. PLAN, (attached as Appendix A) *available at* [http://www.seattlehousing.org/residents/pdf/HCVF\\_AP\\_Full.pdf](http://www.seattlehousing.org/residents/pdf/HCVF_AP_Full.pdf)).

<sup>2</sup>Citations to Findings are to second hearing officer Kalhorn’s findings, which Nichols did not challenge during the Superior Court’s review, so they are verities on this Court’s review. **Hilltop Terrace Homeowner’s Ass’n v. Island Cnty.**, 126 Wn.2d 22, 29, 891 P.2d 30 (1995).

income changes within 10 days and must undergo annual reviews. 24 C.F.R. 982.516(a)(1) & .551(b)(2); ADMIN. PLAN, Ch. 14-5 & -8. SHA informs participants of these reporting requirements in writing when they enter the program and at an orientation. 24 C.F.R. 982.301; *Admin Plan*, Ch. 10-1 & -2; CP 61 (F/F 19-20). During the annual reviews, participants sign a declaration swearing that they will abide by the reporting requirements. ADMIN. PLAN, Ch. 14-2 through -4; CP 61 (F/F 19). If a participant fails to report increased income, SHA cannot accurately calculate the rent subsidy and unknowingly pays too much, depleting funding for other potential participants. ADMIN. PLAN, Ch. 14-9; CP 403.

**B. When Nichols failed to report increased family income as required, SHA terminated her first Section 8 voucher.**

Nichols and her daughter, Melissa Donahue, entered the Section 8 Program in 1985 or 1986. CP 5. Nichols attended an orientation at which she was informed that she must report income changes within 10 days. CP 61 (F/F 19 & 20). During her annual reviews, Nichols also signed sworn declarations stating that she understood the reporting requirements. CP 61 (F/F 19).

In 2002, SHA discovered that Nichols had failed to report employment income, resulting in a \$759 overpayment. CP 21.

SHA may terminate a participant who fails to report family income, or may offer the participant a payment agreement in lieu of termination. 24 C.F.R. 982.551(b)(2), .552(c)(1)(i) & (vii); ADMIN. PLAN, Ch. 19. SHA gave Nichols a payment agreement, but she stopped making payments after a few months. CP 21. SHA terminated Nichols' Section 8 voucher in March 2003. CP 21.

**C. Nichols regained a voucher, and SHA informed her – repeatedly – that she had to report all income changes.**

Nichols received a new Section 8 voucher in May 2008. CP 21. She again signed a voucher agreement explaining that she had to supply “information . . . of family income and composition.” CP 61 (F/F 19) (ellipses in original), 467; 24 C.F.R. 982.551(b)(2). Nichols was repeatedly reminded that she had to report increased income within 10 days:

- ◆ Nichols attended an orientation at which she was reminded that participants must report all income changes within 10 days. CP 61 (F/F 19 & 20), 467.
- ◆ Nichols signed a Participant Obligations form stating that SHA may terminate participants for violating “any family obligations under the program” and that participants must “report all changes in family circumstances including income.” CP 61 (F/F 19), 467-68.
- ◆ During her annual review, Nichols signed a declaration agreeing to report all family income, including income “received on behalf of minors” living in her household. CP

61 (F/F 19), 470-71. She promised to report any income changes within 10 days. CP 61 (F/F 19), 471.

**D. Nichols did not timely report her increased income and failed to report her daughter's new income, so SHA terminated her voucher.**

In August 2009, Nichols began receiving \$1,005 per month in Social Security benefits. CP 21, 60 (F/F 11), 472. Two months later, Nichols' teenage daughter, Donahue, began receiving \$502 per month in Social Security benefits. CP 21, 61 (F/F 14), 473-74. At about this time, SHA discovered that Nichols had defaulted on her 2002 payment agreement. CP 21. In October 2009, the parties again entered a payment agreement, allowing Nichols to stay in the Section 8 Program if she paid off her debt. CP 21.

But Nichols did not report her increased income until March 2010. CP 21. She never reported Donahue's increased income. CP 21. By the time SHA discovered her failures to report, it had overpaid Nichols \$3,074. CP 21.

SHA then terminated Nichols' voucher "for violation of [her] participant obligations." CP 21. It listed numerous reasons supporting the termination, including that Nichols did not timely report her increased income and that she never reported Donahue's increased income. *Id.*

**E. Procedural History.**

Nichols requested an informal hearing, challenging the termination. CP 22, 24. SHA essentially gave hearing officer Chandola two reasons for the termination: (1) Nichols violated her obligation to report increased family income, and (2) Nichols owed SHA money while already under the 2009 payment agreement. CP 477-78, 494, 499. Nichols did not dispute that she failed to report increased family income, arguing that she believed she was permitted to wait until her annual review. CP 484-85.

SHA argued throughout the hearing that it properly terminated Nichols because she violated her obligation to report increased family income. CP 464, 467-68, 477, 493-94, 499. SHA stated at the beginning that the hearing was held “for a termination of [Nichols’] Section 8 voucher for failure to report income.” CP 464. SHA walked Chandola through several exhibits showing that SHA repeatedly informed Nichols that she had to report her family income, yet she failed to do so, including:

- ◆ Nichols’ voucher agreement, which informed her that she had to supply income information at regularly scheduled and interim reexaminations. CP 466-67.
- ◆ Nichols’ Participant Obligation form, where she agreed to “report all changes in family circumstances, including income,” and acknowledged that her voucher could be terminated for violating her obligations. CP 467-68.

- ◆ Nichols' 2010 Personal Declaration, where she first disclosed her Social Security benefits and did not disclose her daughter's benefits. CP 470-73. The declaration also stated that Nichols would report any family income changes within 10 days. CP 471.

SHA argued that, contrary to Nichols' claim that her failure to report was unintentional, she signed multiple documents reminding her to report increased family income within 10 days, showing a "pattern of noncompliance." CP 493-94. SHA argued in closing that it properly terminated Nichols' voucher because she failed to report her income (CP 499):

I want to make sure that in our hearing that we have presented evidence showing that Ms. Nichols was aware of her responsibility to report changes in income . . . and then engaged in further noncompliance with reporting her income. As a result of those things, the Housing Authority acted appropriately by terminating her.

Chandola found that the "sole issue" was whether SHA could terminate Nichols under Chapter 19 of its Administrative Plan, providing that: (1) SHA may – at its "sole discretion" – enter a payment agreement in lieu of termination when a participant is in arrears; (2) SHA generally will not do so when the participant has a preexisting payment agreement; and (3) debts that are more than six years old will be "written off." CP 16; *Admin. Plan*, Ch. 19-1, -3. Chandola ruled that SHA wrongfully terminated Nichols based on

her failure to comply with the 2009 payment agreement, where the 2009 agreement was “void” as it was based on a 2002 debt that should have been “written off.” CP 16-19. But Chandola failed to address SHA’s key argument that Nichols’ failure to report her increased family income fully justified the termination. CP 14-19.

HUD regulations provide that SHA “is not bound by a hearing decision” that “exceeds [the hearing officer’s] authority” or that is contrary to HUD regulations, or to federal, state, or local law. 24 C.F.R. 982.555(f). SHA therefore notified Nichols that it was not bound by Chandola’s decision, where he failed to address SHA’s key argument. CP 26-27. SHA scheduled a new hearing before a second hearing officer. CP 33, 39-40, 44.

That hearing officer, Joan Kalthorn, ruled that Chandola’s decision did not bind SHA and that SHA properly terminated Nichols’ voucher. CP 64-65. Kalthorn concluded that Chandola’s analysis was “misguided,” where SHA had plainly argued that it could terminate Nichols for failing to report increased family income. CP 62-64. She ruled that SHA properly terminated

Nichols' voucher for breaching "her participant obligations by failing to report income on two occasions."<sup>3</sup> CP 64.

Nichols sought a writ of review, asking the King County Superior Court to review and reverse Kalhorn's decision. CP 1-12. That court granted the writ, ruling that SHA was bound by Chandola's decision and that Kalhorn did not have authority to hold the second hearing. 6/1/11 RP 11; CP 439-40, 684-87. The court ordered SHA to reinstate Nichols' Section 8 voucher and to enter into yet another payment agreement with Nichols. CP 686. SHA timely appealed. CP 693.

## ARGUMENT

### **A. This Court reviews the facts in the light most favorable to SHA and reviews legal issues *de novo*.**

A writ of review is an extraordinary remedy that "should be granted sparingly." *City of Seattle v. Holifield*, 170 Wn.2d 230, 239-40, 240 P.3d 1162 (2010) (citation omitted). A petitioner must provide evidence showing that: (1) an inferior tribunal or officer (2) exercising judicial functions (3) exceeded its jurisdiction, acted illegally, or held an erroneous proceeding, and that (4) there is no other avenue of review or adequate remedy at law. RCW 7.16.040;

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<sup>3</sup>Kalhorn agreed with Chandola that the 2009 payment agreement was void. CP 62-63 n.2. SHA does not challenge this ruling here.

**Clark Cnty. Pub. Util. Dist. No. 1 v. Wilkinson**, 139 Wn.2d 840, 845, 991 P.2d 1161 (2000); **Thompson v. Wilson**, 142 Wn. App. 803, 816-17, 175 P.3d 1149 (2008).

If it grants a writ, the Superior Court then reviews the merits *de novo*, deciding whether the administrative decision below was contrary to law and whether the factual determinations were supported by substantial evidence. **Hilltop Terrace**, 126 Wn.2d at 29; **City of Seattle v. Werner**, 163 Wn. App. at 899, 907, 261 P.3d 218 (2011); RCW 7.16.120.<sup>4</sup> The court views the facts “in the light most favorable to the party that prevailed at the highest forum that exercised fact-finding authority.” **Sunderland Family Treatment Servs. v. City of Pasco**, 127 Wn.2d 782, 788, 903 P.2d 986 (1995); **State ex rel. Lige & Wm. B. Dickson Co. v. Cnty. of Pierce**, 65 Wn. App. 614, 618, 829 P.2d 217 (1992). The court either affirms, annuls, or modifies the decision below. RCW 7.16.110.

This Court reviews *de novo* the administrative record, examining both the decision to grant a writ and the merits decision.

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<sup>4</sup> Under RCW 7.16.120, the court analyzes (1) whether the body or officer had subject matter jurisdiction; (2) whether the body or officer had authority pursuant to its subject matter jurisdiction; (3) whether the body or officer violated any rule or law in making the decision; (4) whether the body or officer proved the facts necessary to its decision; and (5) whether substantial evidence supported those facts.

*Holifield*, 170 Wn.2d at 240; *Sunderland*, 127 Wn.2d at 788; *Werner*, 163 Wn. App. at 906-907. Here, Nichols argued in the Superior Court that Kalhorn (1) had no subject matter jurisdiction; (2) had no authority; and (3) made an erroneous legal decision. CP 10. She did not challenge Kalhorn's findings, so they are verities here. *Hilltop Terrace*, 126 Wn.2d at 30. And the Court views the facts in SHA's favor, where Kalhorn was the only officer to make findings on SHA's decision not to be bound by Chandola's ruling. CP 60-61, *Sunderland*, 127 Wn.2d at 788. Legal decisions are reviewed *de novo*. *Hilltop Terrace*, 126 Wn.2d at 29.

**B. The Superior Court erred in granting a writ of review, where hearing officer Chandola exceeded his authority by failing to consider or rule upon SHA's key factual and legal reasons for terminating Nichols' voucher.**

The Superior Court erred in granting the writ of review. CP 439-40. The parties agree that SHA is not bound by Chandola's decision if he exceeded his authority. CP 8, 404. Kalhorn correctly ruled that Chandola did just that when he failed to address SHA's argument that it properly terminated Nichols based on her second and third failures to timely report increased family income. CP 62-64. This Court should reverse.

In Chandola's hearing, SHA plainly argued that it could terminate Nichols because she failed to report increased family income, violating her obligations under the Section 8 Program. CP 21, 477, 499. But Chandola incorrectly ruled that the "sole issue" before him was whether SHA could terminate Nichols based on her old debts to SHA. CP 16. Chandola thus exceeded his authority, failing to address material factual issues and legal authorities supporting Nichols' termination.

**1. Chandola failed to consider material facts.**

SHA's hearing procedures require hearing officers to adjudicate "all material factual issues" and to consider all relevant facts raised at the informal hearing. ADMIN PLAN, Ch. 20-8. A "material factual issue[ ]" is any issue that tends to affect the outcome of the hearing. *Id.* A "relevant" fact is one that has "a tendency to prove that any fact of consequence to the outcome of the hearing [is] more likely or less likely than without the information." Admin. Plan, Ch. 20-7.

There is simply no question that SHA may terminate a Section 8 participant who fails to report increased family income. 24 C.F.R. 982.551(b) & .552(c)(1)(i); ADMIN. PLAN, Ch. 14-5 & 17-1; CP 61 (F/F 19 & 20). An alleged failure to report increased family

income is thus a material factual issue affecting the outcome of the termination hearing. CP 64; ADMIN. PLAN, Ch. 20-8.

SHA walked Chandola through the law, declarations, forms, and agreements requiring Nichols to report family income changes within 10 days or risk losing her voucher. CP 466-68, 471, 477. SHA informed Nichols at two orientations that she had to report income increases within 10 days. CP 61 (F/F 20). Nichols signed declarations at her annual reviews agreeing to the income-reporting requirements. CP 61 (F/F 19 & 20). Accordingly, four of the eight reasons SHA provided for terminating Nichols' voucher related to her failures to report increased family income. CP 21.

SHA also presented facts showing that Nichols began receiving additional family income in August 2009, but failed to report it until March 2010. CP 21, 472-73. SHA showed Chandola that Donahue began receiving additional income in October 2009, but that Nichols never reported it. CP 21, 473-74. SHA argued in closing that it properly terminated Nichols' voucher because she failed to report her income. CP 499.

Yet Chandola never addressed the fact that Nichols failed to report her increased family income. CP 16-19. He stated instead that the "sole issue" was whether SHA could terminate Nichols'

voucher under the payment agreement chapter in the ADMIN. PLAN. CP 16. Chandola thus exceeded his authority by failing to “adjudicate all material factual issues.” ADMIN. PLAN, Ch. 20-8.

**2. Chandola failed to conform his rulings to the law.**

Hearing officers also must conform their rulings to the relevant legal authority, including HUD regulations and internal SHA policies (ADMIN. PLAN, Ch. 20-8):

Hearing Officers presiding over SHA informal hearings shall . . . conform their rulings to all relevant legal authority, including, but not limited to:

All relevant federal regulations, particularly those codified at 24 CFR Part 982.1 et seq. (concerning the tenant based Housing Choice Voucher Program);

. . . .

**4. Internal SHA policies, in particular the Section 8 Administrative Plan.**

As noted above, SHA walked Chandola through the facts and the C.F.R. allowing it to terminate Nichols for failing to report increased income. CP 21, 466-74, 477. But Chandola failed to consider SHA’s key legal theory and authorities and failed to conform his decision to those authorities. ADMIN. PLAN, Ch. 20-8. Chandola did not consider these authorities, let alone conform his decision to them. CP 16-19. He therefore exceeded his authority under the hearing officer regulations.

**C. SHA was not bound by Chandola's decision, so the Superior Court's writ was improper.**

SHA must adopt informal hearing procedures and is "not bound by a hearing decision [that] exceeds the authority of the person conducting the hearing under [SHA's] hearing procedures." 24 C.F.R. 982.555(e)(1) & (f); CP 8. As discussed above, those hearing procedures required Chandola (1) to consider all relevant factual issues and decide "all material factual issues" (ADMIN. PLAN, Ch. 20-7 & -8); and (2) to conform his decision to all relevant legal authorities (ADMIN. PLAN, Ch. 20-8). As also explained above, he failed to do so.

Hearing officer Kalhorn correctly found that SHA properly raised Nichols' failures to disclosed increased family income in the Chandola hearing:

- ◆ SHA presented a "significant number" of exhibits showing Nichols' obligation to report income and her knowledge of that obligation (CP 63);
- ◆ A "significant portion" of Chandola's hearing "focused on Ms. Nichols' and her daughter's 2009 income changes" (CP 63, 466-68, 471, 477, 493-94, 499);
- ◆ SHA argued in its closing that Nichols' voucher termination should be upheld because she violated her participant obligations (CP 63, 499); and
- ◆ SHA never stated that, but for the pre-existing debt, it would not have terminated Nichols' voucher (CP 63).

Kalhorn therefore correctly ruled that SHA was not bound by Chandola's decision, where he failed to consider material, factual and legal arguments as required. CP 62-64.

The Superior Court erroneously granted the writ of review. Kalhorn's ruling was not erroneous or illegal, as she correctly found that Chandola had exceeded his authority under hearing officer regulations. RCW 7.16.040 & .120. This Court should reverse the writ. The Court should not reach the merits because the writ was erroneous and because Nichols did not challenge Kalhorn's findings or rulings on the merits in the Superior Court.

**D. Kalhorn's correct ruling that Nichols' voucher could be terminated for failing to report increased income was not disputed below.**

Nichols did not dispute that she failed to report increased family income – in fact, she “acknowledged the infraction” CP 442, 60-61 (F/F 11-15). She also did not dispute that her failures to timely report income changes are sufficient grounds for termination. 24 C.F.R. 982.552(c)(1)(i) & .551(b). She instead argued that her failure to report her increased income was unintentional. CP 59, 484-85, 500.

But Kalhorn properly found that SHA could reasonably conclude that Nichols was not credible (in light of her many failures

to properly report) and that her excuses did not justify her failures. CP 64. There literally is no dispute that Kalthorn's decision is correct on the merits. Accordingly, the Superior Court erred in ordering SHA to enter into a payment agreement, to reinstate Nichols' Section 8 voucher, and to pay Nichols' costs and expenses. CP 686.

### CONCLUSION

This Court should reverse the Superior Court and reinstate SHA's decision to terminate Nichols' voucher.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2011.

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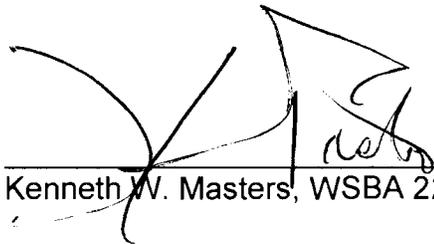
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### Appendix A

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ADMINISTRATIVE PLAN  
FOR THE  
SEATTLE HOUSING AUTHORITY  
HOUSING CHOICE VOUCHER PROGRAM

Approved by the SHA Board of Commissioners November 17, 2003

## Chapter 14

### RECERTIFICATIONS

[24 CFR 982.516]

In accordance with HUD requirements and SHA's Moving to Work Plan, SHA will re-examine the income and household composition of all families regularly. Recertifications and interim re-examinations will be processed in a manner that ensures families are given reasonable notice of decreases in the Housing Assistance Payment and corresponding increases in tenant rent (hereafter referred to as rent increases). This Chapter defines SHA's policy for conducting annual recertifications. It also explains the interim reporting requirements for families, and the standards for timely reporting of changes in family income or composition.

#### **A. Regularly Scheduled Annual, Biannual and Triennial Activities** [24 CFR 982.516, 982.405]

There are three activities SHA must conduct on a regular basis:

1. Recertification of income and family composition;
2. Update family income, VPS and UA between triennial recertifications, and
2. HQS inspection

SHA will complete a recertification of families with MTW voucher assistance whose total household income consists of one or more of the following on a triennial basis: Social Security, SSI, VA benefits, pension. Other families will be recertified annually.\*

#### **B. Recertification/Re-Examination** [24 CFR 982.516]

##### Moves Between Re-Examinations

When a family moves to another dwelling unit, the annual recertification will not be re-scheduled to correspond with the effective date of the new HAP Contract.

Income limits are not used as a test for continued eligibility at recertification.

##### Re-Examination Notice to the Family

SHA will maintain a re-examination tracking system and the household will be notified by mail of the recertification requirements at least 90 to 120 days in advance of the anniversary date. If requested as an accommodation by a person with a disability, SHA will provide the notice in an accessible format. SHA will also mail the notice to a third-party, if requested as reasonable

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\* Triennial recertifications were included in SHA's 2010 MtW Plan and implemented in phases beginning with May 2010 anniversary dates.

accommodation for a person with disabilities.

### Completion of Annual Recertification or Update and Notice of Change in Rent

SHA will complete annual recertifications or updates for families before the anniversary date, including notifying the family of any increases in rent at least 30 days before the anniversary date. If the family's rent portion remains the same or decreases, SHA may give less than 30 days written notice to the family.

### Persons with Disabilities

Persons with disabilities who are unable to complete their review by mail will be granted an accommodation which includes conducting the interview at the person's home or other location, as requested by the family, upon verification that the accommodation requested meets the need presented by the disability.

### Collection of Information [24 CFR 982.516(f)]

SHA will require the family to complete a Personal Declaration form prior to the completion of an annual recertification.

SHA will mail the Personal Declaration and all other required documents to the family along with a Notice of Annual Review of Eligibility letter. This letter will specify the date and time by which the family must return their documents to SHA.

At the request of the family, SHA will conduct the annual recertification in person at SHA's PorchLight location. The family may call to request an appointment up to 1 day prior to the document submission deadline date.

### Requirements to Attend

In cases where the family has requested an in-person interview, the head of household is required to attend the recertification interview. If the head of household is unable to attend the interview, the appointment will be rescheduled.

### Failure to Respond to Notification to Recertify

If the family fails to submit some or all of their required documents by the deadline noted in the first notification letter, and has not made prior arrangements with SHA, SHA will mail a second notification letter to the family. The second letter will outline the steps necessary for the family to complete their review, and will be attached to another set of review forms for the family to complete.

If the family fails to respond to the second notice, and has not rescheduled or made prior arrangements, SHA will send the family notice of termination and offer them an informal hearing.

Exceptions to these policies may be made by the Occupancy Supervisor if the family is able to document an emergency situation that prevented them from responding to the recertification notices, or, if requested, as a reasonable accommodation for a person with a disability.

### Documents Required From the Family

In the notification letter to the family, SHA will include instructions for the family to submit the following:

1. Documentation of all income declared by the family on their Personal Declaration and/or as requested by SHA;
2. Verification of all assets, when the total value of assets is equal to or greater than \$50,000 (\$5,000 for tax credit units);†
3. Documentation of any deductions/allowances declared by the family;
4. Personal Declaration form completed by head of household, and signed and dated by all family members age 18 and older;
5. Authorization for the Release of Information Forms completed by head of household, and signed and dated by all family members age 18 and older; and
6. SHA citizenship declaration forms completed by head of household and all family members age 18 and older.
7. Form HUD-52675: Debts Owed to Public Housing Agencies and Terminations must be individually signed and dated by all family members age 18 and older for all Annual Reviews effective November 1, 2010 through October 31, 2011 and Annual Reviews for families on a Triennial Recertification schedule at their next Annual Review.

### Verification of Information

SHA will follow the verification procedures and guidelines described in Chapter 9. Verification documents for re-examinations must be current within 90 days of the submission deadline date stated in the family's initial notification letter.

### Tenant Rent Increases

If tenant rent increases, a 30-day notice is mailed to the family prior to the scheduled effective date of the annual recertification or update.

If less than 30 days are remaining before the scheduled effective date of the annual recertification or update, the tenant rent increase will be effective on the first of the month following the 30-day notice.

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† The asset threshold was raised to \$50,000 (\$5,000 for tax credit units) using Seattle Housing's Move to Work authority effective with new applications received on or after September 1, 2010 and, for existing participants, with Annual Reviews effective January 1, 2011 and after.

If there has been a misrepresentation or a material omission by the family, or if the family causes a delay in the re-examination processing, there will be a retroactive increase in rent to the scheduled effective date of the annual recertification.

#### Tenant Rent Decreases

If tenant rent decreases, the decrease will be effective on the anniversary date.

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

#### Families qualified for Triennial Recertifications

During the years that a recertification is not conducted, an Annual Update will be completed to update any changes in Utility Allowances, Voucher Payment Standards and to reflect standardized changes to fixed income sources due to annual cost of living increases as published by the Social Security Administration and the Veterans Administration.

Families will be notified in writing that an Annual Update has been processed which will include any changes to the Housing Assistance Payment and tenant share of the rent.

#### Hardship Policy

If a participant family has been placed on the Triennial recertification schedule and believes this to create a hardship on the family, a waiver may be requested in writing to the Housing Authority. Hardship waivers will be reviewed by the HCV Occupancy Manager. Waivers will be granted if it is determined that there would be a reduction in the family's portion of housing costs as a result of a complete reexamination.

### **C. Reporting Interim Changes [24 CFR 982.516]**

#### Additional Family Members

Program participants must report all changes in household composition to SHA between annual or triennial re-examinations. This includes additions due to birth, adoption and court-awarded custody. The family must obtain SHA approval prior to all other additions to the household.

If any new family member is added, family income must include any income of the new family member. SHA will conduct an interim re-examination to review such additional income and will make the appropriate adjustments in the Housing Assistance Payment and family unit size.

The U.S. citizenship/eligible immigrant status of additional family members must be declared and verified as required before moving into the unit.

### Increases in Income

Families are required to report all increases in income/assets, in writing, within 10 business days of the change.

### Interim Re-Examination Policy‡

Effective October 1, 2005, for all income received after October 1, 2005, SHA shall conduct interim re-examinations to increase rent when families report an increase in income in the following cases:

1. Interim household additions;
2. Any increase in income when a family previously reported no income source;
3. An increase in income that is greater than \$100 per month; and
4. Written request from the family (example: FSS family who receives interim increase in family income wishes to increase their rent so that their FSS escrow will increase).

SHA may conduct interim re-examinations when families report increases in income in other circumstances, if:

1. The increase will have a material effect on the family's TTP (greater than 10 percent); or
2. The increase follows a decrease in income, which resulted from the participant's voluntary action (e.g., a request to an employer to decrease hours, or a request to DSHS to reduce or eliminate TANF payments).

### Decreases in Income

Participants may report a decrease in income and other changes which would reduce the amount of tenant rent, such as an increase in allowances or deductions. SHA must calculate the change in tenant rent if a decrease in income is reported.

### SHA Error

If the Housing Authority discovers that it has made an error that has a substantial effect upon a tenant family's rent subsidy, it will take necessary steps to correct the error and make adjustments to the tenant's subsidy calculation.

If correction of the error would have an adverse affect on the tenant family (e.g. a reduction in Housing Assistance Payments to the owner) then the Housing Authority will provide the family with a 30-day notice of the rent increase. The rent increase will be effective the first day of the month after the expiration of the 30-day notice of the new rent amount. Neither the family nor the owner will be asked to repay funds for an error that they did not cause.

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‡ Revised July 2005 per Resolution 4784, passed by the Seattle Housing Authority Board of Commissioners on June 20, 2005

If correction of the error would be favorable to the tenant (e.g. a retroactive increase in Housing Assistance Payments to the owner) then the Housing Authority will calculate the adjustment amount from the point at which the error was made to the month during which the error was corrected. The adjustment amount will be credited to the owner's account or be paid to the tenant in one of the following ways:

- If the tenant is still in the unit and the period of incorrect HAP is within the current calendar year then a check will be issued to the owner with a copy of the notification being sent to the tenant. The owner will be responsible for adjusting the rent accordingly or for issuing a refund to tenant.
- If the tenant is still in the unit and the period of incorrect HAP spans a previous calendar year, then a check will be issued to the tenant at the tenant's current address.
- If the tenant is still in the program but not in the same unit then a check will be sent to tenant at tenant's current address.
- If the tenant is no longer in the program then notification will be sent to the tenant at the tenant's last known address advising them to contact us to resolve an error in their previous program participation. Reserve details of the reconciliation until the tenant contacts us and confirms their identity.

#### Automatic Welfare Reductions

DSHS revamped the General Assistance program as Disability Lifeline in the fall of 2010. The maximum monthly Disability Lifeline cash grant reduced from \$339 per month to \$266 per month effective Jan. 1, 2011 and from \$266 to \$197 per month effective April 1, 2011. To ease the transition for our participants, SHA automatically reduced the dollar amount based on written notification from DSHS by processing reviews effective January 1, 2011 and April 1, 2011 for all current recipients without requiring documentation from the participant.

DSHS also reduced TANF grant amounts effective February 1, 2011 and, in response to written notification from DSHS, SHA automatically processed reviews reducing the dollar amount. Effective May 1, 2011, DSHS further reduced TANF grant amounts for households with 5 or more members and suspended child support pass-through payments. SHA again automatically processed reviews reducing the TANF amount and/or removing the child support pass-through payment income.

#### **D. Other Interim Reporting Issues**

An interim re-examination does not affect the date of the annual recertification, but may affect the date of a triennial recertification.

Most interim reviews will be conducted through the mail unless the family requests that the review take place in person.

Any changes reported by participants, other than those listed in Section C above, will be noted in the file, but will not be processed between regularly-scheduled annual recertifications.

#### **E. Income Changes Resulting from Welfare Program Requirements** [24 CFR 5.615]

SHA will not reduce the family share of rent for families whose welfare assistance is reduced due to a “specified welfare benefit reduction,” which is a reduction in benefits by the welfare agency specifically because of:

1. Fraud in connection with the welfare program; or
2. Non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program.

However, SHA will reduce the rent if the welfare assistance reduction is a result of:

1. The expiration of a lifetime time limit on receiving benefits;
2. A reduction in welfare assistance resulting from the family’s failure to obtain employment, after having complied with welfare program requirements; or
3. A reduction in welfare assistance resulting from a family member’s failure to comply with other welfare agency requirements.

#### **Families Affected by Welfare Rules**

Families are affected by the welfare rules discussed above if they receive benefits for welfare or public assistance from a state or public agency program which requires, as a condition of eligibility to receive assistance, the participation of a family member in an economic self-sufficiency program.

#### **Definition of “Imputed Welfare Income”**

“Imputed welfare income” is the amount of annual income, not actually received by a family, as a result of a specified welfare benefit reduction, that is included in the family’s income for purposes of determining rent.

The amount of imputed welfare income is determined by SHA, based on written information supplied to SHA by the welfare agency, including:

1. The amount of the benefit reduction;
2. The term of the benefit reduction;
3. The reason for the reduction; and
4. Subsequent changes in the term or amount of the benefit reduction.

The family's annual income will include the imputed welfare income, as determined at the family's annual or interim re-examination, during the term of the welfare benefits reduction specified by the welfare agency.

The amount of imputed welfare income will be offset by the amount of additional income the family receives that commences after the sanction was imposed. When additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income will be reduced to zero.

If the family was not an assisted resident when the welfare sanction began, imputed welfare income will not be included in annual income.

#### Verification Before Denying a Request to Reduce Rent

SHA will obtain written verification or verbal phone verification from the welfare agency stating that the family's benefits have been reduced due to fraud or non-compliance with welfare agency economic self-sufficiency or work activity requirements before denying the family's request for rent reduction.

SHA will rely on the welfare agency's written notice or verbal phone verification regarding welfare sanctions.

#### Family Dispute of Amount of Imputed Welfare Income

If the family disputes the amount of imputed income, the Certification Specialist II or HCV Supervisor will review the calculation for accuracy. If SHA denies the family's request to modify the amount, SHA will provide the tenant with a notice of denial, which will include:

1. An explanation for SHA's determination of the amount of imputed welfare income;
2. A statement that the tenant may request an informal hearing; and
3. A statement that the grievance information received from the welfare agency cannot be disputed at the informal hearing, and the issue to be examined at the informal hearing will be SHA's determination of the amount of imputed welfare income, not the welfare agency's determination to sanction the welfare benefits.

#### **F. Notification of Results of Recertifications and Annual Updates** [HUD Notice PIH 98-6]

The HUD Form 50058 will be completed and transmitted as required by HUD. A contract and lease amendment noting the changes in rent portions is mailed to the owner and the tenant. If the family disagrees with the rent adjustment, they may request an informal hearing.

#### **G. Timely Reporting of Changes in Income and Assets** [24 CFR 982.516(c)]

##### Standard for Timely Reporting of Changes

SHA requires that families report interim changes to SHA in writing within 10 business days of when the change occurs. Any information, document or signature needed from the family,

which is needed to verify the change, must be provided by the deadline specified by SHA.

#### Family Requests for Interim Reviews by 10<sup>th</sup> of the Month

All participant requests for interim reviews must be submitted in writing no later than the 10<sup>th</sup> of each month in order to be effective the first of the following month. If a family's request is received after the 10<sup>th</sup>, or if the majority of relevant documentation is submitted after the deadline issued by the Certification Specialist, the family's review will not be effective until the month following the next immediate month, or whenever the family finally submits all relevant documentation. All requests for exceptions to the above standards will be referred to the appropriate Occupancy Supervisor for final decision and follow-up. If the change is not reported within the required time period, or if the family fails to provide documentation or signatures, it will be considered untimely reporting.

#### Procedures When the Change is Reported in a Timely Manner

SHA will notify the family and the owner of any change in the Housing Assistance Payment, which will take effect according to the following guidelines:

1. Increases in the tenant rent are effective on the first of the month following at least a 30-day notice; and
2. Decreases in the tenant rent are effective the first of the month following the month in which the change is reported, within the limitations described above for timely notification of reduced income. In general, rent reductions will not be processed until all the facts have been verified. However, a change may be implemented based on documentation provided by the family, pending third-party written verification.

#### Procedures When the Change is Not Reported by the Family in a Timely Manner

If the family does not report the change as described above, the family will have caused an unreasonable delay in the interim re-examination processing and the following guidelines will apply:

1. Increase in tenant rent will be effective retroactive to the date it would have been effective had it been reported on a timely basis. The family will be liable for any overpaid housing assistance and may be required to sign a repayment agreement; and
2. Decrease in tenant rent will be effective on the first of the month following the month that the change was reported, assuming the family complies with all SHA-required document submission deadlines.

#### Procedures When the Change is Not Processed by SHA in a Timely Manner

“Processed in a timely manner” means that the change goes into effect on the date it should, by policy, when the family reports the change in a timely manner. If the change cannot be made effective on that date, the change is not processed by SHA in a timely manner.

In the event that a change is not processed by SHA in a timely manner, an increase will be effective after the required 30-day notice prior to the first of the month after completion of processing by SHA.

If the change resulted in a decrease, the overpayment by the family will be calculated retroactively to the date it should have been effective, and the owner will be credited for the amount the HAP was underpaid. The owner will then be responsible for crediting or reimbursing the family for any rent they overpaid during this period.

## Chapter 17

### TERMINATION OF ASSISTANCE

[24 CFR 5.902, 5.902, 5.903, 5.905, 982.4, 982.54, 982.552, 982.553, 982.555]

SHA may terminate assistance for a family because of the family's action or failure to act. SHA will provide families with a written description of the family obligations under the program, the conditions under which SHA terminates assistance, and SHA's informal hearing procedures.

#### **A. Grounds for Termination** [24 CFR 982.54, 982.552, 982.553]

##### Form of Denial/Termination

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

1. Denial of admission to Housing Choice Voucher Program;
2. Withdrawing a voucher after issuance;
3. Refusing to enter into a HAP Contract or approve a tenancy; and
4. Refusing to process or provide assistance under portability procedures.

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

1. Refusing to enter into a HAP Contract or approve a tenancy;
2. Terminating Housing Assistance Payments under an outstanding HAP Contract; and
3. Refusing to process or provide assistance under portability procedures.

##### Denial of Assistance

SHA policies on denying assistance to households based on criminal history or previous history with the Section 8 program are outlined in detail in Chapter 2, Section F. of this Plan. Any reason for denial of assistance may also be grounds for termination of assistance.

##### Terminations of Assistance for Current Participants

SHA may terminate assistance to a family for any of the following reasons:

1. Failure to comply with a family obligation, including failure to provide information requested by SHA;
2. HUD-mandated terminations for:
  - a) Criminal history;
  - b) Failure to provide consent forms; and
  - c) Ineligible citizenship status.
3. Other violations of federal law or regulation; and
4. HAP of \$50 or less for 180 days.

## **B. Failure to Comply with Family Obligations**

SHA shall terminate assistance if it determines that a family has failed to meet family obligations outlined on the voucher and described in 24 CFR 982.551, as follows:

1. The family must supply any information that SHA or HUD find necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). "Information" includes any requested certification, release or other documentation;
2. The family must supply any information requested by SHA or HUD for use in a regularly scheduled re-examination or interim re-examination of family income and composition in accordance with HUD requirements;
3. The family must disclose and verify Social Security Numbers (as provided by 24 CFR 5.216) and must sign and submit consent forms for obtaining information in accordance with 24 CFR 5.230;
4. All information supplied by the family must be true and complete;
5. The family is responsible for an HQS breach caused when the family fails to pay for any utilities which are to be paid by the tenant, or when the family fails to provide and maintain any appliances which are to be provided by the tenant (for tenant-caused damages, see Chapter 12, Section K);
6. The family must allow SHA to inspect the unit at reasonable times and after reasonable notice;
7. The family may not commit serious or repeated violations of the lease;
8. The family must provide proper legal notice to the owner and, at the same time, notify SHA, before the family moves out of the unit or terminates the lease;
9. The family must promptly give SHA a copy of any owner eviction notice;
10. The family must use the assisted unit for residence by the family. The unit must be the family's only residence;
11. The composition of the assisted family residing in the unit must be approved by SHA. The family must promptly inform SHA of the birth, adoption or court-awarded custody of a child. The family must request SHA approval to add any other family member as an occupant of the unit;
12. The family must promptly notify SHA if any family member no longer resides in the unit;
13. If SHA has given approval, a foster child or a live-in aide may reside in the unit. If the family does not request approval or if SHA does not approve the request, the family may not allow a foster child or live-in aide to reside with the assisted family;
14. Members of the household may, with SHA's prior approval, engage in legal profit-making activities in the unit, but only if such activities are incidental to primary use of the unit as a residence by members of the family;
15. The family may not sublease or otherwise receive compensation for anyone's occupancy of the unit;
16. The family may not assign the lease or otherwise transfer the unit;
17. 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 of any absence from the unit for any period in excess of 14 calendar days;
18. The family may not own or have any ownership interest in the unit;
  19. The members of the family may not commit fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
  20. The household members may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises;
  21. The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises; and
  22. An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy for the same unit or for a different unit, under any duplicative federal, state or local housing assistance program.

#### Definition of “Promptly”

The term “promptly” when used with the family obligations always means within 10 business days.

#### Lease Violations

The following criteria will be used to decide if a serious or repeated violation of the lease will result in termination of assistance:

1. If the owner initiates termination of the tenancy, or terminates the tenancy, through court action for serious or repeated violation of the lease;
2. If the owner notifies the family and SHA of termination of tenancy for serious or repeated lease violations, and the family moves from the unit without notice prior to the completion of court action;
3. If there are police reports, neighborhood complaints or other third-party information verifying serious or repeated violations of the lease;
4. If the family moves from the unit without providing notice to SHA and the owner; or
5. If the family fails to pay rent when due.

#### Proposed Additions to the Family

SHA will deny a family’s request to add additional family members who are:

1. Persons who have been evicted from public housing;
2. Persons who have previously violated a family obligation listed above and in 24 CFR 982.551 of HUD regulations;
3. Persons who have been part of a family whose assistance has been terminated for cause

- under the Certificate or Voucher program;
4. Persons who have engaged in drug-related criminal activity or violent criminal activity;
  5. Persons who have committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
  6. Persons who currently owe rent or other amounts to SHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Housing Act;
  7. Persons who have engaged in or threatened abusive or violent behavior toward residents, the public or SHA personnel;
  8. Persons who cannot provide verification of their assigned SSN; or
  9. Persons who contend to have eligible immigration status, but cannot provide verification.

(Refer to Chapter 14, Recertifications, for further information on adding people to a subsidized family.)

#### Family Member Moves Out

Families are required to notify SHA if any family member leaves the assisted household. When the family notifies SHA, they must furnish the following information:

1. The date the family member moved out;
2. Verification of the family member's new address (e.g., a copy of a new lease or utility bill), or, if this documentation is not available, a statement from the head of household as to why it cannot be obtained; and
3. A statement as to whether the family member is temporarily or permanently absent.

#### Limitation on Profit-Making Activity in Unit

Any business activity that results in the family's inability to use any of the living areas in the unit, such as a bedroom utilized for a business which is not available for sleeping, is prohibited.

Any use of the unit for a business that is not incidental to its use as a dwelling unit is prohibited.

Any illegal business or business not permitted by zoning is prohibited.

#### Interest in Unit

The owner may not reside in an assisted unit whether he or she is a member of the assisted family or not.

#### Missed Appointments and Deadlines [24 CFR 982.551, 982.552 (c)]

It is a family obligation to supply information, documentation, and certification as needed for SHA to fulfill its responsibilities. SHA schedules appointments and sets deadlines in order to obtain the required information. The family obligations also require that the family allow SHA to inspect the unit, and appointments are made for this purpose.

A participant who fails to keep an appointment, or to supply information required by a deadline without notifying SHA, may be sent a Notice of Termination of Assistance for failure to provide required information, or for failure to allow SHA to inspect the unit. The Notice will include information about requesting a hearing.

#### Requirement to Provide Information and Keep Appointments

The family will be given information about the requirement to keep appointments and the number of times appointments will be rescheduled, as specified in this Plan.

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

1. Deadline for scheduling eligibility interview;
2. Appearance at eligibility interview for admissions;
3. Completion of verification procedures;
4. Attendance at voucher issuance and briefings;
5. Attendance at Housing Quality Standards (HQS) inspections;
6. Completion of recertifications; and
7. Requests for appeals.

Generally, acceptable reasons for missing appointments or failing to provide information by deadlines are:

1. Medical emergency;
2. Family emergency; or
3. Other good cause, as determined by SHA.

#### Procedure When Appointments are Missed or Information Not Provided

For most purposes in this Plan, the family will be given two opportunities before being issued a notice of termination or denial for breach of a family obligation.

The notice may be rescinded if the family offers to cure and the family does not have a history of non-compliance.

#### **C. Terminations of Assistance for Criminal History** [24 CRF 982.553(a)]

SHA shall terminate assistance for participants with the following history:

1. Eviction in last 3 years from federally assisted housing for illegal drug activity: SHA shall terminate assistance for participants who have been evicted from public or other federally assisted housing due to drug-related activity within the last three years. [24 982.553(a)]

- a) Definition of drug-related criminal activity: Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.
  - b) Evidence of rehabilitation or permanent absence of criminal from household: SHA may, however, admit the household if it determines that:
    - i. The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by SHA; or
    - ii. The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).
      - a) Evidence of rehabilitation: SHA's standards for evidence of rehabilitation under this section may take into consideration documented evidence of rehabilitation for drug-related offenses if the applicant can provide all of the following:
        - i. Evidence of completion of a recognized drug treatment program;
        - ii. Commitment of appropriate services by a recognized service provider; and
        - iii. No re-offense in the two-year period preceding the issuance interview.
2. Current use of illegal drugs: SHA shall terminate assistance to households if it determines that a household member is currently engaged in illegal drug use.
  3. Methamphetamine production in federally assisted housing: SHA shall terminate assistance to a household if any household member has been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.
  4. Sex-offenders: SHA shall terminate assistance to a household if any household member is subject to a lifetime registration requirement under a State sex offender registration program. Because Washington State has no lifetime registration requirement, SHA will deny admission to any sex-offender for the duration of any Washington State sex-offender registration requirement.
  5. Pattern of abuse of alcohol: SHA shall terminate assistance to a household if it has cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety or right to peaceful enjoyment of the premises by other residents.

### Definitions

“Covered person,” for purposes of 24 CFR 982 and this chapter, means a tenant, any member of the tenant’s household, a guest or another person under the tenant’s control.

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

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

“Guest,” for purposes of this chapter and 24 CFR 5, subpart A and 24 CFR 982, means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of 24 CFR 982 apply to a guest as so defined.

“Household,” for the purposes of 24 CFR 982 and this chapter, means the family and PHA-approved live-in aide.

“Other person under the tenant’s control,” for the purposes of the definition of “covered person” and for 24 CFR 5 and 982 and for this chapter, means that the person, although not staying as a guest (as defined in this chapter) 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 lawful commercial purposes is not under the tenant’s control.

“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.

#### Criminal/Credit Checks

SHA may at any time obtain a criminal history and/or credit check for any member of a participant household for the purpose of determining whether a family meets SHA’s standards for continued participation in the program outlined in this chapter.

#### Standards for Violations

SHA will consider the use of a controlled substance or alcohol to be a pattern if there is more than one incident in a three-month period.

Engaged in or engaging in “violent criminal activity” means any act by an applicant, a participant, a household member, a guest, or other covered person, in the preceding five years, which involved 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, regardless of whether the activity results in the arrest or conviction of the applicant, participant, or household member.

The existence of the above-referenced behavior by any household member, guest or covered person, may be grounds for denial or termination of assistance, regardless of the participant’s knowledge of the behavior.

In evaluating evidence of past and current behavior, SHA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or the

likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

Standards for Terminating Assistance for Illegal Use or Possession for Personal Use of Illegal Drugs

Assistance to a family may be terminated if any member of the family uses or possesses illegal drugs, provided that the use or possession occurred no more than one year prior to the date that the family is notified that assistance will be terminated.

Assistance may not be terminated if the family member can demonstrate that he or she:

1. Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and
2. Is recovering, or has recovered, from such an addiction, and does not currently use or possess controlled substances.

A family member who has engaged in the illegal use of drugs may be required to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

**D. Termination for Failure to Submit Consent Forms**

SHA shall terminate the assistance for a family if any member of the family fails to sign and submit consent forms for obtaining information required by SHA, including HUD Form 9886. This denial is required pursuant to 24 CFR 982.552(b).

**E. Termination for Non-Eligible Immigration Status** [24 CFR 5.514, 5.516, 5.518]

SHA must terminate assistance when required to do so under the regulations establishing citizenship or eligible immigration status.

Applicant and participant families, in which all members are neither U.S. citizens nor eligible immigrants, are not eligible for assistance. The assistance of any such participant families shall be terminated. SHA shall, on request, provide such applicants or families a hearing.

Assistance may not be terminated while confirmation from the Department of Homeland Security of the participant family's eligible immigration status is pending.

False or Incomplete Information

SHA will verify eligible status, then continue, deny, terminate, or prorate assistance as appropriate.

SHA will deny or terminate assistance based upon the submission of false information or upon

misrepresentation.

#### Procedure for Denial or Termination

If the family (or any member) claimed eligible immigrant status and the INS primary and secondary verifications failed to document the status, the family may make an appeal to the INS and request a hearing with SHA either after the INS appeal or in lieu of the INS appeal.

After SHA has made a determination of ineligibility, the family will be notified of the determination and the reasons and informed of the option for prorated assistance (if applicable).

#### **F. \$50 or Less HAP for 180 days**

SHA is required to terminate assistance for participants, if the family is living in a unit under contract and 180 days have elapsed since SHA's last Housing Assistance Payment of more than \$50 was made. (See Chapter 16, Contract Terminations.)

If the family is still in the unit after 180 days, the assistance will be terminated. If, within the 180-day period, an owner's rent increase or a decrease in the family's Total Tenant Payment causes the family to be eligible for a Housing Assistance Payment of greater than \$50, SHA will resume assistance payments for the family.

If the family chooses to move during the 180-day period, SHA will not issue a voucher to the household if the maximum HAP available for the family is \$0. In this case the family's program participation will end at the move out date of the previous unit. If the family's maximum HAP is greater than \$0 a voucher will be issued to the family. However, if the family chooses to move to a unit where the HAP for that unit is \$0, SHA will not enter a HAP contract for the new unit. In this case the family's program participation will end at the move out date of the previous unit.

#### **G. Procedures for Termination of Assistance [24 CFR, 982.555]**

##### Housing Authority Discretion [24 CFR 982.552(c) (2)]

In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, SHA has discretion to consider all of the circumstances in each case, including the seriousness of the case. SHA will use its discretion in reviewing the extent of participation or culpability of individual family members and the length of time since the violation occurred. SHA may also review the family's more recent history and record of compliance, and the effects that denial or termination of assistance may have on other family members who were not involved in the action or failure to act.

SHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in, or were culpable for the action or failure to act, will not reside in the unit. SHA may permit the other members of a family to continue in the program.

## Notice

In any case where SHA decides to terminate assistance to the family, SHA must give the family written notice which states:

1. The reason(s) for the proposed termination;
2. The effective date of the proposed termination;
3. The family's right, if they disagree, to request a hearing to be held before assistance is terminated; and
4. The date by which a request for a hearing must be received by SHA.

SHA will simultaneously provide written notice of the contract termination to the owner so that it will coincide with the termination of assistance. The notice to the owner will not include any details regarding the reason for termination of assistance.

## Required Evidence

If the family requests a hearing, SHA shall be required to establish, by a preponderance of the evidence, that a termination for criminal activity is justified. SHA may terminate assistance whether the household member has been arrested or convicted for such activity or not.

“Preponderance of evidence” is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

“Credible evidence” may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence can be considered credible evidence.

Other credible evidence includes documentation of drug raids or arrest warrants.

## Confidentiality of Criminal Records

If SHA proposes to terminate assistance for criminal activity as shown by a criminal record, SHA will furnish to the family, upon request, a copy of any public record background check (e.g. AIR, WSP, and WATCH reports).

As a condition of SHA's agreement with the Seattle Police Department, SHA may not make or furnish copies of confidential police reports. SHA may show the participant SHA's copy of the police report. Parties to the police report may obtain their own copies of the police report at their own expense at the local police department.

SHA will maintain the confidentiality of any criminal record received and take reasonable precautions to ensure that such records are not misused or improperly disseminated. Such records shall be destroyed when the purpose for which they were requested has been accomplished.

All criminal reports, while needed, will be housed in a locked file with access limited to individuals responsible for screening and determining eligibility for initial and continued assistance and to upper level management.

Misuse of the above information by any employee will be grounds for termination of employment.

#### Behavior Resulting From A Disability

If termination is based upon behavior resulting from a disability and SHA receives a request for a reasonable accommodation, SHA will delay a decision on the denial or termination pending a decision on the request for reasonable accommodation.

#### **H. Option Not To Terminate for Misrepresentation** [24 CFR 982.551, 982.552(c)]

If the family has misrepresented any facts that caused SHA to overpay assistance, SHA may terminate assistance or offer to continue assistance provided that the family executes a repayment agreement and makes payments in accordance with the agreement and/or reimburses SHA in full.

#### **I. Misrepresentation in Collusion with Owner** [24 CFR 982.551, 982.552 (c)]

If the family intentionally, willingly, and knowingly commits fraud or is involved in any other illegal scheme with the owner, SHA will deny or terminate assistance.

In making this determination, SHA will carefully consider the possibility of overt or implied intimidation of the family by the owner and the family's understanding of the events.

## Chapter 19

### OWNER OR FAMILY DEBTS TO SHA/PAYMENT AGREEMENTS

[24 CFR 982.453 (b), 982.552] [24 CFR 792.103, 982.552 (c)(v-vii)]

This chapter describes SHA's policies for the recovery of funds which have been overpaid.

#### File Documentation

Before a debt is assessed against a participant or owner, SHA's claim that a debt is owed must be properly documented, which shall include a clear written explanation of the method used to calculate the debt. The debt file, with all supporting documentation, shall be made available to the owner or the participant who owes the debt.

#### Methods of Debt Collection

Every effort shall be made to collect all debts owed, which includes, but is not limited to:

1. Demands for lump sum payments;
2. Execution of a payment agreement;
3. Partial abatements when appropriate;
4. Reductions in HAP to owner;
5. Use of collection agencies; and
6. Securing judgments.

#### **A. Payment Agreement for Participants** [24 CFR 982.552 (c)(v-vii)]

A payment agreement is a written agreement entered into between SHA and a person who is indebted to SHA. It shall contain a promise to repay the debt, details regarding the nature of the debt, the terms of payment, any special provisions, and the remedies available to SHA in the event of a default by the debtor.

#### SHA May Decline to Enter Into a Payment Agreement

SHA, in its sole discretion, may enter into payment agreements with owners or participants. SHA will generally not enter into payment agreements when:

1. There is an existing payment agreement between SHA and the participant;
2. SHA determines that the participant has committed or has attempted to commit program fraud; or
3. SHA determines that the amount owed is more than the participant can repay in a reasonable period of time.

## Terms and Conditions of Payment Agreements

SHA shall prescribe the terms and conditions of any payment agreement.

### Term

The payment agreement term shall range from 2 to 24 months, but shall in any event be the minimum time period in which the participant can be reasonably expected to repay the debt owed. Written requests to the Section 8 Manager for a term longer than 24 months will be reviewed on a case-by-case basis.

### Monthly Payments

The monthly payment shall be the greater of \$50 or the total amount due divided by the number of months in the term of the payment agreement, up to 24 months ( $1/12^{\text{th}}$  of the total amount owing for a 12 month payment plan,  $1/18^{\text{th}}$  for an 18 month payment plan, etc.).

The Section 8 Manager may approve a decrease or temporary (up to 6 months) deferral of the monthly payment for participants who experience a hardship (such as loss of income or a medical situation), provided that the participant requests a hardship in a reasonable time, provides verification of the hardship, and has been in compliance with the terms of the agreement up until the hardship. The change in monthly payment shall be made an attachment to the payment agreement and shall be signed by the Section 8 Manager and the participant(s). The term of the payment agreement shall be lengthened accordingly.

### Execution

Payment agreements shall be executed by the head of household. The payment agreement shall be executed for SHA by the Occupancy Supervisor or designee.

### Cashier Check or Money Order Only

Payments shall be made by money order or cashier's check.

### Late Payments/Default/Termination of Assistance

Payments shall be delinquent if not received by SHA within five business days of the due date. Failure to make any payment before it is delinquent shall constitute a default under the payment agreement.

When a payment is delinquent the participant's assistance may be terminated and SHA may pursue any available remedy, including filing a civil action, to collect the balance owing.

## Referrals

When fraud is involved, SHA may refer a participant's or owner's case to the HUD Inspector General, the U.S. Attorney, the County Prosecutor, or the City Attorney, in addition to pursuing any available civil remedy against the participant or owner.

## Requests to Move

No move will be approved until the debt is paid in full or the family is current in their payment agreement, unless the move is the result of one of the following causes:

1. Family size exceeds the HQS maximum occupancy standards;
2. The HAP Contract is terminated due to owner non-compliance or opt-out;
3. A man-made or natural disaster;
4. The move is pursuant to a reasonable accommodation approved by SHA; or
5. The move is necessary as a result of domestic violence, with documentation of police reports and a court-ordered restraining order.

SHA may require that a payment agreement be current before issuing a voucher to move in these cases.

## **B. Owner Debts to SHA [24 CFR 982.453(b)]**

If an owner has received Housing Assistance Payments or claim payments to which the owner is not entitled, SHA may recover such amounts from future Housing Assistance Payments or claim payments owed the owner.

If future housing assistance or claim payments are insufficient to recover the amounts owed in a reasonable time, SHA may:

1. Demand that the owner pay the amount in full within 30 days;
2. Enter into a payment agreement with the owner for the amount owed;
3. Refer the debt to a collection agency;
4. File a lawsuit to recover the debt; or
5. Prohibit the owner's future participation in the program.

## **C. Writing Off Debts**

Debts that are uncollected after six years from the date the debt was due, or from the date of execution of a payment agreement, will be written off. Debts that are reduced to judgment shall be written off when the judgment can no longer be collected legally. SHA shall keep a record of all debts owing for reference in reviewing applications for participation in the Section 8 program or other housing programs administered by SHA.

## Chapter 20

### COMPLAINTS AND APPEALS

This Chapter describes the policies, procedures and standards to be applied when applicants, owners or participants disagree with an SHA decision.

#### **A. Complaints**

##### Processing Complaints

All complaints, other than HQS violation complaints, must be in writing. HQS complaints may be reported orally (by telephone or in person) or in writing.

SHA will respond to all properly documented complaints within 10 business days.

##### Complaints By or Concerning Participants

Complaints by or concerning program participants shall be referred to the Certification Specialist II. Any complaint not resolved by the Certification Specialist II shall be referred to the Occupancy Supervisor, and if still unresolved to the Section 8 Manager and then to the PorchLight Director of Rental Assistance Programs.

##### Complaints By or Concerning Applicants

Complaints by or concerning applicants shall be referred to the Issuance Supervisor. Any complaint not resolved by the Issuance Supervisor shall be referred to the Section 8 Manager and then to the PorchLight Director of Rental Assistance Programs.

#### **B. Informal Reviews for Denials of Admission to Program** [24 CFR 982.54(d)(12), 982.554]

An informal review is a review of an applicant's file and circumstances by an SHA staff person who has not had any previous material involvement with the applicant, to determine whether SHA's policies and procedures have been applied correctly in denying the application.

##### When Informal Reviews are Required

An applicant whose application is denied shall be provided an opportunity for an informal review of SHA's decision.

Exception: An applicant whose application is denied for reasons of citizenship or eligible immigrant status shall be provided an "informal hearing" (see procedures below).

##### When Informal Reviews are Not Required

Informal reviews are not required for the following:

1. Discretionary administrative determinations such as what constitutes a complete application, how and when applications will be assigned for review, and what resources will be devoted to the review of a particular application or applications in general;
2. General policy issues or class grievances such as local preferences and income eligibility;
3. The determination of the family unit size under SHA subsidy standards;
4. A refusal to extend or suspend a voucher;
5. A determination not to approve tenancy for a specific unit;
6. A determination that a unit selected by an applicant is not in compliance with HQS because of characteristics of the unit; or
7. A determination that a unit is not in accordance with HQS due to family size or composition.

#### Notice of Denial/Procedure for Requesting Informal Review

When SHA determines that an applicant is ineligible, the applicant must be notified of the decision in writing.

The notice must state:

1. The reason(s) for ineligibility;
2. A statement that the applicant may request an informal review if they disagree with the decision;
3. The procedure for requesting a review if the applicant does not agree with the decision; and
4. The deadline for requesting a review.

When an application is denied because of criminal activity described in a criminal record, SHA must, on request, provide both the applicant and the person who is the subject of the record a copy of the criminal record upon which the denial decision is based (24 CFR 5.903 (f)).

#### Procedure for Informal Review

A request for an informal review must be submitted in writing to PorchLight by 4:00 p.m., no later than 10 business days from the date of SHA's denial notice. An informal review will be scheduled within 10 business days from the date the hearing request is received.

The review may be conducted by a supervisory level staff person who was not involved in the decision under review, and who is not subordinate to the person who made the decision.

The applicant will be given the opportunity to present oral or written objections to the decision. Both SHA and the applicant may present evidence and witnesses. The applicant may, at the applicant's own expense, be represented by an attorney or other representative.

The applicant may be present at the review to provide information, but the applicant's presence is not required.

The review may be conducted as a conference call at the discretion of SHA.

The decision of the review officer shall be provided to the applicant in writing within 10 business days after the date of the review, and shall include an explanation of the reasons for the decision.

All review requests, supporting documentation, and a copy of the final decision shall be retained in the applicant's file.

**C. Informal Hearing Procedures for Participants** [24 CFR 982.555(a-f), 982.54(d)(13)]

**When Hearings for Participants are Required**

A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions, relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and SHA policies:

1. The determination of the participant's annual or adjusted income and the computation of the Housing Assistance Payment;
2. The determination of the appropriate utility allowance (if any) for tenant-paid utilities, from the SHA utility allowance schedule;
3. The determination of family unit size under SHA's subsidy standards;
4. A decision to terminate a participant's Family Self-Sufficiency (FSS) contract, withhold supportive services, or propose forfeiture of the participant's escrow account;
5. The determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under SHA's subsidy standards, or a decision to deny the family's request for an exception from the standards;
6. A decision to terminate assistance for a participant family because of the family's failure to satisfy its family obligations; and
7. A decision to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under SHA policy and HUD rules.

An opportunity for an informal hearing must always be provided before terminating assistance.

**Notice to Participants of SHA Decisions**

Participants shall be notified in writing of decisions regarding the amount of their assistance or their eligibility for continued participation in the program. Participants will be given prompt notice of such decisions, which shall include:

1. The proposed action or decision;
2. The date the proposed action or decision will take place;
3. The participant's right to an explanation of the basis for the decision;
4. The procedures for requesting a hearing if the participant disputes the action or decision;

5. The deadline for requesting the hearing; and
6. The name of the person to whom the hearing request should be addressed.

When continued participation in the program is denied because of criminal activity described in a criminal record, SHA will, on request, provide the participant and the person who is the subject of the record a copy of the criminal record upon which the denial decision is based.

A copy of SHA's hearing procedures shall be provided if requested by the family.

#### Notification of Hearing

When a request for an informal hearing is received, a hearing shall be scheduled within 30 days from the date the request is received by SHA. The hearing notification shall state:

1. The date and time of the hearing;
2. The place where the hearing will be held;
3. That the participant has a right to present evidence and witnesses, bring translators, and be represented by legal or other representatives at the participant's expense;
4. That the participant has the right to view any available documents or evidence upon which SHA based the proposed action and, at the family's expense, obtain a copy of such documents prior to the hearing. Requests for such documents or evidence must be received no later than three business days before the hearing date. If the family requests copies of documents relevant to the hearing, SHA will make the copies for the family and assess a charge of 15 cents per copy. In no case will the family be allowed to remove the file from SHA's office; and
5. That SHA shall have the opportunity to examine, at its offices, before the hearing, any of the participant's documents that are relevant to the hearing, and must be allowed to copy any such document at its expense. Any documents not provided to SHA may not be used in the hearing.

#### **D. Conduct of Hearings Not Involving a Voucher Termination**

##### Participant Rights

Participants have the right to:

1. Present written or oral objections to SHA's determination;
2. Examine the documents that are the basis for SHA's action, and all documents submitted to the Hearing Officer;
3. Present any information or witnesses on any pertinent issues;
4. Request that SHA staff be available or present at the hearing to answer questions pertinent to the case; and
5. Be represented, at their own expense, by legal counsel or other designated advocate or representative.

## SHA Rights

In addition to other rights contained in this Chapter, SHA has a right to:

1. Present evidence and information on any pertinent issue;
2. Three days' advance notice of the participant's intent to be represented by legal counsel or other advocate or representative;
3. Examine and copy any documents presented at the hearing;
4. Be represented by counsel; and
5. Have staff persons and other witnesses familiar with the case present.

## Conduct of the Hearing

The informal hearing shall be conducted by a Hearing Officer appointed by SHA who is neither the person who made or approved the decision, nor a subordinate of that person.

Only the issues subject to appeal and raised by the participant in their notice of appeal shall be addressed at the hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence in judicial proceedings.

No documents may be presented at the hearing which have not been provided to the other party if requested before the hearing. "Documents" include all written records.

If the participant desires an audio recording of the hearing, the recording must be requested at least one business day prior to the hearing date.

The Hearing Officer may ask the family for additional information and/or may adjourn the hearing as needed. In the case of domestic violence, the hearing may be postponed pending further investigation.

If the family fails to appear at the hearing, or fails to meet a deadline imposed by the Hearing Officer, the decision of SHA shall become final and take effect immediately. No new hearing will be granted unless the applicant is able to demonstrate to SHA, by clear and compelling evidence, that their failure to appear or meet the deadline was caused by circumstances beyond their control.

## Standard of Review

The Hearing Officer will determine whether SHA's action or decision is consistent with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

## Decision

The Hearing Officer will issue a written decision within 10 business days after the date the hearing is closed.

The decision shall include:

1. A clear statement of the Hearing Officer's findings, conclusion and decision;
2. A clear summary of the decision and explanation of the reasons;
3. If the decision involves money owed, a clear statement of the amount owed, and documentation of the calculation of the amount owed; and
4. The date the decision is effective.

### **E. Informal Voucher Termination Hearing Procedures**

#### Participant Rights

SHA shall afford, at a minimum, the following procedural safeguards to any Housing Choice Voucher participant facing termination:

1. At least 30 days notice of the grounds for termination;
2. An opportunity to appear in person and present objections orally;
3. An opportunity to present any information or witnesses on any pertinent issues;
4. An opportunity to confront and cross-examine adverse witnesses;
5. An opportunity to have counsel (at the participant's expenses);
6. A competent and impartial decision-maker;
7. Determination of relevant facts by a preponderance of the evidence;
8. A decision based solely on the evidence and arguments presented at the hearing;
9. A written decision that explains the legal reasoning and factual basis for the decision;
10. A record made of the hearing.

#### SHA Rights

In addition to other rights contained in this Chapter, SHA has a right to:

1. Present evidence and information on any pertinent issue;
2. Three days' advance notice of the participant's intent to be represented by legal counsel or other advocate or representative;
3. Examine and copy any documents presented at the hearing;
4. Be represented by counsel; and
5. Have witnesses testify on any issue and have staff persons and other witnesses familiar with the case present.

#### Conduct of the Hearing

The informal hearing shall be conducted by a Hearing Officer appointed by SHA who is neither the person who made or approved the decision, nor a subordinate of that person, and who has the qualifications described in Section "H" below.

Only the issues subject to appeal and raised by the participant in their notice of appeal shall be addressed at the hearing. A participant family may present any relevant legal argument arising from any valid source of law at information hearings, and hearing officers shall consider such arguments to the extent that they are relevant and germane to the case. An argument is relevant if the manner in which the contention is resolved could affect the outcome of the hearing. Relevance shall be determined by the Hearing Officer based on the specific facts and circumstances of each particular case. No legal theories or authorities shall be precluded from consideration at informal hearings or otherwise excluded on a categorical or near-categorical basis.

Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence in judicial proceedings; provided Hearing Officers may exclude evidence that is irrelevant, immaterial, or unduly repetitious, and; provided further that Hearing Officers shall consider evidentiary principles, including, but not limited to:

1. That the information offered is not relevant to the proceeding; “relevant” means having a tendency to prove that any fact of consequence to the outcome of the hearing more likely or less likely than without the information;
2. That the information offered presents a danger of unfair prejudice, confusion of the issues, undue delay, or other delay, or other deleterious effects that substantially outweighs the probative value of the information;
3. That the information is offered in violation of some public policy, such as evidence unlawfully obtained in violation of a family’s legal or constitutional rights, or evidence obtained in the course of settlement negotiations, or evidence of a person’s character offered to prove action in conformity therewith on a specific occasion; or
4. That the information lacks competence or is not based on personal knowledge.

No documents may be presented at the hearing which has not been provided to the other party if requested before the hearing. “Documents” include all written records.

SHA shall record all informal hearings by electronic means. If a participant objects to the recording of his or her informal hearing, the hearing officer will not make an official recording, but may make a personal recording for his or her own use.

If a party seeks to record any informal hearing by means other than audio recording, such as by stenographic transcription or by audio/video recording, the hearing officer shall permit such alternative recording at the requesting party’s expense, unless good cause exists to disallow the method of recording, in which case the hearing officer should state the reasons for denial on the record or in the written decision.

SHA shall provide a copy of a hearing recording to the family or its representative on request, provided that the family or its representative shall pay reasonable reproduction costs prior to receiving the recordings.

The Hearing Officer may ask the family for additional information and/or may adjourn the

hearing as needed.

Hearing Officers shall not impose arbitrary limits on the length of time that a hearing may last, or the amount of time specific portion of the hearing may consume, or impose unreasonable limits on the number of witnesses that may be called or the number of exhibits that may be presented. Hearing Officers may impose such limits but only as warranted for cause in their discretion, in which case the Hearing Officer should state the reasons for imposing the limits on the record or in the written decision.

If the family fails to appear at the hearing, or fails to meet a deadline imposed by the Hearing Officer, the decision of SHA shall become final and take effect immediately. No new hearing will be granted unless the applicant is able to demonstrate to SHA, by clear and compelling evidence, that their failure to appear or meet the deadline was caused by circumstances beyond their control.

### Standard of Review

Hearing Officers presiding over SHA informal hearings shall consider all relevant facts and conform their rulings to all relevant legal authority, including, but not limited to:

1. The United States Constitution and U.S. Code;
2. All relevant federal regulations, particularly those codified at 24 CFR Part 982.1 et seq. (concerning the tenant based Housing Choice Voucher Program);
3. Other HUD policies, as applicable; see 24 CFR 982.52 (a);
4. Internal SHA policies, in particular the Section 8 Administrative Plan;
5. All applicable State law, including Washington statutes and regulations and the common law of Washington State as reflected by judicial decisions;
6. All relevant charter provisions, ordinances, and other laws governing the City of Seattle, including the Seattle Municipal Code.

Hearing Officers presiding over SHA informal hearings shall adjudicate all material factual issues raised at an informal hearing. A factual issue is “material” if the adjudication of the fact tends to affect the outcome of the hearing.

In adjudicating factual issues at informal hearings, the burden of production and persuasion with respect to any fact shall be on the party asserting the fact.

### Decision

The Hearing Officer will issue a written decision within 10 business days after the date the hearing is closed.

The decision shall include:

1. The names of all persons present at the hearing, and identification of their roles (whether as the hearing officer, a representative for SHA, a member of the family, a witness,

- interpreter, or other);
2. The date and location of the hearing (and if the hearing occurred over multiple days, the date the hearing began and the date it ended);
  3. A summary of the factual allegations and the SHA action or decision under review;
  4. A summary of any evidence and arguments presented by the parties;
  5. A statement of the facts upon which the decision is based; and
  6. A clear statement of the conclusion of law and any other relief ordered.

#### **F. Decisions Not Binding on SHA**

SHA shall not be bound by any decision that:

1. Concerns matters for which no opportunity for a hearing is provided;
2. Conflicts with or contradicts HUD regulations or requirements;
3. Conflicts with or contradicts federal, state or local laws;
4. Exceeds the authority of the Hearing Officer; or
5. Involves issues not raised in the participant's appeal notice.

If SHA determines that it is not bound by the Hearing Officer's decision it shall, within 10 days of the date of the Hearing Officer's decision, so advise the participant in writing, which shall include the reasons for SHA's determination that it will not be bound by the decision.

#### **G. Records**

All non-termination hearing requests, supporting documentation, and a copy of the final decision shall be retained in the participant's file.

All voucher termination hearing requests, supporting documentation, and a copy of the non-redacted final decision shall be retained in the participant's file.

SHA shall safely keep and maintain the electronic recordings of all informal hearings involving voucher terminations as a public record on file for no fewer than thirty-seven (37) months after the decision date; if a family's Housing Choice Voucher program participation is terminated pursuant to an informal hearing decision, SHA shall keep the hearing recording for at least thirty-seven (37) months from the date of the last Housing Assistance Payment made on behalf of the family. SHA shall also keep, for the same duration as the hearing recording, copies of all exhibits and all other tangible materials presented to the Hearing Officer, whether or not admitted into evidence.

#### **H. Hearing Officer Selection**

Persons having no other affiliation with Seattle Housing Authority (SHA) (i.e., other than as Hearing Officers) shall serve as Hearing Officers in termination of Section 8 Housing Choice Voucher informal hearings; provided that, the PHA reserves the right to establish an in house Hearing Officer position, and; provided further, that such an in house Hearing Officer shall meet the Hearing Officer qualifications, will be selected, and will be subject to performance reviews.

SHA will maintain a roster of persons approved to serve as Hearing Officers. To the extent possible, the roster shall contain at least three (3) approved Hearing Officers at all times. SHA will assign Hearing Officers from the roster to specific cases through a blind rotating basis; exceptions will be made only for good cause, which shall include, but not limited to, scheduling difficulties and ethical conflicts. On written agreement of the parties, a person (or persons) not listed on SHA's roster of Hearing Officers may serve as the Hearing Officer for a particular case.

SHA shall solicit applications (through paid advertising) when the number of active hearing officers on SHA's roster falls below three (3).

Consistent with SHA hiring policies, SHA will advertise for Hearing Officer(s) periodically, in order to maintain a minimum of three (3) Hearing Officers on a roster to serve as Hearing Officers for informal hearings.

Whenever additional Hearing Officers are to be added to the roster, SHA will form a selection panel, composed of five members. The panel shall include housing authority officials and staff and non-housing authority personnel who have Section 8 expertise, legal training and/or experience in mediation/arbitration. One panel member shall be appointed by the Seattle Tenant's Union and one panel member shall be appointed by the King County Bar Association Housing Justice Project's Sponsor Group, provided that no one from the following organizations shall be selected to serve on the panel: The Northwest Justice Project, the Legal Action Center, Columbia Legal Services, or any other organization whose members or staff regularly represent Housing Choice Voucher participants in SHA informal hearings.

The panel will review Hearing Officer Applicant resumes, conduct in-person interviews and recommend candidates to the SHA hiring official or officials for selection.

SHA will advertise a rate of compensation for Hearing Officers reasonably calculated to attract qualified applicants to apply for the position. All advertisements shall be posted to the websites of the Seattle Housing Authority, the Washington State Bar Association, the King County Bar Association, and the Advocate Resources Center.

Advertisements for SHA Hearing Officers will indicate that qualified applicants must have legal training and experience defined as:

1. A Juris Doctorate from an accredited law school; and
2. At least three years relevant experience as an attorney, law clerk, judge, arbitrator, administrative law judge, or other legal professional.

### **I. Hearing Officer Evaluation**

Consistent with SHA's Human Resource policies, each Hearing Officer will be subject to an annual performance evaluation.

To facilitate such reviews, SHA shall, at the conclusion of each informal hearing, distribute

“Informal Hearing Evaluation Forms” to all persons in attendance; the form shall ask:

1. Whether the Hearing Officer was courteous and respectful;
2. Whether the Hearing Officer allowed the participant a fair opportunity to present his or her evidence and arguments;
3. Whether the Hearing Officer was neutral and impartial; and
4. Any other questions, as determined by SHA.

The Informal Hearing Evaluation form shall ask respondents to identify themselves as participants, advocates, witnesses, SHA staff, etc., but shall not ask persons to identify themselves by name, office or other identifying characteristics. The Informal Hearing Evaluation form shall contain information encouraging recipients to complete and deliver the form to SHA by mail, fax, email, or hand delivery and contain instruction on how to do so.

SHA may share information collected in the Informal Hearing Evaluation Form with Hearing Officers for the purpose of assisting Hearing Officers in evaluating and improving their performance.

Prior to each Hearing Officer’s annual review, SHA will send to any attorneys and other advocates who appeared before the Hearing Officer a “Hearing Officer Evaluation Form,” which shall ask to evaluate the performance of SHA Hearing Officers in the following areas:

1. Professionalism/Demeanor/Conduct of the proceedings;
2. Skill at evaluating evidence and determining facts;
3. The soundness of legal rulings;
4. Fairness and objectivity;
5. Quality of analysis and clarity of written opinions; and
6. Any other criteria, as determined by SHA.

The Hearing Officer Evaluation Form may ask respondents to identify themselves as attorneys or other types of advocates, but shall not ask person to identify themselves by name, office, or other identifying characteristics. The Hearing Officer Evaluation Form shall contain information encouraging recipients to complete and deliver the form to SHA by mail, fax, email, or hand delivery and contain instructions on how to do so.

#### **J. Hearing Officer Training**

SHA shall establish a “Hearing Officer Training Program.” All persons admitted to SHA’s roster of Hearing Officers shall complete the Hearing Officer Training Program within three (3) months of admission to the roster.

The Hearing Officer Training Program shall consist of at least six hours of instruction on the Section 8 Housing Choice Voucher Program and SHA’s Section 8 Administrative Plan.

SHA shall create a training manual for Hearing Officers; SHA shall post an electronic copy of the manual on its website and shall distribute one copy, either in paper or electronic form, to

each Hearing Officer.

**K. Hearing and Appeal Provisions for “Restrictions on Assistance to Non-Citizens”**

[24 CFR Part 5, Subpart E]

If there is an INS appeal, assistance to an applicant or participant may not be delayed, denied or terminated on the basis of the applicant’s or participant’s immigration status prior to receipt of the decision on the INS appeal.

Assistance to a family may not be terminated or denied while an SHA hearing is pending.

INS Determination of Ineligibility

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the participant or applicant will be notified within 10 days of the right to appeal to the INS. Such an appeal must be filed within 30 days. The applicant or participant may also request an informal hearing with SHA.

If the applicant or participant appeals to the INS, he or she must provide a copy of the appeal and proof of mailing to SHA or SHA may proceed to deny the application or terminate assistance.

The time period for requesting an appeal may be extended for good cause.

Hearing Request

The request for an SHA hearing must be made within 14 calendar days of receipt of the notice of the right to appeal to the INS or request an informal SHA hearing.

Hearing Process

After receipt of a request for an informal hearing, SHA shall schedule and conduct the hearing in accordance with the procedures described in Section “C” above.

Ineligibility Determinations

If the Hearing Officer determines that the applicant or participant is not eligible, and there are no other eligible family members, SHA may:

1. Defer termination if the participant qualifies for deferral; or
2. Terminate the participant if they do not qualify for deferral.

If there are eligible members in the family, SHA will offer to pro-rate assistance or give the family the option to remove the ineligible members.

Other Complaints Related to Citizenship/Immigration Status

If any family member fails to provide documentation or certification as required by the regulations, that member shall be considered ineligible. If all family members fail to provide the required documentation, the family will be denied assistance or terminated for failure to provide the required information.

Participants terminated after a temporary deferral may not request a hearing.

Participants whose assistance is pro-rated (either because some members are ineligible or because of the failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing regarding tenant rent and Total Tenant Payment determinations.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same manner as terminations for any other fraud.

42 U.S.C. 1437f. Low-income housing assistance [Caution: See prospective amendment note below.]

(a) Authorization for assistance payments. For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

(b) Other existing housing programs.

(1) In general. The Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section. In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section.

(2) The Secretary is authorized to enter into annual contributions contracts with public housing agencies for the purpose of replacing public housing transferred in accordance with title III of this Act [42 USCS §§ 1437aaa et seq.]. Each contract entered into under this subsection shall be for a term of not more than 60 months.

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments.

(1) An assistance contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically but not less than annually for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under this section, except that the maximum monthly rent may exceed the fair market rental (A) by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of housing strategy as defined in section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 USCS § 12705], or (B) by such higher amount as may be requested by a tenant and approved by the public housing agency in accordance with paragraph (3)(B). In the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after October 1, 1980. Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment, and shall become effective upon the date of publication in final form in the Federal Register. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which

they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section. Notwithstanding any other provision of this section, after the date of enactment of the Housing and Community Development Act of 1977 [enacted Oct. 12, 1977], the Secretary shall prohibit high-rise elevator projects for families with children unless there is no practical alternative. The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York. The Secretary shall also establish separate fair market rentals under this paragraph for Monroe County in the Commonwealth of Pennsylvania. In establishing fair market rentals for the remaining portion of the market area in which Monroe County is located, the Secretary shall establish the fair market rentals as if such portion included Monroe County. If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control.

(2) (A) The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals established in the housing area for similar types and sizes of dwelling units or, if the Secretary determines, on the basis of a reasonable formula. However, where the maximum monthly rent, for a unit in a new construction, substantial rehabilitation, or moderate rehabilitation project, to be adjusted using an annual adjustment factor exceeds the fair market rental for an existing dwelling unit in the market area, the Secretary shall adjust the rent only to the extent that the owner demonstrates that the adjusted rent would not exceed the rent for an unassisted unit of similar quality, type, and age in the same market area, as determined by the Secretary. The immediately foregoing sentence shall be effective only during fiscal year 1995, fiscal year 1996 prior to April 26, 1996, and fiscal years 1997 and 1998, and during fiscal year 1999 and thereafter. Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. The immediately foregoing two sentences shall be effective only during fiscal year 1995, fiscal year 1996 prior to April 26, 1996, and fiscal years 1997 and 1998, and during fiscal year 1999 and thereafter. In establishing annual adjustment factors for units in new construction and substantial rehabilitation projects, the Secretary shall take into account the fact that debt service is a fixed expense. The immediately foregoing sentence shall be effective only during fiscal year 1998.

(B) The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increases in the actual and necessary expenses of

owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum monthly rent authorized by subparagraph (A). The Secretary shall make additional adjustments in the maximum monthly rent for units under contract (subject to the availability of appropriations for contract amendments) to the extent the Secretary determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units that have resulted from the expiration of a real property tax exemption. Where the Secretary determines that a project assisted under this section is located in a community where drug-related criminal activity is generally prevalent and the project's operating, maintenance, and capital repair expenses have been substantially increased primarily as a result of the prevalence of such drug-related activity, the Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments for this purpose), on a project by project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the project rents, to cover the costs of maintenance, security, capital repairs, and reserves required for the owner to carry out a strategy acceptable to the Secretary for addressing the problem of drug-related criminal activity. Any rent comparability standard required under this paragraph may be waived by the Secretary to so implement the preceding sentence. The Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments), on a project by project basis for projects receiving project-based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluating and reducing lead-based paint hazards, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 [42 USCS § 4851b].

(C) Adjustments in the maximum rents under subparagraphs (A) and (B) shall not result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, as determined by the Secretary. In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for

comparable unassisted units. If the Secretary or appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied. The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to the enactment of this sentence shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect.

(3) The amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and the rent the family is required to pay under section 3(a) of this Act [42 USCS § 1437a(a)]. Reviews of family income shall be made no less frequently than annually.

(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit, and, subject to the provisions of the following sentence, such payments may be made, in the case of a newly constructed or substantially rehabilitated project, after such sixty-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such sixty-day period if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

(5) The Secretary shall take such steps as may be necessary, including the making of contracts for assistance payments in amounts in excess of the amounts required at the time of the initial renting of dwelling units, the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts, to assure that assistance payments are increased on a timely basis to cover increases in maximum monthly rents or decreases in family incomes.

(6) [Redesignated]

(7) [Deleted]

(8) (A) Not less than one year before termination of any contract under which assistance payments are received under this section, other than a contract for tenant-based

assistance under this section, an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination. The notice shall also include a statement that, if the Congress makes funds available, the owner and the Secretary may agree to a renewal of the contract, thus avoiding termination, and that in the event of termination the Department of Housing and Urban Development will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent, which is likely to include the dwelling unit in which they currently reside. Any contract covered by this paragraph that is renewed may be renewed for a period of up to 1 year or any number or years, with payments subject to the availability of appropriations for any year.

(B) In the event the owner does not provide the notice required, the owner may not evict the tenants or increase the tenants' rent payment until such time as the owner has provided the notice and 1 year has elapsed. The Secretary may allow the owner to renew the terminating contract for a period of time sufficient to give tenants 1 year of advance notice under such terms and conditions as the Secretary may require.

(C) Any notice under this paragraph shall also comply with any additional requirements established by the Secretary.

(D) For purposes of this paragraph, the term "termination" means the expiration of the assistance contract or an owner's refusal to renew the assistance contract, and such term shall include termination of the contract for business reasons.

(9) (A) That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

(B) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

(C) (i) Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

(ii) Notwithstanding clause (i) or any Federal, State, or local law to the contrary, an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and 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 also 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, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.

(iii) Nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, 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 issued to address the distribution or possession of property among the household members in cases where a family breaks up.

(iv) Nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.

(v) Nothing in clause (i) may be construed to limit the authority of an owner, manager, or public housing agency to evict or terminate from assistance any tenant or lawful occupant if the owner, manager or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.

(vi) 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, or stalking.

(d) Required provisions and duration of contracts for assistance payments; waiver of limitation.

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that--  
(A) the selection of tenants shall be the function of the owner, subject to the annual contributions contract between the Secretary and the agency, except that with respect to the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish local preferences, consistent with the public housing agency plan submitted under section 5A (42 U.S.C. 1437c-1) by the public housing agency and that an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission;

(B)

(i) the lease between the tenant and the owner shall be for at least one year or the term of such contract, whichever is shorter, and shall contain other terms and conditions specified by the Secretary;

(ii) during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(iii) during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by

persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy, except that: (I) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights or program assistance, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (II) Notwithstanding subclause (I) or any Federal, State, or local law to the contrary, a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and 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 also 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, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.[:]; (III) nothing in subclause (I) may be construed to limit the authority of a public housing agency, owner, or manager, 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 issued to address the distribution or possession of property among the household members in cases where a family breaks up; (IV) nothing in subclause (I) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (V) nothing in subclause (I) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (VI) 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, or stalking[:];

(iv) any termination of tenancy shall be preceded by the owner's provision of written notice to the tenant specifying the grounds for such action; and

(v) it shall be cause for termination of the tenancy of a tenant if such tenant--

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of

such State; or

(II) is violating a condition of probation or parole imposed under Federal or State law;

(C) maintenance and replacement (including redecoration) shall be in accordance with the standard practice for the building concerned as established by the owner and agreed to by the agency; and

(D) the agency and the owner shall carry out such other appropriate terms and conditions as may be mutually agreed to by them.

(2)

(A) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. The Secretary shall permit public housing agencies to enter into contracts for assistance payments of less than 12 months duration in order to avoid disruption in assistance to eligible families if the annual contributions contract is within 1 year of its expiration date.

(B) (i) In determining the amount of assistance provided under an assistance contract for project-based assistance under this paragraph or a contract for assistance for housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of this Act [former subsec. (b)(2) of this section] (as such section existed immediately before October 1, 1983), the Secretary may consider and annually adjust, with respect to such project, for the cost of employing or otherwise retaining the services of one or more service coordinators under section 661 of the Housing and Community Development Act of 1992 [42 USCS § 13520] to coordinate the provision of any services within the project for residents of the project who are elderly or disabled families.

(ii) The budget authority available under section 5(c) [42 USCS § 1437c(c)] for assistance under this section is authorized to be increased by \$ 15,000,000 on or after October 1, 1992, and by \$ 15,000,000 on or after October 1, 1993. Amounts made available under this subparagraph shall be used to provide additional amounts under annual contributions contracts for assistance under this section which shall be made available through assistance contracts only for the purpose of providing service coordinators under clause (i) for projects receiving project-based assistance under this paragraph and to provide additional amounts under contracts for assistance for projects constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of this Act [former subsec. (b)(2) of this section] (as such section existed immediately before October 1, 1983) only for such purpose.

(C) An assistance contract for project-based assistance under this paragraph shall provide that the owner shall ensure and maintain compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 USCS §§ 13601 et seq.] and any regulations issued under such subtitle.

(D) An owner of a covered section 8 housing project (as such term is defined in section 659 of the Housing and Community Development Act of 1992 [42 USCS § 13619]) may give preference for occupancy of dwelling units in the project, and reserve units for occupancy, in accordance with subtitle D of title VI of the Housing and Community Development Act of 1992.

(3) Notwithstanding any other provision of law, with the approval of the Secretary the public housing agency administering a contract under this section with respect to existing housing units may exercise all management and maintenance responsibilities

with respect to those units pursuant to a contract between such agency and the owner of such units.

(4) A public housing agency that serves more than one unit of general local government may, at the discretion of the agency, in allocating assistance under this section, give priority to disabled families that are not elderly families.

(5) Calculation of limit. Any contract entered into under section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 [note to this section] shall be excluded in computing the limit on project-based assistance under this subsection.

(6) Treatment of common areas. The Secretary may not provide any assistance amounts pursuant to an existing contract for project-based assistance under this section for a housing project and may not enter into a new or renewal contract for such assistance for a project unless the owner of the project provides consent, to such local law enforcement agencies as the Secretary determines appropriate, for law enforcement officers of such agencies to enter common areas of the project at any time and without advance notice upon a determination of probable cause by such officers that criminal activity is taking place in such areas.

(e) Restrictions on contracts for assistance payments.

(1) Nothing in this Act shall be deemed to prohibit an owner from pledging, or offering as security for any loan or obligation, a contract for assistance payments entered into pursuant to this section: *Provided*, That such security is in connection with a project constructed or rehabilitated pursuant to authority granted in this section, and the terms of the financing or any refinancing have been approved by the Secretary.

(2) **[Caution: Pursuant to § 289(b) of Nov. 28, 1990, P.L. 101-625 (42 USCS § 12839(b)), this paragraph was repealed, effective on Oct. 1, 1991, except that it remains in effect with respect to single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act (42 USCS §§ 11461 et seq.).]** For the purpose of upgrading and thereby preserving the Nation's housing stock, the Secretary is authorized to make assistance payments under this section directly or through public housing agencies pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary, and which shall involve a minimum expenditure of \$ 3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems. The Secretary is authorized to prescribe such terms and conditions for contracts entered into under this section pursuant to this paragraph as the Secretary determines to be necessary and appropriate, except that such terms and conditions, to the maximum extent feasible, shall be consistent with terms and conditions otherwise applicable with respect to other dwelling units assisted under this section. Notwithstanding subsection (c)(1) of this section, the Secretary may, in carrying out the preceding sentence, establish a maximum monthly rent (for units upgraded pursuant to this paragraph) which exceeds the fair market rental by not more than 20 per centum if such units are located in an area where the Secretary finds cost levels so require, except that the Secretary may approve maximum monthly rents which exceed the fair market rentals by more than 20 but not more than 30 per centum where the Secretary determines that special

circumstances warrant such higher rent or where necessary to the implementation of a local housing assistance plan. The Secretary is also authorized to make assistance available under this section pursuant to this paragraph to any unit in a housing project which, on an overall basis, reflects the need for such upgrading. The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1), if the Secretary determines such increase necessary to assist in the sale of multi-family housing projects owned by the Department of Housing and Urban Development. In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of the Internal Revenue Code of 1986 [26 USCS § 42] (or from any syndication of such credits) with respect to the housing. For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 213(d) of the Housing and Community Development Act of 1974 [42 USCS § 1439(d)], and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted.

(f) Definitions. As used in this section--

(1) the term "owner" means any private person or entity, including a cooperative, or a public housing agency, having the legal right to lease cooperative, an agency of the Federal Government, or a public housing agency, having the legal right to lease or sublease dwelling units;

(2) the terms "rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative;

(3) the term "debt service" means the required payments for principal and interest made with respect to a mortgage secured by housing assisted under this Act;

(4) the term "participating jurisdiction" means a State or unit of general local government designated by the Secretary to be a participating jurisdiction under title II of the Cranston-Gonzalez National Affordable Housing Act;

(5) the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(6) the term "project-based assistance" means rental assistance under subsection (b) that is attached to the structure pursuant to subsection (d)(2) or (o)(13);

(7) the term "tenant-based assistance" means rental assistance under subsection (o) that is not project-based assistance and that provides for the eligible family to select suitable housing and to move to other suitable housing;

(8) the term "domestic violence" has the same meaning given the term in section 40002 of the Violence Against Women Act of 1994 [42 USCS § 13925];

(9) the term "dating violence" has the same meaning given the term in section 40002 of

the Violence Against Women Act of 1994 [42 USCS § 13925];

(10) the term "stalking" means--

(A) (i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or

(ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

(B) 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--

(i) that person;

(ii) a member of the immediate family of that person; or

(iii) the spouse or intimate partner of that person; and

(11) the term "immediate family member" means, with respect to a person--

(A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(B) any other person living in the household of that person and related to that person by blood or marriage.

(g) Regulations applicable for implementation of assistance payments. Notwithstanding any other provision of this Act, assistance payments under this section may be provided, in accordance with regulations prescribed by the Secretary, with respect to some or all of the units in any project approved pursuant to section 202 of the Housing Act of 1959 [12 USCS § 1701g].

(h) Nonapplicability of inconsistent provisions to contracts for assistance payments. Sections (5)(e) and (6) [42 USCS §§ 1437c(e) and 1437d] (except as provided in section 6(j)(3) [42 USCS § 1437d(j)(3)]), and any other provisions of this Act which are inconsistent with the provisions of this section shall not apply to contracts for assistance entered into under this section.

(i) Assistance under 42 USCS § 8013(b)(1). The Secretary may not consider the receipt by a public housing agency of assistance under section 811(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 USCS § 8013(b)(1)], or the amount received, in approving assistance for the agency under this section or determining the amount of such assistance to be provided.

(j) [Deleted]

(k) Verification of income. The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal

income taxation and data relating to benefits made available under the Social Security Act [42 USCS §§ 301 et seq.], the Food and Nutrition Act of 2008 [7 USCS §§ 2011 et seq.], or title 38, United States Code. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

(l)--(n) [Deleted]

(o) Voucher program.

(1) Authority.

(A) In general. The Secretary may provide assistance to public housing agencies for tenant-based assistance using a payment standard established in accordance with subparagraph (B). The payment standard shall be used to determine the monthly assistance that may be paid for any family, as provided in paragraph (2).

(B) Establishment of payment standard. Except as provided under subparagraph (D), the payment standard for each size of dwelling unit in a market area shall not exceed 110 percent of the fair market rental established under subsection (c) for the same size of dwelling unit in the same market area and shall be not less than 90 percent of that fair market rental.

(C) Set-aside. The Secretary may set aside not more than 5 percent of the budget authority made available for assistance under this subsection as an adjustment pool. The Secretary shall use amounts in the adjustment pool to make adjusted payments to public housing agencies under subparagraph (A), to ensure continued affordability, if the Secretary determines that additional assistance for such purpose is necessary, based on documentation submitted by a public housing agency.

(D) Approval. The Secretary may require a public housing agency to submit the payment standard of the public housing agency to the Secretary for approval, if the payment standard is less than 90 percent of the fair market rental or exceeds 110 percent of the fair market rental.

(E) Review. The Secretary--

(i) shall monitor rent burdens and review any payment standard that results in a significant percentage of the families occupying units of any size paying more than 30 percent of adjusted income for rent; and

(ii) may require a public housing agency to modify the payment standard of the public housing agency based on the results of that review.

(2) Amount of monthly assistance payment. Subject to the requirement under section 3(a)(3) [42 USCS § 1437a(a)(3)] (relating to minimum rental amount), the monthly assistance payment for a family receiving assistance under this subsection shall be determined as follows:

(A) Tenant-based assistance; rent not exceeding payment standard. For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) does not exceed the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the rent (including the amount allowed for tenant-paid utilities) exceeds the greatest of the following amounts, rounded to the nearest dollar:

- (i) 30 percent of the monthly adjusted income of the family.
  - (ii) 10 percent of the monthly income of the family.
  - (iii) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.
- (B) Tenant-based assistance; rent exceeding payment standard. For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) exceeds the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the applicable payment standard exceeds the greatest of amounts under clauses (i), (ii), and (iii) of subparagraph (A).
- (C) Families receiving project-based assistance. For a family receiving project-based assistance, the rent that the family is required to pay shall be determined in accordance with section 3(a)(1) [42 USCS § 1437a(a)(1)], and the amount of the housing assistance payment shall be determined in accordance with subsection (c)(3) of this section.
- (3) 40 percent limit. At the time a family initially receives tenant-based assistance under this section with respect to any dwelling unit, the total amount that a family may be required to pay for rent may not exceed 40 percent of the monthly adjusted income of the family.
- (4) Eligible families. To be eligible to receive assistance under this subsection, a family shall, at the time a family initially receives assistance under this subsection, be a low-income family that is--
- (A) a very low-income family;
  - (B) a family previously assisted under this title [42 USCS §§ 1437 et seq.];
  - (C) a low-income family that meets eligibility criteria specified by the public housing agency;
  - (D) a family that qualifies to receive a voucher in connection with a homeownership program approved under title IV of the Cranston-Gonzalez National Affordable Housing Act; or
  - (E) a family that qualifies to receive a voucher under section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 USCS § 4113 or 4116].
- (5) Annual review of family income.
- (A) In general. Reviews of family incomes for purposes of this section shall be subject to the provisions of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 and shall be conducted upon the initial provision of housing assistance for the family and thereafter not less than annually.
- (B) Procedures. Each public housing agency administering assistance under this subsection shall establish procedures that are appropriate and necessary to ensure that income data provided to the agency and owners by families applying for or receiving assistance from the agency is complete and accurate. Each public housing agency shall, not less frequently than annually, conduct a review of the family income of each family receiving assistance under this subsection.
- (6) Selection of families and disapproval of owners.
- (A) Preferences.

(i) Authority to establish. Each public housing agency may establish a system for making tenant-based assistance under this subsection available on behalf of eligible families that provides preference for such assistance to eligible families having certain characteristics, which may include a preference for families residing in public housing who are victims of a crime of violence (as such term is defined in section 16 of title 18, United States Code) that has been reported to an appropriate law enforcement agency.

(ii) Content. Each system of preferences established pursuant to this subparagraph shall be based upon local housing needs and priorities, as determined by the public housing agency using generally accepted data sources, including any information obtained pursuant to an opportunity for public comment as provided under section 5A(f) [42 USCS § 1437c-1(f)] and under the requirements applicable to the comprehensive housing affordability strategy for the relevant jurisdiction.

(B) Selection of tenants. Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit) shall provide that the screening and selection of families for those units shall be the function of the owner. In addition, the public housing agency may elect to screen applicants for the program in accordance with such requirements as the Secretary may establish. That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission. 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, or stalking.

(C) PHA disapproval of owners. In addition to other grounds authorized by the Secretary, a public housing agency may elect not to enter into a housing assistance payments contract under this subsection with an owner who refuses, or has a history of refusing, to take action to terminate tenancy for activity engaged in by the tenant, any member of the tenant's household, any guest, or any other person under the control of any member of the household that--

(i) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other tenants or employees of the public housing agency, owner, or other manager of the housing;

(ii) threatens the health or safety of, or right to peaceful enjoyment of the residences by, persons residing in the immediate vicinity of the premises; or

(iii) is drug-related or violent criminal activity.

(7) Leases and tenancy. Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit--

(A) shall provide that the lease between the tenant and the owner shall be for a term of not less than 1 year, except that the public housing agency may approve a shorter term for an initial lease between the tenant and the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

(B) shall provide that the dwelling unit owner shall offer leases to tenants assisted under this subsection that--

(i) are in a standard form used in the locality by the dwelling unit owner; and

(ii) contain terms and conditions that--

(I) are consistent with State and local law; and  
(II) apply generally to tenants in the property who are not assisted under this section;  
(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--  
(i) will occupy the unit as a primary residence; and  
(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice[.];  
(D) shall provide that during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that (i) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (ii) Limitation. Notwithstanding clause (i) or any Federal, State, or local law to the contrary, a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and 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 also 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, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.[.]; (iii) nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor 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 members in cases where a family breaks up; (iv) nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of

violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (v) nothing in clause (i) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (vi) 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, or stalking[.];

(E) shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with applicable State and local law; and

(F) may include any addenda required by the Secretary to set forth the provisions of this subsection. In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.

(8) Inspection of units by PHA's.

(A) In general. Except as provided in paragraph (11), for each dwelling unit for which a housing assistance payment contract is established under this subsection, the public housing agency shall inspect the unit before any assistance payment is made to determine whether the dwelling unit meets the housing quality standards under subparagraph (B).

(B) Housing quality standards. The housing quality standards under this subparagraph are standards for safe and habitable housing established--

(i) by the Secretary for purposes of this subsection; or

(ii) by local housing codes or by codes adopted by public housing agencies that--

(I) meet or exceed housing quality standards, except that the Secretary may waive the requirement under this subclause to significantly increase access to affordable housing and to expand housing opportunities for families assisted under this subsection, except where such waiver could adversely affect the health or safety of families assisted under this subsection; and

(II) do not severely restrict housing choice

(C) Inspection. The determination required under subparagraph (A) shall be made by the public housing agency (or other entity, as provided in paragraph (11)) pursuant to an inspection of the dwelling unit conducted before any assistance payment is made for the

unit. Inspections of dwelling units under this subparagraph shall be made before the expiration of the 15-day period beginning upon a request by the resident or landlord to the public housing agency or, in the case of any public housing agency that provides assistance under this subsection on behalf of more than 1250 families, before the expiration of a reasonable period beginning upon such request. The performance of the agency in meeting the 15-day inspection deadline shall be taken into consideration in assessing the performance of the agency.

(D) Annual inspections. Each public housing agency providing assistance under this subsection (or other entity, as provided in paragraph (11)) shall make an annual inspection of each assisted dwelling unit during the term of the housing assistance payments contract for the unit to determine whether the unit is maintained in accordance with the requirements under subparagraph (A). The agency (or other entity) shall retain the records of the inspection for a reasonable time and shall make the records available upon request to the Secretary, the Inspector General for the Department of Housing and Urban Development, and any auditor conducting an audit under section 5(h) [42 USCS § 1437c(h)].

(E) Inspection guidelines. The Secretary shall establish procedural guidelines and performance standards to facilitate inspections of dwelling units and conform such inspections with practices utilized in the private housing market. Such guidelines and standards shall take into consideration variations in local laws and practices of public housing agencies and shall provide flexibility to authorities appropriate to facilitate efficient provision of assistance under this subsection.

(9) Vacated units. If an assisted family vacates a dwelling unit for which rental assistance is provided under a housing assistance payment contract before the expiration of the term of the lease for the unit, rental assistance pursuant to such contract may not be provided for the unit after the month during which the unit was vacated.

(10) Rent.

(A) Reasonableness. The rent for dwelling units for which a housing assistance payment contract is established under this subsection shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market.

(B) Negotiations. A public housing agency (or other entity, as provided in paragraph (11)) shall, at the request of a family receiving tenant-based assistance under this subsection, assist that family in negotiating a reasonable rent with a dwelling unit owner. A public housing agency (or such other entity) shall review the rent for a unit under consideration by the family (and all rent increases for units under lease by the family) to determine whether the rent (or rent increase) requested by the owner is reasonable. If a public housing agency (or other such entity) determines that the rent (or rent increase) for a dwelling unit is not reasonable, the public housing agency (or other such entity) shall not make housing assistance payments to the owner under this subsection with respect to that unit.

(C) Units exempt from local rent control. If a dwelling unit for which a housing assistance payment contract is established under this subsection is exempt from local rent control provisions during the term of that contract, the rent for that unit shall be reasonable in comparison with other units in the market area that are exempt from local

rent control provisions.

(D) Timely payments. Each public housing agency shall make timely payment of any amounts due to a dwelling unit owner under this subsection. The housing assistance payment contract between the owner and the public housing agency may provide for penalties for the late payment of amounts due under the contract, which shall be imposed on the public housing agency in accordance with generally accepted practices in the local housing market.

(E) Penalties. Unless otherwise authorized by the Secretary, each public housing agency shall pay any penalties from administrative fees collected by the public housing agency, except that no penalty shall be imposed if the late payment is due to factors that the Secretary determines are beyond the control of the public housing agency.

(F) Tax credit projects. In the case of a dwelling unit receiving tax credits pursuant to section 42 of the Internal Revenue Code of 1986 [26 USCS § 42] or for which assistance is provided under subtitle A of title II of the Cranston Gonzalez National Affordable Housing Act of 1990 [42 USCS §§ 12741 et seq.], for which a housing assistance contract not subject to paragraph (13) of this subsection is established, rent reasonableness shall be determined as otherwise provided by this paragraph, except that--

(i) comparison with rent for units in the private, unassisted local market shall not be required if the rent is equal to or less than the rent for other comparable units receiving such tax credits or assistance in the project that are not occupied by families assisted with tenant-based assistance under this subsection; and

(ii) the rent shall not be considered reasonable for purposes of this paragraph if it exceeds the greater of--

(I) the rents charged for other comparable units receiving such tax credits or assistance in the project that are not occupied by families assisted with tenant-based assistance under this subsection; and

(II) the payment standard established by the public housing agency for a unit of the size involved.

(11) Leasing of units owned by PHA. If an eligible family assisted under this subsection leases a dwelling unit (other than a public housing dwelling unit) that is owned by a public housing agency administering assistance under this subsection, the Secretary shall require the unit of general local government or another entity approved by the Secretary, to make inspections required under paragraph (8) and rent determinations required under paragraph (10). The agency shall be responsible for any expenses of such inspections and determinations.

(12) Assistance for rental of manufactured housing.

(A) In general. A public housing agency may make assistance payments in accordance with this subsection on behalf of a family that utilizes a manufactured home as a principal place of residence. Such payments may be made only for the rental of the real property on which the manufactured home owned by any such family is located.

(B) Rent calculation.

(i) Charges included. For assistance pursuant to this paragraph, the rent for the space on which a manufactured home is located and with respect to which assistance payments are to be made shall include maintenance and management charges and tenant-paid utilities.

(ii) Payment standard. The public housing agency shall establish a payment standard for the purpose of determining the monthly assistance that may be paid for any family under this paragraph. The payment standard may not exceed an amount approved or established by the Secretary.

(iii) Monthly assistance payment. The monthly assistance payment for a family assisted under this paragraph shall be determined in accordance with paragraph (2).

(13) PHA project-based assistance.

(A) In general. A public housing agency may use amounts provided under an annual contributions contract under this subsection to enter into a housing assistance payment contract with respect to an existing, newly constructed, or rehabilitated structure, that is attached to the structure, subject to the limitations and requirements of this paragraph.

(B) Percentage limitation. Not more than 20 percent of the funding available for tenant-based assistance under this section that is administered by the agency may be attached to structures pursuant to this paragraph.

(C) Consistency with PHA plan and other goals. A public housing agency may approve a housing assistance payment contract pursuant to this paragraph only if the contract is consistent with--

(i) the public housing agency plan for the agency approved under section 5A [42 USCS § 1437c-1]; and

(ii) the goal of deconcentrating poverty and expanding housing and economic opportunities.

(D) Income mixing requirement.

(i) In general. Not more than 25 percent of the dwelling units in any project may be assisted under a housing assistance payment contract for project-based assistance pursuant to this paragraph. For purposes of this subparagraph, the term "project" means a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

(ii) Exceptions. The limitation under clause (i) shall not apply in the case of assistance under a contract for housing consisting of single family properties or for dwelling units that are specifically made available for households comprised of elderly families, disabled families, and families receiving supportive services.

(E) Resident choice requirement. A housing assistance payment contract pursuant to this paragraph shall provide as follows:

(i) Mobility. Each low-income family occupying a dwelling unit assisted under the contract may move from the housing at any time after the family has occupied the dwelling unit for 12 months.

(ii) Continued assistance. Upon such a move, the public housing agency shall provide the low-income family with tenant-based rental assistance under this section or such other tenant-based rental assistance that is subject to comparable income, assistance, rent contribution, affordability, and other requirements, as the Secretary shall provide by regulation. If such rental assistance is not immediately available to fulfill the requirement under the preceding sentence with respect to a low-income family, such requirement may be met by providing the family priority to receive the next voucher or other tenant-based rental assistance amounts that become available under the program used to fulfill such requirement.

(F) Contract term. A housing assistance payment contract pursuant to this paragraph

between a public housing agency and the owner of a structure may have a term of up to 15 years, subject to the availability of sufficient appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations Acts and in the agency's annual contributions contract with the Secretary, and to annual compliance with the inspection requirements under paragraph (8), except that the agency shall not be required to make annual inspections of each assisted unit in the development. The contract may specify additional conditions for its continuation. If the units covered by the contract are owned by the agency, the term of the contract shall be agreed upon by the agency and the unit of general local government or other entity approved by the Secretary in the manner provided under paragraph (11).

(G) Extension of contract term. A public housing agency may enter into a contract with the owner of a structure assisted under a housing assistance payment contract pursuant to this paragraph to extend the term of the underlying housing assistance payment contract for such period as the agency determines to be appropriate to achieve long-term affordability of the housing or to expand housing opportunities. Such contract may, at the election of the public housing agency and the owner of the structure, specify that such contract shall be extended for renewal terms of up to 15 years each, if the agency makes the determination required by this subparagraph and the owner is in compliance with the terms of the contract. Such a contract shall provide that the extension of such term shall be contingent upon the future availability of appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations Acts, and may obligate the owner to have such extensions of the underlying housing assistance payment contract accepted by the owner and the successors in interest of the owner. A public housing agency may agree to enter into such a contract at the time it enters into the initial agreement for a housing assistance payment contract or at any time thereafter that is before the expiration of the housing assistance payment contract.

(H) Rent calculation. A housing assistance payment contract pursuant to this paragraph shall establish rents for each unit assisted in an amount that does not exceed 110 percent of the applicable fair market rental (or any exception payment standard approved by the Secretary pursuant to paragraph (1)(D)), except that if a contract covers a dwelling unit that has been allocated low-income housing tax credits pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) and is not located in a qualified census tract (as such term is defined in subsection (d) of such section 42), the rent for such unit may be established at any level that does not exceed the rent charged for comparable units in the building that also receive the low-income housing tax credit but do not have additional rental assistance, except that in the case of a contract unit that has been allocated low-income housing tax credits and for which the rent limitation pursuant to such section 42 [26 USCS § 42] is less than the amount that would otherwise be permitted under this subparagraph, the rent for such unit may, in the sole discretion of a public housing agency, be established at the higher section 8 rent, subject only to paragraph (10)(A). The rents established by housing assistance payment contracts pursuant to this paragraph may vary from the payment standards established by the public housing agency pursuant to paragraph (1)(B), but shall be subject to paragraph (10)(A).

(I) Rent adjustments. A housing assistance payments contract pursuant to this

paragraph shall provide for rent adjustments, except that--

(i) the adjusted rent for any unit assisted shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted, local market and may not exceed the maximum rent permitted under subparagraph (H), except that the contract may provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the unit; and

(ii) the provisions of subsection (c)(2)(C) shall not apply.

(J) Tenant selection. A public housing agency shall select families to receive project-based assistance pursuant to this paragraph from its waiting list for assistance under this subsection. Eligibility for such project-based assistance shall be subject to the provisions of section 16(b) [42 USCS § 1437n(b)] that apply to tenant-based assistance. The agency may establish preferences or criteria for selection for a unit assisted under this paragraph that are consistent with the public housing agency plan for the agency approved under section 5A [42 USCS § 1437c-1]. Any family that rejects an offer of project-based assistance under this paragraph or that is rejected for admission to a structure by the owner or manager of a structure assisted under this paragraph shall retain its place on the waiting list as if the offer had not been made. The owner or manager of a structure assisted under this paragraph shall not admit any family to a dwelling unit assisted under a contract pursuant to this paragraph other than a family referred by the public housing agency from its waiting list. Subject to its waiting list policies and selection references, a public housing agency may place on its waiting list a family referred by the owner or manager of a structure and may maintain a separate waiting list for assistance under this paragraph, but only if all families on the agency's waiting list for assistance under this subsection are permitted to place their names on the separate list.

(K) Vacated units. Notwithstanding paragraph (9), a housing assistance payment contract pursuant to this paragraph may provide as follows:

(i) Payment for vacant units. That the public housing agency may, in its discretion, continue to provide assistance under the contract, for a reasonable period not exceeding 60 days, for a dwelling unit that becomes vacant, but only (I) if the vacancy was not the fault of the owner of the dwelling unit, and (II) the agency and the owner take every reasonable action to minimize the likelihood and extent of any such vacancy. Rental assistance may not be provided for a vacant unit after the expiration of such period.

(ii) Reduction of contract. That, if despite reasonable efforts of the agency and the owner to fill a vacant unit, no eligible family has agreed to rent the unit within 120 days after the owner has notified the agency of the vacancy, the agency may reduce its housing assistance payments contract with the owner by the amount equivalent to the remaining months of subsidy attributable to the vacant unit. Amounts deobligated pursuant to such a contract provision shall be available to the agency to provide assistance under this subsection.

Eligible applicants for assistance under this subsection may enforce provisions authorized by this subparagraph.

(L) Use in cooperative housing and elevator buildings. A public housing agency may enter into a housing assistance payments contract under this paragraph with respect to-

- 
- (i) dwelling units in cooperative housing; and
  - (ii) notwithstanding subsection (c), dwelling units in a high-rise elevator project, including such a project that is occupied by families with children, without review and approval of the contract by the Secretary.

(M) Reviews.

(i) Subsidy layering. A subsidy layering review in accordance with section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) shall not be required for assistance under this paragraph in the case of a housing assistance payments contract for an existing structure, or if a subsidy layering review has been conducted by the applicable State or local agency.

(ii) Environmental review. A public housing agency shall not be required to undertake any environmental review before entering into a housing assistance payments contract under this paragraph for an existing structure, except to the extent such a review is otherwise required by law or regulation.

(14) Inapplicability to tenant-based assistance. Subsection (c) shall not apply to tenant-based assistance under this subsection.

(15) Homeownership option.

(A) In general. A public housing agency providing assistance under this subsection may, at the option of the agency, provide assistance for homeownership under subsection (y).

(B) Alternative administration. A public housing agency may contract with a nonprofit organization to administer a homeownership program under subsection (y).

(16) Rental vouchers for relocation of witnesses and victims of crime.

(A) Witnesses. Of amounts made available for assistance under this subsection in each fiscal year, the Secretary, in consultation with the Inspector General, shall make available such sums as may be necessary for the relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to requests from law enforcement or prosecution agencies.

(B) Victims of crime.

(i) In general. Of amounts made available for assistance under this section in each fiscal year, the Secretary shall make available such sums as may be necessary for the relocation of families residing in public housing who are victims of a crime of violence (as that term is defined in section 16 of title 18, United States Code) that has been reported to an appropriate law enforcement agency.

(ii) Notice. A public housing agency that receives amounts under this subparagraph shall establish procedures for providing notice of the availability of that assistance to families that may be eligible for that assistance.

(17) Deed restrictions. Assistance under this subsection may not be used in any manner that abrogates any local deed restriction that applies to any housing consisting of 1 to 4 dwelling units. This paragraph may not be construed to affect the provisions or applicability of the Fair Housing Act [42 USCS §§ 3601 et seq.].

(18) Apartment assistance for assisted living facilities.

(A) In general. A public housing agency may make assistance payments on behalf of a family that uses an assisted living facility as a principal place of residence and that uses such supportive services made available in the facility as the agency may require. Such

payments may be made only for covering costs of rental of the dwelling unit in the assisted living facility and not for covering any portion of the cost of residing in such facility that is attributable to service relating to assisted living.

(B) Rent calculation.

(i) Charges included. For assistance pursuant to this paragraph, the rent of the dwelling unit that is an assisted living facility with respect to which assistance payments are made shall include maintenance and management charges related to the dwelling unit and tenant-paid utilities. Such rent shall not include any charges attributable to services relating to assisted living.

(ii) Payment standard. In determining the monthly assistance that may be paid under this paragraph on behalf of any family residing in an assisted living facility, the public housing agency shall utilize the payment standard established under paragraph (1), for the market area in which the assisted living facility is located, for the applicable size dwelling unit.

(iii) Monthly assistance payment. The monthly assistance payment for a family assisted under this paragraph shall be determined in accordance with paragraph (2) (using the rent and payment standard for the dwelling unit as determined in accordance with this subsection), except that a family may be required at the time the family initially receives such assistance to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such an amount or percentage that is reasonable given the services and amenities provided and as the Secretary deems appropriate.[.]

(C) Definition. For the purposes of this paragraph, the term "assisted living facility" has the meaning given that term in section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)), except that such a facility may be contained within a portion of a larger multifamily housing project.

(19) Rental vouchers for veterans affairs supported housing program.

(A) Set aside. Subject to subparagraph (C), the Secretary shall set aside, from amounts made available for rental assistance under this subsection, the amounts specified in subparagraph (B) for use only for providing such assistance through a supported housing program administered in conjunction with the Department of Veterans Affairs. Such program shall provide rental assistance on behalf of homeless veterans who have chronic mental illnesses or chronic substance use disorders, shall require agreement of the veteran to continued treatment for such mental illness or substance use disorder as a condition of receipt of such rental assistance, and shall ensure such treatment and appropriate case management for each veteran receiving such rental assistance.

(B) Amount. The amount specified in this subparagraph is--

(i) for fiscal year 2007, the amount necessary to provide 500 vouchers for rental assistance under this subsection;

(ii) for fiscal year 2008, the amount necessary to provide 1,000 vouchers for rental assistance under this subsection;

(iii) for fiscal year 2009, the amount necessary to provide 1,500 vouchers for rental assistance under this subsection;

(iv) for fiscal year 2010, the amount necessary to provide 2,000 vouchers for rental assistance under this subsection; and

(v) for fiscal year 2011, the amount necessary to provide 2,500 vouchers for rental assistance under this subsection.

(C) Funding through incremental assistance. In any fiscal year, to the extent that this paragraph requires the Secretary to set aside rental assistance amounts for use under this paragraph in an amount that exceeds the amount set aside in the preceding fiscal year, such requirement shall be effective only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year for incremental rental assistance under this subsection.

(20) Prohibited basis for termination of assistance.

(A) In general. A public housing agency may not terminate assistance to a participant in the voucher program on the basis of an incident or incidents of actual or threatened domestic violence, dating violence, or stalking against that participant.

(B) Construal of lease provisions. Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim or threatened victim of that criminal activity justifying termination of assistance to the victim or threatened victim.

(C) Termination on the basis of criminal activity. Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant's family who is a victim of the domestic violence, dating violence, or stalking.

(D) Exceptions.

(i) Public housing authority right to terminate for criminal acts. Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to individuals who engage in criminal acts of physical violence against family members or others.

(ii) Compliance with court orders. Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of a public housing agency, 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 issued to address the distribution or possession of property among the household members in cases where a family breaks up.

(iii) Public housing authority right to terminate voucher assistance for lease violations. Nothing in subparagraph (A), (B), or (C) limit any otherwise available authority of the public housing agency to terminate voucher assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate.

(iv) Public housing authority right to terminate voucher assistance for imminent threat. Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to a tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property or public housing agency if that tenant is not evicted or terminated from assistance.

(v) Preemption. 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, or stalking.

(p) Shared housing for elderly and handicapped. In order to assist elderly families (as defined in section 3(b)(3) [42 USCS § 1437a(b)(3)]) who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit assistance provided under the existing housing and moderate rehabilitation programs to be used by such families in such arrangements. In carrying out this subsection, the Secretary shall issue minimum habitability standards for the purpose of assuring decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(q) Administrative fees.

(1) Fee for ongoing costs of administration.

(A) In general. The Secretary shall establish fees for the costs of administering the tenant-based assistance, certificate, voucher, and moderate rehabilitation programs under this section.

(B) Fiscal year 1999.

(i) Calculation. For fiscal year 1999, the fee for each month for which a dwelling unit is covered by an assistance contract shall be--

(I) in the case of a public housing agency that, on an annual basis, is administering a program for not more than 600 dwelling units, 7.65 percent of the base amount; and

(II) in the case of an agency that, on an annual basis, is administering a program for more than 600 dwelling units (aa) for the first 600 units, 7.65 percent of the base amount, and (bb) for any additional dwelling units under the program, 7.0 percent of the base amount.

(ii) Base amount. For purposes of this subparagraph, the base amount shall be the higher of--

(I) the fair market rental established under section 8(c) of this Act [subsec. (c) of this section] (as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 [42 USCS § 1437 note]) for fiscal year 1993 for a 2-bedroom existing rental dwelling unit in the market area of the agency, and

(II) the amount that is the lesser of (aa) such fair market rental for fiscal year 1994, or (bb) 103.5 percent of the amount determined under clause (i), adjusted based on changes in wage data or other objectively measurable data that reflect the costs of administering the program, as determined by the Secretary. The Secretary may require that the base amount be not less than a minimum amount and not more than a maximum amount.

(C) Subsequent fiscal years. For subsequent fiscal years, the Secretary shall publish a notice in the Federal Register, for each geographic area, establishing the amount of the fee that would apply for public housing agencies administering the program, based on changes in wage data or other objectively measurable data that reflect the costs of administering the program, as determined by the Secretary.

(D) Increase. The Secretary may increase the fee if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas.

(E) Decrease. The Secretary may decrease the fee for units owned by a public housing

agency to reflect reasonable costs of administration.

(2) Fee for preliminary expenses. The Secretary shall also establish reasonable fees (as determined by the Secretary) for--

(A) the costs of preliminary expenses, in the amount of \$ 500, for a public housing agency, except that such fee shall apply to an agency only in the first year that the agency administers a tenant-based assistance program under this section, and only if, immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 [42 USCS § 1437 note], the agency was not administering a tenant-based assistance program under the United States Housing Act of 1937 (as in effect immediately before such effective date), in connection with its initial increment of assistance received;

(B) the costs incurred in assisting families who experience difficulty (as determined by the Secretary) in obtaining appropriate housing under the programs; and

(C) extraordinary costs approved by the Secretary.

(3) Transfer of fees in cases of concurrent geographical jurisdiction. In each fiscal year, if any public housing agency provides tenant-based assistance under this section on behalf of a family who uses such assistance for a dwelling unit that is located within the jurisdiction of such agency but is also within the jurisdiction of another public housing agency, the Secretary shall take such steps as may be necessary to ensure that the public housing agency that provides the services for a family receives all or part of the administrative fee under this section (as appropriate).

(4) Applicability. This subsection shall apply to fiscal year 1999 and fiscal years thereafter.

(r) Portability.

(1) In general.

(A) Any family receiving tenant-based assistance under subsection (o) may receive such assistance to rent an eligible dwelling unit if the dwelling unit to which the family moves is within any area in which a program is being administered under this section.

(B) (i) Notwithstanding subparagraph (A) and subject to any exceptions established under clause (ii) of this subparagraph, a public housing agency may require that any family not living within the jurisdiction of the public housing agency at the time the family applies for assistance from the agency shall, during the 12-month period beginning on the date of initial receipt of housing assistance made available on behalf of the family from such agency, lease and occupy an eligible dwelling unit located within the jurisdiction served by the agency.

(ii) The Secretary may establish such exceptions to the authority of public housing agencies established under clause (i).

(2) The public housing agency having authority with respect to the dwelling unit to which a family moves under this subsection shall have the responsibility of carrying out the provisions of this subsection with respect to the family.

(3) In providing assistance under subsection (o) for any fiscal year, the Secretary shall give consideration to any reduction in the number of resident families incurred by a public housing agency in the preceding fiscal year as a result of the provisions of this subsection. The Secretary shall establish procedures for the compensation of public housing agencies that issue vouchers to families that move into or out of the jurisdiction

of the public housing agency under portability procedures. The Secretary may reserve amounts available for assistance under subsection (o) to compensate those public housing agencies.

(4) The provisions of this subsection may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under this section.

(5) Lease violations. A family may not receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has moved out of the assisted dwelling unit of the family in violation of a lease, except that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

(s) Prohibition of denial of certificates and vouchers to residents of public housing. In selecting families for the provision of assistance under this section (including subsection (o)), a public housing agency may not exclude or penalize a family solely because the family resides in a public housing project.

(t) Enhanced vouchers.

(1) In general. Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (o), except that under such enhanced voucher assistance--

(A) subject only to subparagraph (D), the assisted family shall pay as rent no less than the amount the family was paying on the date of the eligibility event for the project in which the family was residing on such date;

(B) the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project, and if, during any period the family makes such an election and continues to so reside, the rent for the dwelling unit of the family in such project exceeds the applicable payment standard established pursuant to subsection (o) for the unit, the amount of rental assistance provided on behalf of the family shall be determined using a payment standard that is equal to the rent for the dwelling unit (as such rent may be increased from time-to-time), subject to paragraph (10)(A) of subsection (o) and any other reasonable limit prescribed by the Secretary, except that a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families;

(C) subparagraph (B) of this paragraph shall not apply and the payment standard for the dwelling unit occupied by the family shall be determined in accordance with subsection (o) if--

(i) the assisted family moves, at any time, from such project; or

(ii) the voucher is made available for use by any family other than the original family on behalf of whom the voucher was provided; and

(D) if the income of the assisted family declines to a significant extent, the percentage of

income paid by the family for rent shall not exceed the greater of 30 percent or the percentage of income paid at the time of the eligibility event for the project.

(2) Eligibility event. For purposes of this subsection, the term "eligibility event" means, with respect to a multifamily housing project, the prepayment of the mortgage on such housing project, the voluntary termination of the insurance contract for the mortgage for such housing project (including any such mortgage prepayment during fiscal year 1996 or a fiscal year thereafter or any insurance contract voluntary termination during fiscal year 1996 or a fiscal year thereafter), the termination or expiration of the contract for rental assistance under section 8 of the United States Housing Act of 1937 [this section] for such housing project (including any such termination or expiration during fiscal years after fiscal year 1994 prior to the effective date of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001), or the transaction under which the project is preserved as affordable housing, that, under paragraphs (3) and (4) of section 515(c), section 524(d) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), section 223(f) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f)), or section 201(p) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a(p)), results in tenants in such housing project being eligible for enhanced voucher assistance under this subsection.

(3) Treatment of enhanced vouchers provided under other authority.

(A) In general. Notwithstanding any other provision of law, any enhanced voucher assistance provided under any authority specified in subparagraph (B) shall (regardless of the date that the amounts for providing such assistance were made available) be treated, and subject to the same requirements, as enhanced voucher assistance under this subsection.

(B) Identification of other authority. The authority specified in this subparagraph is the authority under--

(i) the 10th, 11th, and 12th provisos under the "Preserving Existing Housing Investment" account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104-204; 110 Stat. 2884) [unclassified], pursuant to such provisos, the first proviso under the "Housing Certificate Fund" account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Public Law 105-65; 111 Stat. 1351) [unclassified], or the first proviso under the "Housing Certificate Fund" account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105-276; 112 Stat. 2469) [unclassified]; and

(ii) paragraphs (3) and (4) of section 515(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), as in effect before the enactment of this Act.

(4) Authorization of appropriations. There are authorized to be appropriated for each of fiscal years 2000, 2001, 2002, 2003, and 2004 such sums as may be necessary for enhanced voucher assistance under this subsection.

(u) Assistance for residents of rental rehabilitation projects. In the case of low-income families living in rental projects rehabilitated under section 17 of this Act [42 USCS §

1437o] or section 533 of the Housing Act of 1949 [42 USCS § 1490m] before rehabilitation--

(1) vouchers under this section shall be made for families who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding;

(2) at the discretion of each public housing agency or other agency administering the allocation of assistance, vouchers under this section may be made for families who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or to move from, the project; and

(3) the Secretary shall allocate assistance for vouchers under this section to ensure that sufficient resources are available to address the physical or economic displacement or potential economic displacement, of existing tenants pursuant to paragraphs (1) and (2).

(v) Extension of contracts. The Secretary may extend expiring contracts entered into under this section for project-based loan management assistance to the extent necessary to prevent displacement of low-income families receiving such assistance as of September 30, 1996.

(w) [Deleted]

(x) Family unification.

(1) Increase in budget authority. The budget authority available under section 5(c) [42 USCS § 1437c(c)] for assistance under section 8(b) [subsec. (b) of this section] is authorized to be increased by \$ 100,000,000 on or after October 1, 1992, and by \$ 104,200,000 on or after October 1, 1993.

(2) Use of funds. The amounts made available under this subsection shall be used only in connection with tenant-based assistance under section 8 [this section] on behalf of (A) any family (i) who is otherwise eligible for such assistance, and (ii) who the public child welfare agency for the jurisdiction has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or out-of-home care or the delayed discharge of a child or children to the family from out-of-home care and (B) for a period not to exceed 18 months, otherwise eligible youths who have attained at least 18 years of age and not more than 21 years of age and who have left foster care at age 16 or older.

(3) Allocation. The amounts made available under this subsection shall be allocated by the Secretary through a national competition among applicants based on demonstrated need for the assistance under this subsection. To be considered for assistance, an applicant shall submit to the Secretary a written proposal containing a report from the public child welfare agency serving the jurisdiction of the applicant that describes how a lack of adequate housing in the jurisdiction is resulting in the initial or prolonged separation of children from their families, and how the applicant will coordinate with the public child welfare agency to identify eligible families and provide the families with assistance under this subsection.

(4) Definitions. For purposes of this subsection:

(A) Applicant. The term "applicant" means a public housing agency or any other agency responsible for administering assistance under section 8 [this section].

(B) Public child welfare agency. The term "public child welfare agency" means the public agency responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(y) Homeownership option.

(1) Use of assistance for homeownership. A public housing agency providing tenant-based assistance on behalf of an eligible family under this section may provide assistance for an eligible family that purchases a dwelling unit (including a unit under a lease-purchase agreement) that will be owned by 1 or more members of the family, and will be occupied by the family, if the family--

(A) is a first-time homeowner, or owns or is acquiring shares in a cooperative;

(B) demonstrates that the family has income from employment or other sources (other than public assistance, except that the Secretary may provide for the consideration of public assistance in the case of an elderly family or a disabled family), as determined in accordance with requirements of the Secretary, that is not less than twice the payment standard established by the public housing agency (or such other amount as may be established by the Secretary);

(C) except as provided by the Secretary, demonstrates at the time the family initially receives tenant-based assistance under this subsection that one or more adult members of the family have achieved employment for the period as the Secretary shall require;

(D) participates in a homeownership and housing counseling program provided by the agency; and

(E) meets any other initial or continuing requirements established by the public housing agency in accordance with requirements established by the Secretary.

(2) Determination of amount of assistance.

(A) Monthly expenses not exceeding payment standard. If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, do not exceed the payment standard, the monthly assistance payment shall be the amount by which the homeownership expenses exceed the highest of the following amounts, rounded to the nearest dollar:

(i) 30 percent of the monthly adjusted income of the family.

(ii) 10 percent of the monthly income of the family.

(iii) If the family is receiving payments for welfare assistance from a public agency, and a portion of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Monthly expenses exceed payment standard. If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceed the payment standard, the monthly assistance payment shall be the amount by which the applicable payment standard exceeds the highest of the amounts under clauses (i), (ii), and (iii) of subparagraph (A).

(3) Inspections and contract conditions.

(A) In general. Each contract for the purchase of a unit to be assisted under this section shall--

- (i) provide for pre-purchase inspection of the unit by an independent professional; and
  - (ii) require that any cost of necessary repairs be paid by the seller.
- (B) Annual inspections not required. The requirement under subsection (o)(8)(A)(ii) for annual inspections shall not apply to units assisted under this section.
- (4) Other authority of the Secretary. The Secretary may--
- (A) limit the term of assistance for a family assisted under this subsection; and
  - (B) modify the requirements of this subsection as the Secretary determines to be necessary to make appropriate adaptations for lease-purchase agreements.
- (5) Inapplicability of certain provisions. Assistance under this subsection shall not be subject to the requirements of the following provisions:
- (A) Subsection (c)(3)(B) of this section.
  - (B) Subsection (d)(1)(B)(i) of this section.
  - (C) Any other provisions of this section governing maximum amounts payable to owners and amounts payable by assisted families.
  - (D) Any other provisions of this section concerning contracts between public housing agencies and owners.
  - (E) Any other provisions of this Act that are inconsistent with the provisions of this subsection.
- (6) Reversion to rental status.
- (A) FHA-insured mortgages. If a family receiving assistance under this subsection for occupancy of a dwelling defaults under a mortgage for the dwelling insured by the Secretary under the National Housing Act [12 USCS §§ 1701 et seq.], the family may not continue to receive rental assistance under this section unless the family (i) transfers to the Secretary marketable title to the dwelling, (ii) moves from the dwelling within the period established or approved by the Secretary, and (iii) agrees that any amounts the family is required to pay to reimburse the escrow account under section 23(d)(3) [42 USCS § 1437u(d)(3)] may be deducted by the public housing agency from the assistance payment otherwise payable on behalf of the family.
  - (B) Other mortgages. If a family receiving assistance under this subsection defaults under a mortgage not insured under the National Housing Act [12 USCS §§ 1701 et seq.], the family may not continue to receive rental assistance under this section unless it complies with requirements established by the Secretary.
  - (C) All mortgages. A family receiving assistance under this subsection that defaults under a mortgage may not receive assistance under this subsection for occupancy of another dwelling owned by one or more members of the family.
- (7) Downpayment assistance.
- (A) Authority. A public housing agency may, in lieu of providing monthly assistance payments under this subsection on behalf of a family eligible for such assistance and at the discretion of the public housing agency, provide assistance for the family in the form of a single grant to be used only as a contribution toward the downpayment required in connection with the purchase of a dwelling for fiscal year 2000 and each fiscal year thereafter to the extent provided in advance in appropriations Acts.
  - (B) Amount. The amount of a downpayment grant on behalf of an assisted family may not exceed the amount that is equal to the sum of the assistance payments that would be made during the first year of assistance on behalf of the family, based upon the income of the family at the time the grant is to be made.

(8) Definition of first-time homeowner. For purposes of this subsection, the term "first-time homeowner" means--

(A) a family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives assistance for homeownership under this subsection; and

(B) any other family, as the Secretary may prescribe.

(z) Termination of section 8 contracts and reuse of recaptured budget authority.

(1) General authority. The Secretary may reuse any budget authority, in whole or part, that is recaptured on account of expiration or termination of a housing assistance payments contract only for one or more of the following:

(A) Tenant-based assistance. Pursuant to a contract with a public housing agency, to provide tenant-based assistance under this section to families occupying units formerly assisted under the terminated contract.

(B) Project-based assistance. Pursuant to a contract with an owner, to attach assistance to one or more structures under this section, for relocation of families occupying units formerly assisted under the terminated contract.

(2) Families occupying units formerly assisted under terminated contract. Pursuant to paragraph (1), the Secretary shall first make available tenant- or project-based assistance to families occupying units formerly assisted under the terminated contract. The Secretary shall provide project-based assistance in instances only where the use of tenant-based assistance is determined to be infeasible by the Secretary.

(aa) [Terminated]

(bb) Transfer, reuse, and rescission of budget authority.

(1) If an assistance contract under this section, other than a contract for tenant-based assistance, is terminated or is not renewed, or if the contract expires, the Secretary shall, in order to provide continued assistance to eligible families, including eligible families receiving the benefit of the project-based assistance at the time of the termination, transfer any budget authority remaining in the contract to another contract. The transfer shall be under such terms as the Secretary may prescribe.

(2) Reuse and rescission of certain recaptured budget authority. Notwithstanding paragraph (1), if a project-based assistance contract for an eligible multifamily housing project subject to actions authorized under title I [12 USCS §§ 1437 et seq.] is terminated or amended as part of restructuring under section 517 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 [note to this section], the Secretary shall recapture the budget authority not required for the terminated or amended contract and use such amounts as are necessary to provide housing assistance for the same number of families covered by such contract for the remaining term of such contract, under a contract providing for project-based or tenant-based assistance. The amount of budget authority saved as a result of the shift to project-based or tenant-based assistance shall be rescinded.

(cc) Law enforcement and security personnel.

(1) In general. Notwithstanding any other provision of this Act, in the case of assistance

attached to a structure, for the purpose of increasing security for the residents of a project, an owner may admit, and assistance under this section may be provided to, police officers and other security personnel who are not otherwise eligible for assistance under the Act.

(2) Rent requirements. With respect to any assistance provided by an owner under this subsection, the Secretary may--

(A) permit the owner to establish such rent requirements and other terms and conditions of occupancy that the Secretary considers to be appropriate; and

(B) require the owner to submit an application for those rent requirements, which application shall include such information as the Secretary, in the discretion of the Secretary, determines to be necessary.

(3) Applicability. This subsection shall apply to fiscal year 1999 and fiscal years thereafter.

(dd) Tenant-based contract renewals. Subject to amounts provided in appropriation Acts, starting in fiscal year 1999, the Secretary shall renew all expiring tenant-based annual contribution contracts under this section by applying an inflation factor based on local or regional factors to an allocation baseline. The allocation baseline shall be calculated by including, at a minimum, amounts sufficient to ensure continued assistance for the actual number of families assisted as of October 1, 1997, with appropriate upward adjustments for incremental assistance and additional families authorized subsequent to that date.

(ee) Certification and confidentiality.

(1) Certification.

(A) In general. An owner, manager, or public housing agency responding to subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5) may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the owner, manager, or public housing agency.

(B) Failure to provide certification. If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification for the owner, manager, or public housing agency, nothing in this subsection or in subsection (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), or (r)(5) may be construed to limit the authority of an owner or manager to evict, or the public housing agency or assisted housing provider to terminate voucher assistance for, any tenant or lawful occupant that commits violations of a lease. The owner, manager or public housing agency may extend the 14-day deadline at their discretion.

(C) Contents. An individual may satisfy the certification requirement of subparagraph (A) by--

(i) providing the requesting owner, manager, or public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider,

an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (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, or stalking has signed or attested to the documentation; or

(ii) producing a Federal, State, tribal, territorial, or local police or court record.

(D) Limitation. Nothing in this subsection shall be construed to require an owner, manager, or public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At their discretion, the owner, manager, or public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

(E) Compliance not sufficient to constitute evidence of unreasonable act. Compliance with this statute by an owner, manager or public housing agency based on the certification specified in paragraphs (1)(A) and (B) of this subsection or based solely on the victim's statement or other corroborating evidence, as permitted by paragraph (1)(C) of this subsection, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by an owner, manager or public housing agency, or employee thereof. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of subsection (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), or (r)(5).

(F) Preemption. 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, or stalking.

(2) Confidentiality.

(A) In general. All information provided to an owner, manager, or public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by an owner, manager, or public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is--

(i) requested or consented to by the individual in writing;

(ii) required for use in an eviction proceeding under subsection (c)(9), (d)(1)(B)(ii),

(d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), or (o)(20),; or

(iii) otherwise required by applicable law.

(B) Notification. Public housing agencies must provide notice to tenants assisted under Section 8 of the United States Housing Act of 1937 [this section] of their rights under this subsection and subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5), including their right to confidentiality and the limits thereof, and to owners and managers of their rights and obligations under this subsection and subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5).

**History:**

(Sept. 1, 1937, ch. 896, Title I, § 8, as added Aug. 22, 1974, P.L. 93-383, Title II, § 201(a), 88 Stat. 662; Aug. 3, 1976, P.L. 94-375, § 2(d), (e), (g), 90 Stat. 1068; April 30, 1977, P.L. 95-24, Title I, § 101(c), 91 Stat. 55; Oct. 12, 1977, P.L. 95-128, Title II § 201(c)-(e), 91 Stat. 1128; Oct. 31, 1978, P.L. 95-557, Title II, § 206(d)(1), (e), (f), 92 Stat. 2091; Dec. 21, 1979, P.L. 96-153, Title II, §§

202(b), 206(b), 210, 211(b), 93 Stat. 1106, 1108-1110; Oct. 8, 1980, P.L. 96-399, Title II, §§ 203, 308(c)(3), 94 Stat. 1629, 1641; Aug. 13, 1981, P.L. 97-35, Title III, Subtitle A, Part 2 §§ 322(e), 324, 325, 326(a), (e)(1), 329H(a), 95 Stat. 402, 405-407, 410; Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title II, §§ 203(b), 207, 208, 209(a), 210, 211, 97 Stat. 1178, 1181-1183; Oct. 17, 1984, P.L. 98-479, Title I, § 102(a)(6)-(10), 98 Stat. 2221; Feb. 5, 1988, P.L. 100-242, Title I, Subtitle A, Part 3, §§ 141-149, Title II, Subtitle D, § 262, 101 Stat. 1849-1853, 1890; June 29, 1988, P.L. 100-358, § 5, 102 Stat. 681; Nov. 7, 1988, P.L. 100-628, Title X, Subtitle A, §§ 1004(a), 1005(b)(1), (c), 1006, 1014(b), (c), 1029, 102 Stat. 3264, 3265, 3269, 3272; Dec. 15, 1989, P.L. 101-235, Title I, Subtitle B, § 127, Title VIII, § 801(c), (g), 103 Stat. 2025, 2058, 2059; Feb. 5, 1988, P.L. 100-242, Title II, Subtitle A, § 203(a)(1), 101 Stat. 1878; Nov. 28, 1990, P.L. 101-625, Title IV, Subtitle A, § 413, Subtitle B, §§ 541-545(b), 546-550(a), (c), 551-553, Subtitle C, § 572, Title VI, Subtitle A, § 603, Subtitle B, § 613(a), 104 Stat. 4160, 4216, 4220, 4223, 4236, 4277, 4280; Nov. 28, 1990, P.L. 101-625, Title II, Subtitle F, § 289(b), 104 Stat. 4128; Oct. 28, 1991, P.L. 102-139, Title II, 105 Stat. 756; Oct. 28, 1992, P.L. 102-550, Title I, Subtitle C, §§ 141-148, Subtitle E, § 185(a), Title VI, Subtitle B, § 623(b), Subtitle D, § 660, Subtitle E, §§ 674, 675, Subtitle F, § 682(b), Title X, Subtitle A, § 1012(g), 106 Stat. 3713, 3745, 3819, 3825, 3827, 3830, 3905; April 11, 1994, P.L. 103-233, Title I, § 101(c)(2), (3), (d), 108 Stat. 357; Sept. 28, 1994, P.L. 103-327, Title II, 108 Stat. 2315; July 27, 1995, P.L. 104-19, Title I, § 1003, 109 Stat. 236; Jan. 26, 1996, P.L. 104-99, Title IV, §§ 402(d)(2), (3), (6)(A)(iii), (iv), 405(c), 110 Stat. 41, 42, 44; April 26, 1996, P.L. 104-134, Title I [Title II, §§ 203(a)-(c), 208], 110 Stat. 1321-281, 1321-284; May 2, 1996, P.L. 104-140, § 1(a), 110 Stat. 1327; Aug. 22, 1996, P.L. 104-193, Title IX, § 903(a)(2), 110 Stat. 2348; Sept. 26, 1996, P.L. 104-204, Title II, § 201(g), 110 Stat. 2893; June 12, 1997, P.L. 105-18, Title II, Ch 10, § 10002, 111 Stat. 201; Aug. 5, 1997, P.L. 105-33, Title II, §§ 2003, 2004, 111 Stat. 257; Oct. 27, 1997, P.L. 105-65, Title II, §§ 201(c), 205, Title V, § 523(a), (c), 111 Stat. 1364, 1365, 1406, 1407; Oct. 21, 1998, P.L. 105-276, Title II, § 209(a), Title V, Subtitle A, § 514(b)(1), Subtitle C, §§ 545(a), (b), 547, 548, 549(a)(1), (2), (b), 550(a), 552-554, 555(a), 556(a), Subtitle E, § 565(c), 112 Stat. 2485, 2547, 2596, 2604-2607, 2609, 2510, 2613, 2631; Oct. 20, 1999, P.L. 106-74, Title II, § 223, Title V, Subtitle B, § 523(a), Subtitle C, §§ 531(d), 535, 538(a), 113 Stat. 1076, 1104, 1121, 1122.) (As amended July 13, 2000, P.L. 106-246, Div B, Title II, Chapter 8, § 2801, 114 Stat. 569; Oct. 27, 2000, P.L. 106-377, § 1(a)(1), 114 Stat. 1441; Dec. 27, 2000, P.L. 106-569, Title III, § 301(a), Title IX, §§ 902(a), 903(a), 114 Stat. 2952, 3026; Dec. 21, 2001, P.L. 107-95, § 12, 115 Stat. 921; Jan. 10, 2002, P.L. 107-116, Title VI, Subtitle C, § 632, 115 Stat. 2227; Jan. 5, 2006, P.L. 109-162, Title VI, § 606, 119 Stat. 3041; Aug. 12, 2006, P.L. 109-271, § 5(c)-(e), 120 Stat. 759; Dec. 22, 2006, P.L. 109-461, Title VII, § 710, 120 Stat. 3441; May 22, 2008, P.L. 110-234, Title IV, Subtitle A, Part I, § 4002(b)(1)(B), (2)(Y), 122 Stat. 1096, 1097; June 18, 2008, P.L. 110-246, § 4(a), Title IV, Subtitle A, Part I, § 4002(b)(1)(B), (2)(Y), 122 Stat. 1664, 1857, 1859; July 30, 2008, P.L. 110-289, Div B, Title VIII, Subtitle B, § 2835(a), 122 Stat. 2871; May 20, 2009, P.L. 111-22, Div A, Title VII, § 703, 123 Stat. 1661; Jan. 4, 2011, P.L. 111-372, Title III, § 302, 124 Stat. 4084.)

## 24 C.F.R. 982.1 Programs: Purpose and structure.

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

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

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

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

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

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

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

### **HISTORY:**

[59 FR 36682, July 18, 1994; 60 FR 34695, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 64 FR 26632, 26640, May 14, 1999; 64 FR 43613, Aug. 11, 1999]

## 24 C.F.R. 982.301 Information when family is selected.

(a) PHA briefing of family. (1) When the PHA selects a family to participate in a tenant-based program, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

(i) A description of how the program works;

(ii) Family and owner responsibilities; and

(iii) Where the family may lease a unit, including renting a dwelling unit inside or outside the PHA jurisdiction.

(2) For a family that qualifies to lease a unit outside the PHA jurisdiction under portability procedures, the briefing must include an explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under portability procedures.

(3) If the family is currently living in a high poverty census tract in the PHA's jurisdiction, the briefing must also explain the advantages of moving to an area that does not have a high concentration of poor families.

(4) In briefing a family that includes any disabled person, the PHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6.

(5) In briefing a welfare-to-work family, the PHA must include specification of any local obligations of a welfare-to-work family and an explanation that failure to meet these obligations is grounds for PHA denial of admission or termination of assistance.

(b) Information packet. When a family is selected to participate in the program, the PHA must give the family a packet that includes information on the following subjects:

(1) The term of the voucher, and PHA policy on any extensions or suspensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension;

(2) How the PHA determines the amount of the housing assistance payment for a family, including:

(i) How the PHA determines the payment standard for a family; and

(ii) How the PHA determines the total tenant payment for a family.

(3) How the PHA determines the maximum rent for an assisted unit;

(4) Where the family may lease a unit. For a family that qualifies to lease a unit outside

the PHA jurisdiction under portability procedures, the information packet must include an explanation of how portability works;

- (5) The HUD-required "tenancy addendum" that must be included in the lease;
- (6) The form that the family uses to request PHA approval of the assisted tenancy, and an explanation of how to request such approval;
- (7) A statement of the PHA policy on providing information about a family to prospective owners;
- (8) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards;
- (9) The HUD brochure on how to select a unit;
- (10) Information on federal, State and local equal opportunity laws, and a copy of the housing discrimination complaint form;
- (11) A list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or help the family find a unit;
- (12) Notice that if the family includes a disabled person, the family may request a current listing of accessible units known to the PHA that may be available;
- (13) Family obligations under the program;
- (14) Family obligations under the program, including any obligations of a welfare-to-work family.
- (15) PHA informal hearing procedures. This information must describe when the PHA is required to give a participant family the opportunity for an informal hearing, and how to request a hearing.

(Approved by the Office of Management and Budget under control number 2577-0169)

**HISTORY:**

[60 FR 34660, 34702, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 61 FR 27162, 27163, May 30, 1996; 64 FR 26632, 26640, 26644, May 14, 1999; 64 FR 43613, Aug. 11, 1999; 64 FR 50140, 50229, Sept. 15, 1999; 64 FR 56894, 56912, Oct. 21, 1999]

## 24 CFR 982.516 Family income and composition: Regular and interim examinations.

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

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

(i) Reported family annual income;

(ii) The value of assets;

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

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

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

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

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

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

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

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

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

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

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

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

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

**HISTORY:**

[63 FR 23826, 23864, Apr. 30, 1998; 64 FR 13056, 13057, Mar. 16, 1999; 64 FR 26632, 26640, 26649, May 14, 1999; 64 FR 43613, Aug. 11, 1999; 64 FR 56894, 56915, Oct. 21, 1999, as corrected and amended at 65 FR 16819, 16821, 16822, Mar. 30, 2000]

## 24 C.F.R. 982.551 Obligations of participant.

(a) Purpose. This section states the obligations of a participant family under the program.

(b) Supplying required information. -- (1) The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(3) The family must disclose and verify social security numbers (as provided by part 5, subpart B, of this title) and must sign and submit consent forms for obtaining information in accordance with part 5, subpart B, of this title.

(4) Any information supplied by the family must be true and complete.

(c) HQS breach caused by family. The family is responsible for an HQS breach caused by the family as described in § 982.404(b).

(d) Allowing PHA inspection. The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.

(e) Violation of lease. The family may not commit any serious or repeated violation of the lease. Under 24 CFR 5.2005(c)(1), an incident or incidents of actual or threatened domestic violence, dating violence, 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, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim.

(f) Family notice of move or lease termination. The family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See § 982.314(d).

(g) Owner eviction notice. The family must promptly give the PHA a copy of any owner eviction notice.

(h) Use and occupancy of unit. -- (1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

(2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded

custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

(3) The family must promptly notify the PHA if any family member no longer resides in the unit.

(4) If the PHA has given approval, a foster child or a live-in-aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when PHA consent may be given or denied.

(5) Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.

(6) The family must not sublease or let the unit.

(7) The family must not assign the lease or transfer the unit.

(i) Absence from unit. The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.

(j) Interest in unit. The family must not own or have any interest in the unit.

(k) Fraud and other program violation. The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

(l) Crime by household members. The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553). Under 24 CFR 5.2005(c)(2), criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or immediate family member of the tenant is the victim.

(m) Alcohol abuse by household members. The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

(n) Other housing assistance. An assisted family, or members of the family, may not

receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

(Approved by the Office of Management and Budget under control number 2577-0169)

**HISTORY:**

[60 FR 34660, 34714, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 61 FR 11112, 11119, Mar. 18, 1996; 61 FR 13614, 13627, Mar. 27, 1996; 61 FR 27162, 27163, May 30, 1996; 64 FR 26632, 26640, 26650, May 14, 1999; 64 FR 43613, Aug. 11, 1999; 66 FR 28776, 28805, May 24, 2001; 73 FR 72336, 72345, Nov. 28, 2008; 75 FR 66246, 66264, Oct. 27, 2010]

## 24 C.F.R. 982.552 PHA denial or termination of assistance for family.

(a) Action or inaction by family. -- (1) A PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or § 982.553. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures.

(4) This section does not limit or affect exercise of the PHA rights and remedies against the owner under the HAP contract, including termination, suspension or reduction of housing assistance payments, or termination of the HAP contract.

(b) Requirement to deny admission or terminate assistance.

(1) For provisions on denial of admission and termination of assistance for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents, see § 982.553.

(2) The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

(3) The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information in accordance with part 5, subparts B and F of this title.

(4) The family must submit required evidence of citizenship or eligible immigration status. See part 5 of this title for a statement of circumstances in which the PHA must deny admission or terminate program assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures.

(5) The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 CFR 5.612.

(c) Authority to deny admission or terminate assistance. (1) Grounds for denial or termination of assistance. The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see § 982.551). See § 982.553 concerning denial or termination of assistance for crime by family members.

(ii) If any member of the family has been evicted from federally assisted housing in the last five years;

(iii) If a PHA has ever terminated assistance under the program for any member of the family.

(iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program (see also § 982.553(a)(1));

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

(viii) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(ix) If the family has engaged in or threatened abusive or violent behavior toward PHA personnel.

(x) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(xi) If the family has been engaged in criminal activity or alcohol abuse as described in § 982.553.

(2) Consideration of circumstances. In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating

circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) In determining whether to deny admission or terminate assistance for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the PHA 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 (42 U.S.C. 13661). For this purpose, the PHA may require the applicant or 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.

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(v) Nondiscrimination limitation and protection for victims of domestic violence, dating violence, or stalking. The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title, and with the requirements of 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, or stalking.

(d) Information for family. The PHA must give the family a written description of:

(1) Family obligations under the program.

(2) The grounds on which the PHA may deny or terminate assistance because of family action or failure to act.

(3) The PHA informal hearing procedures.

(e) Applicant screening. The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

(Approved by the Office of Management and Budget under control number 2577-0169)

**HISTORY:**

[60 FR 34660, 34714, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 61 FR 13614, 13627, Mar. 27, 1996; 63 FR 23826, 23865, Apr. 30, 1998; 64 FR 26632, 26640, 26650, May 14, 1999, as corrected at 64 FR 49656, 49658, Sept. 14, 1999; 64 FR 43613, Aug. 11, 1999; 64 FR 56894, 56915, Oct. 21, 1999, as corrected at 65 FR 16819, 16823, Mar. 30, 2000; 66 FR 28776, 28805, May 24, 2001; 70 FR 77742, 77744, Dec. 30, 2005; 73 FR 72336, 72345, Nov. 28, 2008; 75 FR 66246, 66264, Oct. 27, 2010]

## 24 C.F.R. 982.555 Informal hearing for participant.

(a) When hearing is required. -- (1) A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.

(iii) A determination of the family unit size under the PHA subsidy standards.

(iv) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA subsidy standards, or the PHA determination to deny the family's request for an exception from the standards.

(v) A determination to terminate assistance for a participant family because of the family's action or failure to act (see § 982.552).

(vi) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) When hearing is not required. The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) Establishment of the PHA schedule of utility allowances for families in the program.

(4) A PHA determination not to approve an extension or suspension of a voucher term.

(5) A PHA determination not to approve a unit or tenancy.

(6) A PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate

assistance for a breach of the HQS caused by the family as described in § 982.551(c).)

(7) A PHA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) Notice to family. (1) In the cases described in paragraphs (a)(1) (i), (ii) and (iii) of this section, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) Expeditious hearing process. Where a hearing for a participant family is required under this section, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) Hearing procedures -- (1) Administrative plan. The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) Discovery. (i) By family. The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) By PHA. The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) Documents. The term "documents" includes records and regulations.

(3) Representation of family. At its own expense, the family may be represented by a lawyer or other representative.

(4) Hearing officer: Appointment and authority. (i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) Evidence. The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) Issuance of decision. The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) Effect of decision. The PHA is not bound by a hearing decision:

(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

(g) Restrictions on assistance to noncitizens. The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

(Approved by the Office of Management and Budget under control number 2577-0169)

**HISTORY:**

[60 FR 34600, 34716, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 61 FR 13614, 13627, Mar. 27, 1996; 64 FR 26632, 26640, 26650, May 14, 1999; 64 FR 43613, Aug. 11, 1999; 64 FR 56894, 56915, Oct. 21, 1999, as corrected and amended at 65 FR 16819, 16823, Mar. 30, 2000]

## RCW 7.16.040. Grounds for granting writ

A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

**HISTORY:** 1987 c 202 § 130; 1895 c 65 § 4; RRS § 1002.

RCW 7.16.110. Defective return - further return - hearing - judgment.

If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below.

HISTORY: 1895 c 65 § 11; RRS § 1009.

## RCW 7.16.120. Questions involving merits to be determined

The questions involving the merits to be determined by the court upon the hearing are:

- (1) Whether the body or officer had jurisdiction of the subject matter of the determination under review.
- (2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.
- (3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.
- (4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.
- (5) Whether the factual determinations were supported by substantial evidence.

**HISTORY:** 1989 c 7 § 1; 1957 c 51 § 6; 1895 c 65 § 12; RRS § 1010.