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## **Chapter 1**

### **STATEMENT OF POLICIES AND OBJECTIVES**

#### **INTRODUCTION**

The Stark Metropolitan Housing Authority, Ohio is referred to as "PHA" or "Housing Authority" or "SMHA" throughout this document.

The Public Housing Program was created by the U.S. Housing Act of 1937.

Administration of the Public Housing Program and the functions and responsibilities of the Public Housing Authority (PHA) staff shall be in compliance with the SMHA Personnel Policy, CWA, and SMHA's Admissions and Continued Occupancy Policy. The administration of the SMHA's housing program will also meet the requirements of the Department of Housing and Urban Development. Such requirements include any Public Housing Regulations, Handbooks, and applicable Notices. All applicable Federal, State and local laws, including Fair Housing Laws and regulations also apply. Changes in applicable federal laws or regulations shall supersede provisions in conflict with this policy. Federal regulations shall include those found in Volume 24 CFR, Parts 1, 5, 8, 100, 900-966, and V, VII and IX. (Code of Federal Regulations).

#### **A. STARK METROPOLITAN HOUSING AUTHORITY's MISSION STATEMENT**

"To provide eligible residents of Stark County with decent, safe and affordable housing and contribute to nourishing neighborhoods by working in partnership with the public and private sectors."

#### **B. LOCAL OBJECTIVES**

This Admissions and Continued Occupancy Plan for the Public Housing Program is designed to demonstrate that SMHA is managing its program in a manner that reflects its commitment to improving the quality of housing available to its public, and its capacity to manage that housing in a manner that demonstrates its responsibility to the public trust. In addition, this Admissions and Continued Occupancy Policy is designed to achieve the following objectives:

To provide improved living conditions for very low and low income families while maintaining their rent payments at an affordable level.

To operate a socially and financially sound public housing agency that provides decent, safe, and sanitary housing within a drug free, suitable living environment for tenants and their families.

To avoid concentrations of economically and socially deprived families in any one or all of the SMHA's public housing developments.

To lawfully deny the admission of applicants, or the continued occupancy of residents, whose habits and practices reasonably may be expected to adversely affect the health, safety, comfort or welfare of other residents or the physical environment of the neighborhood, or create a danger to SMHA's employees.

To attempt to house a tenant body in each development that is composed of families with a broad range of incomes and rent-paying abilities that are representative of the range of incomes of low-income families in SMHA's jurisdiction.

To provide opportunities for upward mobility or families who desire to achieve self-sufficiency.

To facilitate the judicious management of SMHA's housing inventory, and the efficient management of SMHA staff.

To ensure compliance with Title VI of the Civil Rights Act of 1964 and all other applicable Federal laws and regulations so that the admissions and continued occupancy are conducted without regard to race, color, religion, creed, sex, national origin, disability, sexual orientation (LGBT) or familial status.

### **C. PURPOSE OF THE POLICY**

The purpose of this Admissions and Continued Occupancy Policy (ACOP) is to establish guidelines for SMHA staff to follow in determining eligibility for admission and continued occupancy. These guidelines are governed by the requirements of the Department of Housing and Urban Development (HUD) with latitude for local policies and procedures. These policies and procedures for admissions and continued occupancy are binding upon applicants, residents, and SMHA.

SMHA's Board of Commissioners must approve the original policy and any changes. This required document is provided to HUD with the submission of the Agency Plan.

### **D. FAIR HOUSING POLICY**

#### **Nondiscrimination**

It is the policy of SMHA to fully comply with Title VI of the Civil Rights Act of 1964, Title VIII and Section 3 of the Civil Rights Act of 1968 (as amended), Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, state and local Fair Housing laws, and any legislation protecting the individual rights of residents, applicants or staff which may be subsequently enacted.

While HOTMA did not revise existing Fair Housing or Civil Rights requirements, SMHA is reminded to follow all applicable nondiscrimination and equal opportunity requirements at 24 CFR § 5.105(a) and 24 CFR § 982.53, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.) and 24 CFR Part 1
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Fair Housing Act (42 U.S.C. §§3601-3631) and 24 CFR Parts 100, 108, and 110
- Executive Order 11063 on equal opportunity in housing and 24 CFR Part 107
- Executive Order 13166 on improving access to services for persons with limited English proficiency
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and 24 CFR Part 8
- Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107) and 24 CFR Part 146
- Title II of the Americans with Disabilities Act (42 U.S.C. §§12131-12134), 28 CFR 35
- Voluntary Compliance Agreement (VCA) between HUD and SMHA
- VAWA 2013
- Limited English Proficiency
- All applicable state and local laws and ordinances

These requirements prohibit discrimination on the basis of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, disability, age, and marital status. SMHA must also comply with Title III of the Americans with Disabilities Act of 1990, as applicable (see 28 CFR part 36).

When an assisted household includes a person with disabilities, a reasonable accommodation may be necessary. A reasonable accommodation is a change, exception, or adjustment to rules, policies, practices, or services that may be necessary in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common areas, or to participate in or access programs and activities.

Under Section 504, reasonable accommodations may also include a structural change to a unit, or to a public or common use area. In addition, the SMHA must provide effective communication to persons with disabilities, including those with vision, hearing, and other communication-related disabilities, which includes ensuring that information is provided in appropriate accessible formats as needed (e.g., Braille, audio, large type, assistive listening devices, sign language interpreters, accessible Web sites; and other accessible electronic communications). See 24 CFR § 8.6.

SMHA must also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP). LEP guidance and LEP information is available at:

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<https://www.federalregister.gov/documents/2007/01/22/07-217/final-guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against>.

In addition, SMHA must comply with the Violence Against Women Act (VAWA), HUD's implementing VAWA regulation at 24 CFR part 5 – subpart L, and applicable program regulations.

SMHA shall not discriminate because of race, color, sex, religion, familial status (in non-elderly designated housing), disability, sexual orientation, marital status, or national origin in the leasing, rental, or other disposition of housing or related facilities, including land, included in any development or developments under its jurisdiction or in the use or occupancy thereof.

Posters and housing information are displayed in locations throughout the PHA's office in such a manner as to be easily readable from a wheelchair.

The PHA's locations are accessible to persons with disabilities. Accessibility for the hearing impaired is provided by the Ohio Relay telephone service provider.

SMHA shall not take any of the following actions on account of race, color, sex, religion, familial status, disability, sexual orientation, or national origin:

- Deny to any family the opportunity to apply for housing, nor deny to any eligible applicant the opportunity to lease housing suitable to its needs.

- Provide housing that is different than that provided others.

- Subject a person to segregation or disparate treatment.

- Restrict a person's access to any benefit enjoyed by others in connection with any program operated by the Housing Authority.

- Treat a person differently in determining eligibility or other requirements for admission.

- Deny a person access to the same level of services.

- Deny a person the opportunity to participate in a planning or advisory group that is an integral part of the public housing program.

SMHA shall not automatically deny admission to a particular group or category of otherwise eligible applicants (e.g. families with children born to unmarried parents ). Each applicant in a particular group or category will be treated on an individual basis in the normal processing routine.

SMHA will seek to identify and eliminate situations or procedures that create a barrier to equal housing opportunity for all. In accordance with Section 504 of the Rehabilitation Act of 1973, SMHA will make such physical or procedural changes as will reasonably accommodate people with disabilities.

SMHA records with respect to applicants for admission shall indicate for each application the date of receipt, the determination of eligibility or non-eligibility, the preference rating if any, and the date, location, identification, and circumstances of each vacancy offered and whether that vacancy was accepted or rejected.

SMHA will identify and eliminate situations or procedures that create a barrier to equal housing opportunity for all. In accordance with Section 504, and the Fair Housing Amendments Act of 1988, SMHA will make structural modifications to its housing and non-housing facilities (required, 24 CFR §§8.21, 8.23, 8.24, and 8.25) and make reasonable accommodations in its procedures or practices (required, 24 CFR §100.204) to permit people with disabilities to take full advantage of SMHA's programs and services.

- 1) In making existing housing programs (see 24 CFR §8.24) or alterations to existing facilities (see 24 CFR §8.23(b)) to be readily accessible to and usable by individuals with handicaps, SMHA is not required to:
  - (a) Make each of its existing facilities accessible (24 CFR §8.24(a)(1)), or make structural changes when other methods can be demonstrated to achieve the same effect; (24 CFR §8.24 (b))
  - (b) Make building alterations that require the removal or altering of a load-bearing structural member; (24 CFR § 8.32 (c))
  - (c) Provide an elevator in any multifamily housing development solely for the purpose of locating accessible dwelling units ("units") above or below the accessible grade level; or (24 CFR § 8.26)
  - (d) Take any action that results in a fundamental alteration in the nature of the program or results in undue financial and administrative burdens. (24 CFR § 8.24(a)(2))
- 2) When SMHA is making substantial alterations (defined in 24 CFR § 8.23 as alterations to a development that has 15+ units and the cost is 75% or more of the replacement cost of the completed facility) to an existing housing facility, SMHA is not required to:
  - (a) Provide an elevator in any multifamily housing development solely for the purpose of locating accessible units above or below the accessible grade level; (24 CFR §8.26)
  - (b) Make building alterations that require the removal or altering of a load-bearing structural member; or (24 CFR §8.32 (c))
  - (c) Make structural alterations to meet minimum accessibility requirements where it is structurally impracticable. "Structural impracticability" is defined as: Changes having little likelihood of being accomplished without removing or altering a load-

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bearing structural member and/or incurring an increased cost of 50% or more of the value of the element of the building or facility involved. (24 CFR §8.32(c) and Appendix A to Part 40, Uniform Federal Accessibility Standards (UFAS) 3.5 and 4.1.6(3))

- 3) Note that the undue burdens test above is not applicable to housing undergoing substantial alteration.

### **VCA Agreement**

1. Unless otherwise agreed by HUD pursuant to HUD's approval of SMHA's UFAS-Accessible Unit Plan, described in paragraph IV. C. above, SMHA will demonstrate the completion of:

- a. a minimum of 43 UFAS-Accessible Units for individuals with mobility impairments and 17 UFAS-Accessible Units for individuals with hearing or vision impairments, as described in Paragraph IV. C. no later than 7/1/2011;
- b. a minimum of an additional 43 for individuals with mobility impairments and 17 UFAS- Accessible Units for individuals With hearing or vision impairments, by 7/1/2012 or, a cumulative minimum of 86 units for individuals with mobility impairments and a cumulative minimum of 34 units for individuals With hearing or vision impairments by 7/1/2012;
- c. a minimum of an additional 42 for individuals with mobility impairments and 17 UFAS Accessible Units for individuals with hearing or vision impairments, by 7/1/2013 for a cumulative total of 128 units for individuals with mobility impairments and a cumulative total of 51 units for individuals with hearing or vision impairments by 7/1/2013.
- d. SMHA will continue to fulfill the requirements on accessible units until satisfying the 5% accessible and 2% hearing impaired requirements for public housing units.

### **Affirmative Marketing**

As conditions may require, SMHA will post notices of housing availability in particular neighborhoods or developments to encourage fuller participation. SMHA may issue public announcements of availability to encourage applications for assistance. Among the marketing efforts SMHA may engage in depending on the situation are the following:

Send informational spots to local media outlets such as radio stations, cable TV, newspapers, or other periodicals for broadcast or publication.

Special outreaches to minorities, persons with disabilities and very low-income families.

Distribute pamphlets and brochures.

Post notices in places of employment, unemployment offices, welfare offices, post offices, grocery stores, churches, community halls, public transportation centers, and with other agency community service providers.

Conduct outreach to organizations that assist people with disabilities, the elderly, students, immigrants, homeless people and victims of domestic violence.

SMHA will monitor the benefits received as a result of the above activities, and will increase or decrease the outreach activities accordingly.

To reach minority groups, it may be necessary to canvas neighborhoods or make mass mailing to areas with heavy concentration of minority citizens. If language is a problem, brochures may be printed in Spanish or other languages as required.

### **Operations**

In order to further the objectives of nondiscrimination, SMHA shall:

Include in the admissions briefings for all SMHA programs a section on compliance with Civil Rights laws. The briefings shall explain to all participants what should be done if they believe they have been discriminated against.

Prominently display Fair Housing posters in every development office owned by SMHA and in SMHA's administrative offices. Such posters shall be posted in such a manner as to be easily readable from a wheelchair.

Use the Equal Housing Opportunity logo and/or statement in all advertising and in all marketing publications of SMHA. SMHA shall be particularly conscious of human models used in its publications so as to avoid signaling any sense of discrimination.

SMHA shall use the local relay service from the local telephone relay service provider:

**Ohio Relay Service Dial - (800) 750-0750.**

**National Relay Service - 711**

As many publications as feasible shall be printed both in English and in Spanish or any other languages as may be commonly spoken within the jurisdiction. SMHA will try to employ staff with bi-lingual language capabilities in English and Spanish or any other language as may be commonly spoken within the SMHA jurisdiction or maintain a relationship with agencies that can perform the service.

### **E. SERVICE AND ACCOMMODATIONS POLICY**



It is the policy of the SMHA to provide courteous and efficient service to all applicants for housing assistance. In that regard, the SMHA will endeavor to accommodate persons with disabilities, as well as those persons with language and literacy barriers.

This policy is applicable to all situations described in this Admissions and Continued Occupancy Policy when a family initiates contact with SMHA, when SMHA initiates contact with a family including when a family applies, and when SMHA schedules or reschedules appointments of any kind.

It is the policy of SMHA to be service-directed in the administration of our housing programs, and to exercise and demonstrate a high level of professionalism while providing housing services to the families within our jurisdiction.

SMHA's policies and practices will be designed to provide assurances that all persons with disabilities will be provided reasonable accommodation so that they may fully access and utilize the housing program and related services. The availability of specific accommodations will be made known by including notices on SMHA forms and letters to all families, and all requests will be verified so that the SMHA can properly accommodate the need presented by the disability.

#### **Violence Against Women Act (VAWA)**

Nothing contained herein is to be construed nor will it be interpreted to violate applicable sections of Violence Against Women Act (Public Law 109-162), in agency plans, denial of assistance, termination of tenancy or lease, denial of moves, certifications, confidentiality and notification.

#### **Federal Americans with Disabilities Act of 1990**

With respect to an individual, the term "disability," as defined by the 1990 Act means:

A person with a physical or mental impairment that substantially limits one or more of the major life activities of an individual;

Has a record of such impairment; or is regarded as having such impairment. (The disability may not be apparent to others, i.e., heart condition).

#### **Undue Hardship**

Requests for reasonable accommodation from persons with disabilities will be granted upon verification that they meet the need presented by the disability and they do not create an "undue financial and administrative burden" for SMHA, meaning an action requiring "significant difficulty or expense."

In determining whether accommodation would create an undue hardship, the following guidelines will apply:

The nature and cost of the accommodation needed;

The overall financial resources of the facility or facilities involved in the provision of reasonable accommodation.

The number of persons currently employed at such facility, the number of families likely currently to need such accommodation, the effect on expenses and resources, or the likely impact on the operation of the facility as a result of the accommodation.

If more than one accommodation is equally effective in providing access to the SMHA's programs and services, the SMHA retains the right to select the most efficient or economical choice.

Any request for an accommodation that would enable a tenant to materially violate essential lease terms will not be approved, i.e. allowing nonpayment of rent, destruction of property, disturbing the peaceful enjoyment of others, etc.

### **Interpretation for Visual or Audible Impairments**

Documents intended for use by applicants and residents will be made available in formats accessible for those with vision or hearing impairments in compliance with the Fair Housing Act, 24 CFR 8.6, including communication by way of TDD/TTY for those applicants or program participants who are speech or hearing impaired.

### **Verification of a Request for Accommodation**

All requests for accommodation or modification of a unit will be verified with a reliable, knowledgeable professional: (A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third part who is in a position to know about the individual's disability, may also provide verification of a disability).

Requests for reasonable accommodation from persons with disabilities will be granted upon verification that they meet the need presented by the disability.

(Recertifications are completed by mail in).

### **Reasonable Accommodation**

Reasonable accommodation will be made for persons with a disability who require an advocate or accessible offices. A designee will be allowed to provide some information, but only with the permission of the person with the disability.

All PHA mailings will be made available in an accessible format upon request, as a reasonable accommodation.

### **Application Process**

For purposes of this section, the SMHA will make the following types of accommodations to persons with disabilities to facilitate the application process:

Permitting the submission of applications or certification forms via mail.

Permitting an authorized designee to participate in the application or certification process.

Providing assisted listening devices/ a certified sign language interpreter/ a Braille interpreter to facilitate the application or certification process.

### **Home Visits**

When requested and where the need for reasonable accommodation has been established, the SMHA will conduct home visits to residents to conduct annual and interim recertifications.

Requests for home visit recertifications must be received by the SMHA at least 30 days before the scheduled appointment date in order for the request to be considered.

### **Interpretation for Visual or Audible Impairments**

Documents intended for use by applicants and residents will be made available in formats accessible for those with vision or hearing impairments in compliance with the Fair Housing Act, 24 CFR 8.6, including communication by way of TDD/TTY for those applicants or program participants who are speech or hearing impaired.

### **Stark Metropolitan Housing Authority Effective Communication Policy**

Pursuant to 24 CFR 8.6 Stark Metropolitan Housing Authority (“SMHA”) will take appropriate steps to ensure effective communication with applicants, beneficiaries and members of the public. In so, SMHA will do the following:

Provide appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

Determine what auxiliary aids and services are necessary and give primary consideration to the requests of the individual with disabilities.

However, SMHA is not required to provide individually prescribed devices, readers for personal use or study, or other devices of personal nature.

Upon request, SMHA will communicate with applicants and participants in writing and/or by telephone, telecommunication devices for deaf persons (TDD’s) and/or any other equally effective communication system.

SMHA will adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities and facilities.

However, SMHA will not take any action that will result in a fundamental alteration in the nature of

a program or activity or cause undue financial and administrative burdens.

If an action would result in the alteration in the nature of a program or activity or in undue financial administrative burdens, SMHA will take alternative actions that will not result in an alteration in the nature of a program or activity or cause undue financial and administrative burdens.

And, in any event, SMHA will ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the programs and/or activities receiving HUD assistance.

### **Other Accommodations**

The SMHA utilizes organizations that provide assistance for hearing- and sight-impaired persons when needed.

Qualified families will be offered an accessible unit, upon request by the family, when an accessible unit is available. Due to the limited number of accessible units, SMHA will offer vacant accessible units with features for person with disabilities as follows:

- First, to a current occupant of another unit of the same development who requires the accessible features of the vacant, accessible unit and is occupying a unit not having the features;
- Second, if there is no current resident in the same development that requires the accessible features of the vacant unit, then it will be offered to a resident with disabilities residing in another development under SMHA's control, who has a disability that requires the special features of the vacant accessible unit;
- Third, if there is no current resident who requires the accessible features of the vacant, accessible unit, then the vacant accessible unit will be offered to an eligible qualified applicant with disabilities on the waiting list who can benefit from the accessible features of the available, vacant, accessible unit;
- Fourth, if there is not an eligible qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible unit, then the SMHA will offer the available accessible unit to an applicant on the waiting list who does not need the accessible features of the unit. However, the SMHA may require the applicant to execute a lease that requires the resident to relocate, at the SMHA's expense, to a non-accessible unit within thirty (30) days of notice by the SMHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. *See 24 CFR § 8.27.* Although the regulation does not mandate the use of the lease provision requiring the nondisabled family to move, as a best practice, HUD strongly encourages recipients to incorporate it into the lease, which is included by reference in the ACOP. By doing so, the SMHA may not have to retrofit additional units because accessible units are occupied by persons who do not need the features of

the units. In addition, making sure that accessible units are actually occupied by persons who need the features will make recipients better able to meet their obligation to ensure that their program is usable and accessible to persons who need units with accessible features. See 24 CFR 8.20. Before occupying with an able-body in the unit, the SMHA will over-house a disabled family qualifying for the unit, with the understanding that they will move to an appropriate sized accessible unit when one becomes available.

**F. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

**Overview**

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

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

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

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

**Oral Interpretation**

All oral interpretation will be communicated by an adult of at least 18 years of age.

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

**SMHA Policy**

The SMHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may

not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible, the SMHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHA's, and will standardize documents. Where feasible and possible, the PHA will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The interpreter may be a family member or friend.

### **Written Translation**

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

### **SMHA Policy**

In order to comply with written-translation obligations, the SMHA will take the following steps:

The SMHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

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

These "safe harbor" provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and reasonable.

SMHA will use the written documents supplied by HUD, whenever possible. All documents will be clearly marked "For Informational Purposes Only". All documents that will be executed for the files and program requirements will be in English.

### **Implementation Plan**

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

If the SMHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the SMHA's public housing program and services.

SMHA Policy

If it is determined the SMHA serves very few LEP persons, and the SMHA has very limited resources, the SMHA will not develop a written LAP, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. If SMHA determines that it serves or is under-serving LEP persons because of language barriers and SMHA has the available resources, the SMHA will develop a LAP. SMHA will use entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants. These entities will be contacted for input into the process.

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

**G. LANGUAGE ASSISTANCE**

The SMHA will provide readers to assist persons with literacy barriers in completing the application and certification process.

The SMHA will refer persons with literacy barriers to Language Line for assistance with the completion of the application and certification process.

**H. PUBLIC HOUSING MANAGEMENT ASSESSMENT SYSTEM (PHAS)**  
**OBJECTIVES [24 CFR 901 & 902]**

SMHA operates its public housing program with efficiency and can demonstrate to HUD or independent auditors that SMHA is using its resources in a manner that reflects its commitment to quality and service. SMHA policies and practices are consistent with the new Public Housing Assessment System (PHAS) outlined in the 24 CFR Parts 901 and 902 final published regulations.

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

**I. FAMILY OUTREACH**

SMHA will publicize and disseminate information to make known the availability of housing units and housing-related services for low-income families on a regular basis.

SMHA will communicate the status of housing availability to other service providers in the community. SMHA will advise them of housing eligibility factors and guidelines in order that they

can make proper referrals for those who seek housing.

SMHA will accept referrals from local providers for available housing. SMHA will determine housing eligibility factors of the applicants.

**J. QUALITY HOUSING AND WORK RESPONSIBILITY ACT (QHWRA)**

SMHA shall comply with the Quality Housing and Work Responsibility Act of 1998 (QHWRA). QHWRA amends the Housing Act of 1937 to include the following operational practices of the Public Housing program:

Deregulation and decontrol of public housing agencies, enabling agencies to perform as property and asset managers;

Flexibility in use of Federal assistance to enable the agency to leverage and combine assistance amounts with amounts obtained from other sources;

The facilitation of mixed income communities and the deconcentration of poverty;

An increased accountability to HUD with rewards for effective management of the Public Housing programs; and

Ability to create incentives and economic opportunities for residents of Public Housing to work, become self-sufficient.

**K. FEDERAL PRIVACY ACT**

SMHA's practices and procedures are designed to safeguard the privacy of applicants and residents.

Applicants and residents, including all adults in their households, are required to sign the form HUD-9886, "Authorization for Release of Information and Privacy Act Notice." This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD will release family information.

SMHA's policy regarding release of information is in accordance with State and local laws that may restrict the release of family information.

Files will never be left unattended or placed in common areas.

Criminal Background check information will be kept in a separate file with access only by persons authorized by local law enforcement and SMHA. Upon making a determination of eligibility, the criminal background check information will be destroyed, unless prevented by State statutes or other laws that would prevent the SMHA from destroying said document.



Any and all information which would lead one to determine the nature and/or severity of a person's disability will not be placed in applicant or tenant files, but must be returned or destroyed. The personal information will be reviewed by the authorized SMHA representative, review of documents will be noted in the file and the originals will be returned to the applicant/tenant. If there is a need to maintain this information, it must be kept in a separate folder and marked "confidential". All requests for access and granting of accommodations based on this information must be approved by the staff person designated by the Executive Director. The personal information must not be released except on an "as needed" basis in cases where an accommodation is under consideration.

SMHA staff will not discuss or access family information contained in files unless there is a business reason to do so. Staff will be required to disclose whether s/he has relatives living in Public Housing or assisted housing. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

#### **L. POSTING OF REQUIRED INFORMATION**

SMHA will maintain bulletin boards in conspicuous areas of the Administrative Office and the individual site development offices. The bulletin boards will contain:

- Statement of policies and procedures governing Admission and Continued Occupancy Policy (ACOP)
- A notice of where the SMHA 5-year Plan and Annual Plan are available
- Information on application taking
- Directory of SMHA's housing sites including names, address of offices and office hours at each facility
- Income limits for admission
- Current schedule of routine maintenance charges
- A copy of the lease
- SMHA's grievance procedures
- A Fair Housing Poster
- An Equal Opportunity in Employment poster
- Current Resident Notices
- Required Public Notices

- Security Deposit Charges
- Schedule of Utility Allowances (if applicable)
- Flat Rent Schedule
- Limited English Policy
- Information on Screening and Eviction for Drug Abuse or Other Criminal Activity
- Banned List- if required
- PHAS Scores
- NSPIRE Scores

#### **M. TERMINOLOGY**

The Stark Metropolitan Housing Authority is referred to as "PHA" or "Housing Authority" or "SMHA" throughout this document.

"Family" is used interchangeably with "Applicant," "Resident" or "Participant" or and can refer to a single-person family.

"Tenant" is used to refer to participants in terms of their relation as a lessee to the SMHA as the landlord.

"Landlord" refers to the SMHA.

"Disability" is used where "handicap" was formerly used.

"Noncitizens Rule" refers to the regulation effective June 19, 1995, restricting assistance to U.S. citizens and eligible immigrants.

See Glossary for other terminology.

## **Chapter 2**

### **ELIGIBILITY FOR ADMISSION** **[24 CFR Part 960, Subpart B]**

#### **INTRODUCTION**

This Chapter defines both HUD's and SMHA's criteria for admission and denial of admission to the program. The policy of SMHA is to strive for objectivity and consistency in applying these criteria to evaluate the qualifications of families who apply. SMHA staff will review all information provided by the family carefully and without regard to factors other than those provided with the regulation and SMHA policies. Families will be provided the opportunity to explain their circumstances, to furnish additional information, if needed, and to receive an explanation of the basis for any decision made by SMHA pertaining to their eligibility.

Basic eligibility. An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403 of this title, must be income-eligible, as described in this section, and must meet the net asset and property ownership restriction requirements in 24 CFR § 5.618. Such eligible applicants include single persons.

#### **Exemption from Eligibility Requirements for Police Officers and Other Security Personnel**

The Authority shall be permitted to admit to Public Housing, police officers and other security personnel who are not otherwise eligible for such housing under any other admission requirements or procedures (i.e. police officers would not be required to be income eligible to qualify for admission to the Public Housing program.) HUD's objective in granting this exemption is to permit long-term residency in public housing developments of police officers and security personnel whose visible presence is expected to serve as a deterrent to criminal activity in and around housing.

Before SMHA would be permitted to house police officers or other security personnel under this provision and as added in the five-year plan, SMHA would submit to HUD the Housing Authority's standards and criteria for approval/waiver of admission criteria in accordance with 24 CFR 960.501.

#### **A. QUALIFICATION FOR ADMISSION**

It is SMHA's policy to admit qualified applicants only. An applicant is qualified if he or she meets the following criteria:

Is a family as defined by regulation.

Where at least one member of the household is either a U.S. citizen or is an eligible non-citizen. (24 CFR Part 5, Subpart E).

Has an Annual Income at the time of admission that does not exceed the low-income limits

for occupancy established by HUD and posted separately in the SMHA offices.

The Quality Housing and Work Responsibility Act of 1998 authorizes PHAs to admit families whose income does not exceed the low-income limit (80% of median area income) and the SMHA is required to meet the annual 40% targeted income requirement of extremely low-income families (families whose income does not exceed 30% of median area income or the poverty rate- whichever is the greater of the two). It is the policy of the SMHA to meet the income-targeting requirement.

Provides a Social Security number (SSN) for all family members that have a SSN for anyone declaring eligibility or will provide written certification that they do not have Social Security numbers for anyone that is not declaring eligibility for the program;

Must meet the net asset and property ownership restriction requirements in § 5.618.

Meets or exceeds the standards for the criminal background check;

Meets the criteria that the head of household is of legal age to execute the required contracts;

Is not on the SMHA banned list;

Meets or exceeds the tenant Selection and Suitability Criteria as set forth in this policy.

### **Timing for the Verification of Qualifying Factors**

The qualifying factors of eligibility will be verified when the family applies and certain items re-verified when the family has been offered housing and is preparing to sign a lease.

## **B. FAMILY COMPOSITION**

### **Definition of Family**

The applicant must qualify as a Family.

*Family* includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be:

(i) An elderly person, displaced person, disabled person, near-elderly person, or any other single person;

(ii) An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

A single person who is not elderly, displaced, or a person with disabilities, or the remaining member of a tenant family is eligible;

Two or more elderly or disabled persons living together, or one or more elderly or disabled persons living with a live-in aide is a family;

Two or more near-elderly persons living together, or one or more near-elderly persons living with a live-in aide.

The definition of “family” in the HOTMA rule incorporates revisions made to the 1937 Act by the Fostering Stable Housing Opportunities provisions of the Consolidated Appropriations Act, 2021, which expands the definition of “single persons.” Due to the modification of the statute prior to the HOTMA rule, HUD is making a conforming change to 24 CFR § 5.403 to align with the new statutory language.

For the purposes of the definition of a qualified family and admission of a single higher education student, the restrictions on assistance to students enrolled in an institution of higher education does not apply to public housing.

### **Head of Household**

The head of household is the adult member of the household who is designated by the family as head, is wholly or partly responsible for paying the rent, and has the legal capacity to enter into a lease under State/local law.

Emancipated minors who qualify under State law will be recognized as head of household if there is a court order recognizing them as an emancipated minor.

Persons who are married are legally recognized as adults under State law.

A family may designate an elderly or disabled family member as head of household solely to qualify the family as an Elderly Family, provided that the person is at least partially responsible for paying the rent (has income).

**Spouse of Head**

Spouse means the husband or wife of the head. The spouse is equally responsible for the lease with the Head of Household.

For proper application of the Noncitizens Rule, the definition of spouse is: the marriage partner whom, in order to dissolve the relationship, would have to be divorced. It includes the partner in a common law marriage. The term "spouse" does not apply to boyfriends, girlfriends, significant others, or co-heads.

**Co-head**

An adult individual in the household who is equally responsible for the lease with the Head of Household. A household may have either a spouse or co-head, but not both. A co-head never qualifies as a dependent.

**Live-In Aide**

A Family may include a live-in aide provided that such live-in aide:

Is determined by SMHA to be essential to the care and well being of an elderly person, a near-elderly person, or a person with disabilities,

Is not obligated for the monetary support of the person(s), and

Would not be living in the unit except to provide care for the person(s).

A live-in aide is not considered to be an assisted family member and has no rights or benefits under the program:

Income of the live-in aide will not be counted for purposes of determining eligibility or level of benefits.

Live-in aides are not subject to Non-Citizen Rule requirements.

Live-in aides may not be considered as a remaining member of the tenant family.

Relatives are not automatically excluded from being live-in aides, but they must meet all of the elements in the live-in aide definition described above.

Family members of a live-in aide may also reside in the unit, providing that the presence of the family member(s) does not overcrowd the unit. The family will be eligible to increase the bedroom

size by one bedroom to accommodate the live-in aide status.

A Live-in Aide may only reside in the unit with the approval of SMHA. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or caseworker. The verification provider must certify that a live-in aide is needed for the care of the family member who is elderly, near-elderly (50-61), or disabled.

Before the SMHA approves the addition of a live-in aide on behalf of a resident, the resident must submit a specific live-in aide's name and information for approval by the SMHA within 30 calendar days of the SMHA's notification.

If the 30 calendar days expire, the resident will have to resubmit an application for approval of a live-in aide.

A specific live-in aide may only reside in the unit with the approval of the SMHA. The SMHA shall make the live-in aide subject to the agency's screening criteria.

The SMHA will require the live-in aide to execute a rider agreeing to abide by the terms and conditions of occupancy set forth in the lease agreement. If the live-in aide violates provisions of the rider, the SMHA may take action against the live-in aide separate from action against the assisted family. The SMHA is not restricted from taking action directly against the family for the actions of the live-in aide. The live-in aide agrees to vacate immediately after the person declaring the need should vacate the unit or become deceased.

If the live-in aide or their family members participate in drug-related or criminal activity, the SMHA will rescind the aide's right to occupy the unit. When the agency takes such action against the live-in aide, the aide must immediately vacate the unit and is not entitled to the grievance hearing process of the agency.

SMHA has the right to disapprove a request for a live-in aide based on the "Other Eligibility Criteria" described in this Chapter.

### **Dependent.**

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

The definition of "dependent" under § 5.603 was revised to explicitly **exclude** foster children and foster adults. SMHA may not provide a dependent deduction under § 5.611(a) for a foster child or foster adult. Consistent with the determination that foster adults/children are not family members, income earned by foster adults/children, payments received for the care of foster adults/children, and expenses incurred related to foster adults/children are not considered to be family income or family expenses used in the determination of annual income. Reasonable unreimbursed child-care expenses (as defined in § 5.603) for foster children under 13 years of

age may be deducted from annual income if those expenses are necessary to enable a member of the family to work, look for work, or to further their education.

Families may be eligible to continue to receive the child-care expense deduction, pursuant to a hardship exemption, when the unreimbursed child-care expense is for the care of a foster child under the age of 13, but only if the unreimbursed child-care expense for the care of the foster child is paid from the family's annual income (and not another source, such as a stipend from a child welfare agency).

When a member of an assisted family is temporarily placed in foster care (as confirmed by the state child welfare agency), the member is still counted as a family member in the unit from which they were removed. This means that a foster child or foster adult could be considered an assisted family member in one household while also being a foster child or adult in another household and receiving consideration in both families' voucher size and/or unit size.

**Foster adult.**

Foster adult means a member of the household who is 18 years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

**Foster child.**

Foster child means a member of the household who meets the definition of a foster child under State law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

Foster adults/children are not considered **family members** and must not be included in calculations of income for eligibility and rent determination purposes. However, foster adults/children are considered **household members** and must be included when determining unit size or subsidy standards based on established policies.

**Minor.**

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

**C. MANDATORY SOCIAL SECURITY NUMBERS [24 CFR 5.216]**

Families are required to provide verification of Social Security Numbers for all family members that are claiming eligible citizenship status. This requirement also applies to persons joining the



family after admission to the program.

Failure to furnish verification of social security numbers is grounds for denial of admission or termination of tenancy.

The SMHA must request the applicant and participant (including each member of the household), who are not exempt under **SSN Disclosure**, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

- An original SSA-issued document, which contains the name and SSN of the individual; or
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

### **SSN Disclosure**

In accordance with 24 CFR 5.216, applicants and participants (including each member of the household) are required to disclose his/her assigned SSN, with the exception of the following individuals:

- Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.
  - A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for housing assistance and cannot be housed.
  - A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. The SMHA may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
- Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. The SMHA may confirm HUD's validation of the participant's SSN by viewing the household's ***Summary Report*** or the ***Identity Verification Report*** in the EIV system.
- Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.
- Unless excepted as stated above, the SMHA determines that the assistance applicant is

otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation as stated above to verify the SSN of each member of the household.

- If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission, the assistance applicant may become a participant, so long as the documentation required is provided to the SMHA within 90 calendar days from the date of admission into the program. The SMHA must grant an extension of one additional 90-day period if the SMHA determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required within the required time period, the processing entity must follow the provisions of termination of the assistance.

Disclosure of SSNs is considered information subject to the Federal Privacy Act (5 USC 552a, as amended). In accordance with 24 CFR 5.212, the collection, maintenance, use, and dissemination of SSNs, any information derived from SSNs and income information must be conducted, to the extent applicable, in compliance with that Act and all other provisions of Federal, State, and local law.

There is no provision under HUD regulations which prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, some state laws prohibit an individual with ineligible immigration status from executing a contract (i.e. lease or other legal binding documents). If this is the case in your state, the family must **not** be admitted into the program.

#### **D. CITIZENSHIP/ELIGIBLE IMMIGRATION STATUS**

In order to receive assistance, a family member must be a U.S. citizen or eligible immigrant. Individuals who are neither may elect not to contend their status. Eligible immigrants are persons who are in one of the six immigrant categories as specified by HUD. Those six categories are:

1. A noncitizen who has been lawfully admitted to the U. S. for permanent residence, as defined by Section 101(a)(20) of the Immigration and Nationality Act (INA) as an immigrant, as defined by Section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 2101(a)(15), respectively (immigrants). This category includes a noncitizen who has been admitted under Section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), and who has been granted lawful temporary resident status;
2. A noncitizen who entered the U. S. before January 1, 1972, or such later date as enacted by law, and who has continuously maintained residence in the U. S. since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for

- permanent residence as a result of an exercise of discretion by the Attorney General under Section 249 of the INA (8 U.S.C. 1259);
3. A noncitizen who is lawfully present in the U. S. pursuant to an admission under Section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under Section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under Section 203(a)(7) of the INA (U.S.C. 1153(a)(7) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;
  4. A noncitizen who is lawfully present in the U.S. as a result of an exercise of discretion by the Attorney General for emergent reasons or for reasons deemed strictly in the public interest under Section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);
  5. A noncitizen who is lawfully present in the U. S. as a result of the Attorney Generals' withholding deportation under Section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or
  6. A noncitizen lawfully admitted for temporary or permanent residence under Section 245A of the INA (8 U.S.C. 1225a) (amnesty granted under INA 245A).

For the Citizenship/Eligible Immigration requirement, the status of each member of the family is considered individually before the family's status is defined. A 214 will be executed by all members of the family prior to admission.

Mixed Families. A family is eligible for assistance as long as at least one member is a citizen or eligible immigrant. Families that include eligible and ineligible individuals are called "mixed families". Such applicant families will be given notice that their assistance will be pro-rated and that they may request a hearing if they contest this determination. If such a family chooses flat rent, the flat rent will not be pro-rated if the flat rent is greater than the Public Housing Maximum Rent. If the Public Housing Maximum Rent is greater than the flat rent, and the family chooses flat rent, the flat rent will be pro-rated.

No eligible members. Applicant families that include no eligible members will be ineligible for assistance. Such families will be denied admission and offered an opportunity for a hearing.

Non-citizen students defined by HUD in the noncitizen regulations are not eligible for assistance.

No individual or family applying for housing assistance may receive such housing. assistance prior to the affirmative establishment and verification of eligibility of at least one individual or family member.

## **E. OTHER ELIGIBILITY CRITERIA**

All applicants will be processed in accordance with HUD's regulations (24 CFR Part 960) and sound management practices. Applicants will be required to demonstrate the ability to comply with essential provisions of the lease as summarized below.

All applicants and all household members must demonstrate through an assessment of current and past behavior the ability:

- to pay rent and other charges as required by the lease in a timely manner;
- to care for and avoid damaging the unit and common areas;
- to use facilities, appliances and equipment in a reasonable way;
- to create no health or safety hazards, and to report maintenance needs in a timely manner;
- not to interfere with the rights and peaceful enjoyment of others and to avoid damaging the property of others;
- not to engage in criminal activity or alcohol abuse that threatens the health, safety or right to peaceful enjoyment of other residents or staff and not to engage in drug-related criminal activity on or off SMHA premises;
- not to have ever been convicted of manufacturing or producing methamphetamine, also known as "speed," on the premises of assisted housing;
- not to be subject to lifetime sex offender registration requirement;
- not owe debts to other subsidized landlords;
- is not on the SMHA banned list;
- not to have committed fraud against any assisted housing program;
- to comply with necessary and reasonable rules and program requirements of HUD and SMHA; and,
- to comply with local health and safety codes.

In the event of the receipt of unfavorable information with respect to an applicant, the SMHA must consider the time, nature and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Chapter 2-G, the SMHA may also need to consider whether the cause of the unfavorable information may be that the applicant is a victim of domestic violence, dating violence, sexual assault or stalking.

**Denial of Admission for Previous Debts to This or Any Other PHA**

Previous outstanding debts to SMHA or any Public Housing Authority (PHA) resulting from a previous tenancy in the public housing, Section 8, or assisted housing program must be paid in full prior to approval of the housing application. SMHA may consider extreme hardships and allow a Repayment agreement for debt owed and still approve the application (if all other eligibility criteria is met) and be admitted to program.

At the time of initial application, the applicant must pay any previous debt prior to any potential approval of application being granted.

Either spouse and/or co-head is responsible for the entire debt incurred as a previous SMHA tenant. Children of the head or spouse who had incurred a debt to SMHA will not be held responsible for the parent's previous debt. In no case will the debt be forgiven.

**Denial of Admission for Previous Debts to Landlords**

SMHA reserves the right, in the case of extreme hardship, i.e. homelessness, to allow the applicant to enter into a Payment Agreement for a debt to a previous subsidized landlord. Full documentation of the hardship will be required. In no case will the debt be forgiven.

**F. NON-ECONOMIC ELIGIBILITY CRITERIA (Including Criminal/Drug)**

**Purpose**

All federally assisted housing is intended to provide a place to live and raise families, not a place to commit crime, to use or sell drugs or terrorize neighbors. It is the intention of the SMHA to fully endorse and implement a policy that is designed to:

Help create and maintain a safe and drug-free community;

Keep our program participants free from threats to their personal and family safety;

Support parental efforts to instill values of personal responsibility and hard work;

Help maintain an environment where children can live safely, learn and grow up to be productive citizens; and

Assist families in their vocational/educational goals in the pursuit of self-sufficiency.

As part of eligibility determination, the Authority will screen each applicant household to assess its suitability as renters.

Factors not related to economics to be considered are housekeeping habits, prior history as a tenant, criminal records, and the ability of the applicant to maintain the responsibilities of tenancy including but not limited to damages, threats to landlord(s), having unauthorized occupants or any other relevant tenancy information.

In determining qualifications for tenancy, SMHA shall consider the following items:

Whether the conduct of the applicant in present or prior housing has been such that admission to the program would adversely affect the health, safety, or welfare of other residents, or the physical, environmental, or financial stability of the development.

SMHA shall rely upon sources of information which may include, but not limited to, SMHA records, the records of other housing authorities, personal interviews with the applicant or tenant, home visits, interviews with previous landlords, employers, family social workers, parole officers, criminal and court records, clinics, physicians, or the police department. This will be done in order to determine whether the individual attributes, prior conduct, and behavior of a particular applicant or tenant is likely to interfere with other tenants in such a manner as to diminish their enjoyment of the premises by adversely affecting their health, safety, or welfare.

In making a decision to deny assistance, the SMHA will consider factors discussed in Chapter 2-G, PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING [Pub.L. 109-162]

An authorized representative of SMHA shall document any pertinent information relative to the following:

Criminal Activity – including the activities further defined herein as of a criminal nature.

Continuous Course of Criminal Activity – including repeated criminal charges over a period of time including the activities further defined herein as of a criminal nature.

Pattern of Violent Behavior – includes evidence of repeated acts of violence on the part of an individual, or a pattern of conduct constituting a danger to neighbors' peaceful enjoyment of their premises. HUD defines violent criminal activity as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property, and the activity was/is being engaged in by any family member.

Pattern of Drug Use – includes a determination by SMHA that the applicant has exhibited a pattern of illegal use of a controlled substance that might interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Open Warrants - includes a determination by SMHA that the applicant currently has outstanding open warrant(s) for criminal activity or failure to comply with any previous court order. SMHA may give consideration as to the circumstances of the warrant so as to not unreasonably deny admission to otherwise eligible applicants.

Drug Related Criminal Activity – includes a determination by SMHA that the applicant has been involved in the illegal manufacture, sale, distribution, use or possession of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Pattern of Alcohol Abuse – includes a determination by SMHA that the applicant's pattern of alcohol abuse might interfere with the health, safety or right to peaceful enjoyment of the premises by other residents.

Initiation of Threats – or behaving in a manner indicating intent to assault employees or other residents.

Abandonment of a Public Housing Unit or Other Assisted Housing Unit ("skipped") – any abandonment of a unit assisted by HUD without advising the administering housing authority's personnel of intent to vacate so that the unit may be properly secured and protected from any vandalism.

Non-payment of Rightful Obligations – including rent and/or utilities and other charges owed to SMHA or another housing authority.

Intentionally Falsifying an Application for Leasing – including providing false information about family income and family composition, using an alias on the application for housing, or making any other material false statement or omission intended to mislead.

Record of Serious Disturbances of Neighbors, Destruction of Property or Other Disruptive or Dangerous Behavior – consists of patterns of behavior which endanger the life, safety, or welfare of other persons by physical violence, gross negligence or irresponsibility, which damage the equipment or premises in which the applicant resides, or which are seriously disturbing to neighbors or disrupt sound family and community life, indicating the applicant's inability to adapt to living in a multi-family setting. Includes judicial termination of tenancy in previous housing on grounds of nuisance or objectionable conduct, or frequent loud parties, which have resulted in serious disturbances of neighbors.

Unsanitary Housekeeping – includes the creation of a fire hazard through acts such as hoarding rags, papers, or other materials; severe damages to premises and equipment caused by the family or persons under control of the family; seriously affecting neighbors by causing infestations, foul odors, depositing garbage outside of normal trash receptacles, or serious neglect of the premises. This category does not include families whose housekeeping is found to be superficially unclean or due to lack of orderliness, where such conditions do not create a problem for neighbors or a threat to health and safety.

Destruction of Property – damage to any previous rentals or property that the family

has resided in.

In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct, and to factors that might indicate a reasonable probability of favorable future conduct.

The SMHA shall not admit persons evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug related criminal activity within the past three (3) years preceding date of interview. (See also Item 6 below re methamphetamine.)

The SMHA may waive this requirement if the person demonstrates that he/she:

Has successfully completed a supervised drug or alcohol rehabilitation program approved by SMHA;

Has otherwise been rehabilitated successfully;

Is participating in a supervised drug or alcohol rehabilitation program; or,

The circumstances leading to the eviction no longer exists (i.e. the individual involved in drugs is no longer in the household because the person is incarcerated).

In no event shall a person convicted of manufacturing or producing methamphetamine (also called "speed") be determined eligible for public housing. Such individuals are permanently denied admission to all federally assisted housing programs.

The SMHA shall not admit persons whose pattern of illegal use of a controlled substance or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents within the past three (3) years preceding the date of interview.

The SMHA shall not admit persons who have engaged in violent criminal activity within the three (3) years preceding the date of interview.

The SMHA shall not admit persons that have been engaged in the serious illegal drug activity within the three (3) years preceding the date of interview.

Persons previously incarcerated must demonstrate behavior that is acceptable outside of the incarcerated environment for three (3) years. Consideration will be given to whether the person was incarcerated at a local county jail or state penitentiary and the amount of time the individual was incarcerated so as to not unreasonably deny admission to otherwise eligible applicants.

The SMHA shall not admit any person classified as a "habitual criminal" or any person subject to a sex offender registration requirement under a State sex offender registration



program.

The SMHA shall not admit persons whose conduct in present or prior housing has been such that admission to the program would adversely affect the health, safety, or welfare of other residents, or the physical environment, or the financial stability of the development.

The SMHA shall not admit persons who have been released from prison for drug related, violent or serious criminal activity within 3 years prior to the date of application.

If in the past the SMHA initiated a lease termination, which may or may not have resulted in eviction for any reason cited under the Notice (PIH 96-27) or amended changes, for a family, as a prior resident of public housing, the family shall be ineligible for admission to Public Housing for a three (3) year period beginning on the date of such eviction. The SMHA may not waive this requirement, even in the event of rehabilitation efforts on part of the family or family member.

In determining the criminal background for admission, the SMHA will not deny the family if the member is a “victim” of domestic violence as stated and protected under the Violence Against Women Act.

### **Administration**

All screening procedures shall be administered fairly and in such a way as not to discriminate on the basis of race, color, nationality, religion, sex, familial status, sexual orientation, disability or against other legally protected groups, and not to violate right to privacy.

To the maximum extent possible, the SMHA will involve other community and governmental entities in the promotion and enforcement of this policy.

In evaluating evidence of negative past behavior, the SMHA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

In order to obtain access to the records the SMHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903]. The SMHA will perform criminal background checks through law enforcement agencies for all adult household members.

The SMHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

The SMHA may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

If the results of the criminal background check indicate there may have been past criminal activity,

but the results are inconclusive, the SMHA may request the applicant to be fingerprinted and will request the information from the National Crime Information center (NCIC).

If the SMHA proposes to deny admission based on a criminal record or on lifetime sex offender registration information, the SMHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission [24 CFR 5.903(f) and 5.905(d)].

The SMHA will ensure that any criminal record received is maintained confidentially, not misused, or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

### **Screening for Drug Abuse and Other Criminal Activity**

In an effort to prevent drug related and other criminal activity, as well as other patterns of behavior that pose a threat to the health, safety or the right to peaceful enjoyment of the premises by other residents, the SMHA will endeavor to screen applicants as thoroughly and fairly as possible.

If in the past the SMHA initiated a lease termination, which may or may not have resulted in eviction for any reason cited under the Screening and Eviction for Drug Abuse and Other Criminal Activity Notice, for a family, as a prior resident of public housing, the SMHA shall have the discretion to consider all circumstances of the case regarding the extent of participation by non-involved family members.

Initial screening will be limited to routine inquiries of the family and any other information provided to the SMHA regarding this matter. The inquiries will be standardized and directed to all applicants by inclusion in the application form.

If as a result of the standardized inquiry, or the receipt of a verifiable referral, there is indication that the family or any family member is engaged in drug-related criminal or violent criminal activity, the SMHA will conduct closer inquiry to determine whether the family should be denied admission.

If the screening indicates that any family member has been arrested or convicted within the prior 3 years for serious drug-related or violent criminal activity, the SMHA shall obtain verification through police/court records.

### **Use of Law Enforcement Records**

The SMHA will check criminal history for all **applicants who are 18 years of age or older** to determine whether any member of the family has engaged in violent or serious drug-related criminal activity.

The SMHA will check criminal history for all **applicants who are 18 years of age or older** to determine whether any member of the family is subject to a lifetime sex offender registration

requirement.

Verification of any past activity will be done at application and if needed re-verified for additional charges within 60 days prior to lease signing and will include a check of conviction records.

### **Standard for Violation**

Persons evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug-related criminal activity are ineligible for admission to Public Housing for a **three-year** period beginning on the date of such eviction.

The SMHA will admit the household if the SMHA determines:

The person demonstrates successful completion of a rehabilitation program approved by the SMHA, or

The circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person has died or is imprisoned.

No member of the applicant's family may have engaged in serious drug related or violent criminal activity within the past **3 years**.

The SMHA will deny participation in the program to applicants where the SMHA determines there is reasonable cause to believe that the person is illegally using a controlled substance or engages in serious drug-related or other criminal activity. The same will apply if it is determined that the person abuses alcohol in a way that may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents. This includes cases where the SMHA determines that there is a pattern of illegal use of controlled substances or a pattern of alcohol abuse.

"Engaged in or engaging in or recent history of" drug-related criminal activity means any act within the past 3 years by applicants or participants, household members, or guests which involved drug-related criminal activity including, without limitation, serious drug-related criminal activity, serious possession and/or use of narcotic paraphernalia, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

"Engaged in or engaging in or recent history of" criminal activity means any act within the past 3 years by applicants or participants, household members, or guests which involved criminal activity that would threaten the health, safety or right to peaceful enjoyment of the public housing premises by other residents or employees of the SMHA, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

In evaluating evidence of negative past behavior, the SMHA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

The SMHA will not waive this policy.

The SMHA may waive the requirement regarding drug-related criminal activity if:

The person demonstrates successful completion of a credible rehabilitation program approved by the SMHA; or

The person demonstrates consistent participation in professional rehabilitation for two of the past three years; or

The individual involved in drug-related criminal activity is no longer in the household because the person is incarcerated.

The SMHA may permit eligibility for occupancy and impose conditions that the involved family member(s) does not reside in the unit. The SMHA will consider evidence that the person is no longer in the household such as; divorce decree/incarceration/death/copy of a new lease with the owner's telephone number and address/or other substantiating evidence.

### **Permanent Denial of Admission**

The SMHA will permanently deny admission to public housing persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law. "Premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds. The SMHA will not waive this requirement.

### **Prohibition on Persons Subject to Lifetime Sex Offender Registration Requirement**

The SMHA will permanently deny admission to public housing to any family in which a family member is subject to a lifetime sex offender registration requirement. This provision will not be waived. The SMHA shall perform necessary criminal history background checks in the State where the housing is located and in any other States where household members are known to have resided.

### **Other criminal activity**

"Other criminal activity" means a history of criminal activity involving crimes of actual or threatened violence to persons or property, or a history of other criminal acts, conduct or behavior which would adversely affect the health, safety, or welfare of other residents.

For the purposes of this policy, this is construed to mean that a member of the current family has been arrested or convicted of any criminal or serious drug-related criminal activity within the past 3 years.

HUD defines violent criminal activity as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property, and the activity

is being engaged in by any family member.

Applicants and/or their household members who have been convicted of criminal sexual conduct, including but not limited to sexual assault, incest, statutory sexual seduction, open and gross lewdness, or child abuse, and are required by law to register as a sex offender will be prohibited from participation in the public housing program.

No family member may have engaged in or threatened abusive or violent behavior toward SMHA personnel at any time.

No family member may have committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program in the last 3 years.

### **Evidence**

The SMHA must have evidence of the violation.

"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 is not to 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, evidence gathered by SMHA inspectors and/or investigators, and evidence gathered from the SMHA Hotline.

The SMHA may pursue fact-finding efforts as needed to obtain credible evidence.

### **Confidentiality of Criminal Records**

The SMHA will ensure that any criminal record received is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

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

### **Disclosure of Criminal Records to Family**

Before the SMHA takes any adverse action based on a criminal conviction record, the applicant and subject of record will be provided with a copy of the criminal record and an opportunity to dispute the record. Applicants will be provided an opportunity to dispute the record at an informal

hearing. Tenants may contest such records at the grievance hearing or court hearing in the case of evictions.

### **Review**

If information is revealed that would cause the SMHA to deny admission to the household and the person disputes the information, he/she shall be given an opportunity for an informal review according to SMHA's grievance procedures outlined in the Chapter on Complaints, Grievances and Appeals.

### **G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING [Pub.L. 109-162]**

The Violence against Women Reauthorization Act of 2013 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. Specifically, Section 607(2) of VAWA adds the following provision to Section 6 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the public housing program:

Every contract for contributions shall provide that . . . the public housing agency shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault or stalking.

### **Definitions**

As used in VAWA:

- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship

- The frequency of interaction between the persons involved in the relationship
- The term *stalking* means:
  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- The term *affiliated individual* means, with respect to a person –
  - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
  - Any individual, tenant, or lawful occupant living in the household of that person.

### **Notification and Victim Documentation**

#### **SMHA Policy**

The SMHA acknowledges that a victim of domestic violence, dating violence, sexual assault or stalking may have an unfavorable history that would warrant denial under the SMHA's policies. Therefore, if the SMHA makes a determination to deny admission to an applicant family on the basis of an unfavorable history, the SMHA will include in its notice of denial a statement of the protection against denial provided by VAWA and will offer the applicant the opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault or stalking.

The documentation must include two elements:

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking

One of the following:

- A police or court record documenting the actual or threatened abuse
- A record of an Administrative Agency
- Documentation from a Mental Health professional
- A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable

professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The applicant must submit the required documentation within 14 days of being requested by the Authority. If the applicant so requests, the SMHA may grant an extension of 10 business days, and will postpone scheduling the applicant's informal hearing until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant the SMHA determines the family is eligible for assistance, no informal hearing will be scheduled and the SMHA will proceed with admission of the applicant family.

### **Perpetrator Removal or Documentation of Rehabilitation**

#### **SMHA Policy**

In cases where an applicant family includes the perpetrator as well as the victim of domestic violence, dating violence, sexual assault or stalking, the SMHA will proceed as above but will require, in addition, either (a) that the perpetrator be removed from the applicant household and not reside in the public housing unit or (b) that the family provide documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment.

If the family elects the second option, the documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

This additional documentation must be submitted within the same time frame as the documentation required above from the victim.

### **SMHA Confidentiality Requirements**

All information provided to the SMHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

### **H. SCREENING FOR SUITABILITY** [24 CFR 960.204, 960.205]

In developing its admission policies, the aim of the SMHA is to attain a tenant body composed of



families with a broad range of incomes and to avoid concentrations of the most economically deprived families and families with serious social problems. It is the policy of SMHA to deny admission to applicants whose habits and practices may reasonably be expected to have a detrimental effect on the operations of the development neighborhood or on the quality of life for its residents.

SMHA will conduct a detailed interview of all applicants. The interview form will contain questions designed to evaluate the qualifications of applicants to meet the essential requirements of tenancy. All information will be subject to third party verification.

An applicant's intentional misrepresentation of any information related to eligibility, award of preference for admission, housing history, allowances, family composition or rent will result in denial of admission.

Applicants must be able to demonstrate the ability and willingness to comply with the terms of the lease, either all or with assistance which they can demonstrate that they have or will have at the time of admission. (24 CFR 8.2 Definition: Qualified Individual with Handicaps) The availability of assistance is subject to verification by SMHA.

The SMHA's minimum age for admission as head of household is 18. This requirement is to avoid entering into leases that would not be valid or enforceable under applicable law. Exception to the age requirement may be granted to those with emancipation status as granted by a court of law.

SMHA will not allow under any circumstances a parent or legal guardian to co-sign a lease on behalf of an applicant in order to bypass the age requirement.

As a part of the final eligibility determination, SMHA will screen each applicant household to assess their suitability as renters.

The SMHA will complete a rental history check with subsidized landlords on all applicants.

SMHA may complete a credit check of each applicant so as to determine past rental history, including any possibility of bad debts to any federally assisted housing programs.

SMHA shall rely upon sources of information which may include, but not be limited to, SMHA records, personal interviews with the applicant or tenant, interviews with previous landlords, employers, family social workers, parole officers, criminal and court records, clinics, physicians or the police department.

SMHA's examination of relevant information pertaining to past and current habits or practices will include, but is not limited to, an assessment of:

- The applicant's past performance in meeting financial obligations, especially rent.
- Eviction or a record of disturbance of neighbors sufficient to warrant a police call,

destruction of property, or living or housekeeping habits at present or prior residences which may adversely affect the health, safety, or welfare of other tenants or neighbors.

- Any history of criminal activity on the part of any applicant family member involving criminal acts, including serious drug-related criminal activity.
- Any history or evidence of repeated acts of violence on the part of an individual, or a pattern of conduct constituting a danger to peaceful occupancy by neighbors.
- Any history of initiating threats or behaving in a manner indicating intent to assault employees or other tenants.
- Any history of alcohol or substance abuse that would threaten the health, welfare, or right to peaceful enjoyment of the premises by other residents.
- The ability and willingness of an applicant to comply with the essential lease requirements will be verified and documented by SMHA. The information to be considered in the screening process shall be reasonably related to assessing the conduct of the applicant and other family members listed on the application in present and prior housing.

The history of applicant conduct and behavior must demonstrate that the applicant family can reasonably be expected not to:

- Interfere with other residents in such a manner as to diminish their peaceful enjoyment of the premises by adversely affecting their health, safety, or welfare. [24CFR 960.205(b)]
- Adversely affect the physical environment or financial stability of the project. [24CFR 960.205(b)]
- Violate the terms and conditions of the lease. [24CFR 8.3].
- Require services from SMHA staff that would alter the fundamental nature of the SMHA's program. [24 CFR 8.3]

### **Rent Paying Habits**

SMHA will examine any Housing Authority records from a prior tenancy and will request written references from any previous subsidized landlord the applicant has had.

Based upon these verifications, SMHA will determine if the applicant was chronically late with rent payments, was evicted at any time (during the past 3 years) for any reason including non-

payment of rent and/or other charges, or had other legal action initiated against him/her. Any of these circumstances could be grounds for an ineligibility determination, depending on the amount of control the applicant had over the situation.

Applicants will not be considered to have a poor credit history if they were late paying rent because they were withholding rent due to substandard housing conditions in a manner consistent with a local ordinance; or had a poor rent paying history clearly related to an excessive rent relative to their income (using 50% of their gross income as a guide,) and responsible efforts were made by the family to resolve the nonpayment problem.

The SMHA will undertake a balancing test that will consider: (1) amount of former rent; (2) loss of employment; (3) death or divorce from primary support; (4) illness or other circumstances beyond applicant's control. Any of these circumstances could be grounds for an ineligibility determination, depending on the amount of control the applicant had over the situation.

### **Screening Applicants Who Claim Mitigating Circumstances**

Mitigating circumstances are facts relating to the applicant's record of unsuitable rental history or behavior, which, when verified would indicate both: (1) the reason for the unsuitable rental history and/or behavior; and (2) that the reason for the unsuitable rental history and behavior is no longer in effect or is under control, and the applicant's prospect for lease compliance is an acceptable one, justifying admission.

If unfavorable information is received about an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct and to factors that might indicate a reasonable probability of favorable future conduct. In order to be factored into the SMHA's screening assessment of the applicant, mitigating circumstances must be verifiable.

If the mitigating circumstances claimed by the applicant relate to a change in disability, medical condition or course of treatment, SMHA shall have the right to refer such information to persons who are qualified and knowledgeable to evaluate the evidence and to verify the mitigating circumstance. SMHA shall also have the right to request further information reasonably needed to verify the mitigating circumstance, even if such information is of a medically confidential nature. Such inquiries will be limited to the information necessary to verify the mitigating circumstances or, in the case of a person with disabilities, to verify a reasonable accommodation.

### **Examples of Mitigating Circumstances**

Examples of mitigating circumstances include:

- Evidence of successful rehabilitation;
- Evidence of the applicant family's participation in and completion of social service or other appropriate counseling service approved by SMHA; and/or
- Evidence of the applicant family's successful and sustained modifications of previous disqualifying behavior.

Consideration of mitigating circumstances does not guarantee that the applicant will qualify for admission. SMHA will consider such circumstances in light of:

- The applicant's ability to substantiate through verification the claim of mitigating circumstances and his/her prospects for improved future behavior; and
- The applicant's overall performance with respect to all the screening requirements.

**Qualified and Unqualified Applicants**

Information that has been verified by SMHA will be analyzed and a determination will be made with respect to:

- The eligibility of the applicant as a family;
- The eligibility of the applicant with respect to income limits for admission;
- The eligibility of the applicant with respect to citizenship or eligible immigration status;
- The eligibility of the family for suitability, non-criminal requirements, etc.;
- Preference category to which the family is entitled.

Assistance to a family may not be delayed, denied or terminated on the basis of the family's ineligible immigration status unless and until the family completes all the verification and appeals processes to which they are entitled under both INS and SMHA procedures, except for a pending SMHA review.

Applicants who are determined to be unqualified for admission will be promptly notified with a Notice of Denial of Admission stating the reason for the denial. In the case of criminal status denial for admissions, the PHA will provide the opportunity to review the documents prior to the denial. SMHA shall provide applicants with an opportunity for an informal review (see Chapter titled "Complaints, Grievances, and Appeals.")

Applicants who have requested a reasonable accommodation as a person with a disability and who have been determined eligible, but fail to meet the Applicant Selection Criteria, will be offered an opportunity for a second meeting to have their cases examined to determine whether mitigating circumstances or reasonable accommodations will make it possible for them to be housed in accordance with the screening procedures.

SMHA will make every effort to accurately estimate an approximate date of occupancy. However, the date given by SMHA does not mean that applicants should expect to be housed by that date. The availability of a suitable unit to offer a family is contingent upon factors not directly controlled by SMHA, such as turnover rates, and market demands as they affect bedroom sizes and project

location.

### **Documenting Findings**

An authorized representative of the SMHA shall document any pertinent information received relative to the following:

Criminal Activity - includes the activities listed in the definition of criminal activity in this Chapter.

Pattern of Violent Behavior - includes evidence of repeated acts of violence on the part of an individual, or a pattern of conduct constituting a danger to peaceful occupancy of neighbors.

Pattern of Drug Use - includes a determination by the SMHA that the applicant has exhibited a pattern of illegal use of a controlled substance which might interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Drug-Related Criminal Activity - includes a determination by the SMHA that the applicant has been involved in the illegal manufacture, sale, distribution, use or possession of a controlled substance.

Pattern of Alcohol Abuse - includes a determination by the SMHA that the applicant's pattern of alcohol abuse might interfere with the health, safety or right to peaceful enjoyment of the premises by other residents.

Initiating Threats - or behaving in a manner indicating an intent to assault employees or other tenants.

Abandonment of a Public Housing Unit - without advising SMHA officials so that staff may secure the unit and protect its property from vandalism.

Non-Payment of Rightful Obligations - including rent and/or utilities and other charges owed to the SMHA, any other PHA, or other subsidized housing.

Intentionally Falsifying an Application for Leasing - including uttering or otherwise providing false information about family income and size, using an alias on the application for housing, or making any other material false statement or omission intended to mislead.

Record of Serious Disturbances of Neighbors, Destruction of Property or Other Disruptive or Dangerous Behavior - consists of patterns of behavior which endanger the life, safety, or welfare of other persons by physical violence, gross negligence or irresponsibility; which damage the equipment or premises in which the applicant resides, or which are seriously disturbing to neighbors or disrupt sound family and community life, indicating the applicant's inability to adapt to living in a multi-family setting. Includes judicial termination of tenancy in previous housing on the grounds of nuisance or objectionable

conduct, or frequent loud parties, which have resulted in serious disturbances of neighbors.

Grossly Unsanitary or Hazardous Housekeeping - includes the creation of a fire hazard through acts such as hoarding rags, papers, or other materials; severe damages to premises and equipment, if it is established that the family is responsible for the condition; seriously affecting neighbors by causing infestation, foul odors, depositing garbage in halls; or serious neglect of the premises. This category does not include families whose housekeeping is found to be superficially unclean or due to lack of orderliness, where such conditions do not create a problem for neighbors.

Destruction of Property from previous rentals.

In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct and to factors which might indicate a reasonable probability of favorable future conduct or financial prospects.

**Prohibited Criteria for Denial of Admission**

Applicants will NOT be rejected because they:

- Have no income;
- Are not employed;
- Do not participate in a job-training program;
- Will not apply for various welfare or benefit programs;
- Have children;
- Have children born out of wedlock;
- Are on welfare;
- Are eligible students.

**I. REVIEW**

If information is revealed that would cause SMHA to deny admission to the household and the person disputes the information, s/he shall be given an opportunity for an informal review according to SMHA's hearing procedures outlined in Chapter 13, Complaints, Grievances and Appeals.

**J. CRITERIA FOR DECIDING TO DENY ASSISTANCE or TERMINATION**

SMHA Policy

The SMHA will use the concept of the preponderance of the evidence as the standard for making all admission and termination decisions.

*Preponderance of the evidence* is defined as the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may, or may not, be identical with quantity (the greater number of witnesses).

Consider all evidence. In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

Equally balanced. If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

**K. ONE STRIKE POLICY**

**A. Purpose**

It is the policy of the SMHA that all residents shall enjoy decent, safe, and sanitary living conditions.

**B. Authority**

Drug-related criminal activity, other criminal activity, and alcohol abuse in public housing and assisted housing communities increases resident fear and decrease unit marketability. Therefore, the Housing Authority will not tolerate such behavior from its applicants or residents. **UNLESS OTHERWISE PROVIDED BY LAW, PROOF OF VIOLATION SHALL NOT REQUIRE CRIMINAL CONVICTION, BUT SHALL BE BY PREPONDERANCE OF EVIDENCE.**

**C. Definitions**

Drug related criminal activity is defined as the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance.

**D. Procedures for Applicants**

1. The Housing Authority shall screen out and deny admission to any applicant whereby either the applicant or authorized occupants proposed by applicants:
  - a. Has a recent history of criminal activity involving crimes to persons and/or other

- criminal acts that affect the health, safety, or right to peaceful enjoyment of the premises by other residents;
  - b. Was evicted from assisted housing within three years of the date of application because of drug-related criminal activity. This requirement may be waived if:
    - i. The person demonstrates successful completion of a rehabilitation program approved by the Housing Authority; or
    - ii. The circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated;
  - c. The Housing Authority has determined the applicant to be illegally using a controlled substance; the Housing Authority has determined the applicant to be abusing alcohol in a way that may interfere with the health, safety or right of peaceful enjoyment of the premises by other residents;
  - d. The Housing Authority has determined that there is a reasonable cause to believe the applicant's pattern of illegal use of a controlled substance or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.
2. The Housing Authority may waive policies prohibiting admission in these circumstances if, the applicant demonstrates to the Housing Authority's satisfaction that the applicant is no longer engaging in illegal use of a controlled substance or abuse of alcohol, and;
- a. The applicant has successfully completed a supervised drug or alcohol rehabilitation program; or,
  - b. The applicant has otherwise been rehabilitated successfully.

**E. Procedures for Residents**

1. The Housing Authority shall terminate the tenancy/rental assistance of any resident who:
- a. The Housing Authority has determined is illegally using a controlled substance;
  - b. The Housing Authority has determined that the resident's abuse of alcohol interferes with the health safety or right to peaceful enjoyment of the premises by other residents; or,
  - c. The Housing Authority has determined to be engaging in serious drug-related criminal activity, either on or off the premises; or,
  - d. Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

**F. Procedures for Housing Authority**

- 1. The Housing Authority shall track crime-related problems at its developments and report any incidents to the local police authorities in order to improve law enforcement and crime prevention.
- 2. The Housing Authority will forward any resident complaints received concerning crime-related problems to the local police authorities.
- 3. The Housing Authority will review police reports and newspaper articles concerning crime-related problems with its residents, and bring such problems to



the attention of local police authorities.

The Housing Authority shall document its progress toward meeting its goals under the implementation plan for any drug prevention or crime reduction program funded by the Department of Housing and Urban Development and being administered by the Housing Authority

## **Chapter 3**

### **APPLYING FOR ADMISSION**

#### **INTRODUCTION**

The policy of SMHA is to ensure that all families who express an interest in housing assistance are given an equal opportunity to apply, and are treated in a fair and consistent manner. This Chapter describes the policies and procedures for completing an initial application for assistance, placement and denial of placement on the waiting list, and limitations on who may apply. The primary purpose of the intake function is to gather information about the family, but SMHA will also utilize this process to provide information to the family so that an accurate and timely decision of eligibility can be made. Applicants will be placed on the waiting list in accordance with this Policy.

#### **A. HOW TO APPLY**

Any family that wishes to reside in public housing must apply for admission to the program [24 CFR 1.4(b)(2)(ii), 24 CFR 960.202(a)(2)(iv), and PH Occ GB, p.68]. HUD permits the PHA to determine the format and content of its applications, as well as how such applications will be made available to interested families and how applications will be accepted by the PHA. However, the PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application.

Families who wish to apply for any of SMHA's programs must complete a pre-application online at SMHA's website when waiting list(s) are open. SMHA will take all necessary steps available to assist with ensuring all interested persons are able to have a pre-application submitted.

Pre-applications will be made available in an accessible format upon request from a person with a disability. Persons with disabilities that prohibit them from being able to submit a pre-application via SMHA's website, may call the SMHA to make other arrangements to complete their pre-application.

A computer for public use to submit an electronic pre-application will be available in the lobby of the Central Administrative Office and other designated locations.

Applications are taken at the central Administrative Office and other locations for all Waiting Lists.

#### **SMHA Policy**

Depending upon the length of time that applicants may need to wait to be housed, the PHA May use a one-or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of the application. At application, the family must provide all of the information necessary to establish family eligibility and the amount of rent the family will pay.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the PHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and the amount of the rent the family will pay when selected from the waiting list.

The application process will involve two phases.

1. The first is the initial application for admission, referred to as the preliminary application. The preliminary application is dated and time stamped and is keyed to the computerized Waiting List management system to secure a place on the Waiting List in accordance with the date and time order, and preference if claimed.
2. The second phase is the final determination of eligibility referred to as the "full application." The full application takes place when the family approaches the top of the Waiting List and is notified for an interview. At this time, SMHA ensures that verification of all HUD, State, local, and SMHA eligibility factors as pursuant to the program are current in order to determine the family's eligibility for an offer of a suitable unit.

## **B. APPLICATION PROCEDURES**

SMHA will utilize a preliminary application form for the initial application. Applications may be mailed to Out of State applicants or for purposes of reasonable accommodations.

Spanish or other language translations as determined by Limited English Proficiency for the pre-application are available for individuals needing a Spanish interpretation of the document.

At a minimum, the preliminary application will contain questions designed to obtain the following information:

- Names of head of household and social security number
- Number of family members broken down by adults/minors and male/female (this will only be used to estimate bedroom size needed)
- Mailing address and phone number(s)

- Total combined annual income of all household members
- Preference(s) being claimed by the family

Duplicate applications, including applications from a segment of an applicant household, will not be accepted.

Whether in pre-application or application status, all applicants are required to inform SMHA of changes in family composition, income and address. This must be done electronically via SMHA's website within 10 days of any change. Corrections, updates or changes will be submitted electronically by the applicant.

Applicants are also required to respond to requests from SMHA to update information or to indicate their continued interest in assistance. Failure to provide information or to respond to mailings will result in the applicant being removed from the waiting list.

A review of all pre-applications will be completed to determine initial eligibility for placement on the waiting list. Applicants meeting the initial eligibility requirements will be placed on the waiting list. Final eligibility for the Public Housing Program will be determined after a family has been pulled from the waiting list, prior to leasing to the family.

### **C. COMPLETION OF APPLICATION**

All preferences claimed at the point of completing the pre-application, or anytime thereafter while the family is on the waiting list, will be verified according to the following:

Upon receipt of the full application once the family is selected from the waiting list.

If a preference cannot be verified, said applicant will be returned to their proper place on the waiting list and preference removed.

The qualification for preferences must exist at the time the preference is verified and at the time of admission regardless of the length of time an applicant has been on the waiting list because the preference is based on current status.

Once pulled from the waiting list applicants are required to:

Complete a full Application Form. A full application form is not considered complete until all release forms have been signed, declaration of citizenship status forms have been completed and required household information has been provided.

Sign Release of Information Forms, including authorization form criminal background checks of all adult household members, and consent for verification of Immigration status.

Furnish complete and accurate information as requested. The applicant will sign and certify

that all information is complete and accurate.

**D. PLACEMENT ON THE WAITING LIST**

The PHA must review each completed pre-application received and make a preliminary assessment of the family's eligibility. The PHA must place on the waiting list families for whom the list is open unless the PHA determines the family to be ineligible. Where the family is determined to be ineligible, the PHA must notify the family in writing [24 CFR 960.208(a); PH Occ GB, p. 41]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or any other particular position on the waiting list.

**Ineligible for Placement on the Waiting List**

PHA Policy

If the PHA can determine from the information provided that the family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the PHA will send written notification of the ineligibility determination within 10 business days of receiving a completed pre-application. The notice will specify the reasons for ineligibility and will inform the family of its rights to request an informal review and explain the process for doing so (see Chapter 14).

**Eligible for Placement on the Waiting List**

PHA Policy

The PHA will send written notification of the preliminary eligibility determination within 10 business days of receiving a completed pre-application. If applicable, the notice will also indicate the waiting list preference(s) for which the family appears to qualify.

Placement on the waiting list does not indicate that the family is, in fact, eligible for admission. A final determination of eligibility and qualification for preferences will be made with the family is selected from the waiting list.

**Timeliness of Verifications**

All verifications will be obtained prior to determination of eligibility to ensure that current and accurate data is being used in calculating rents and eligibility.

Certification by the appropriate staff member will be made when verification of all necessary items for each application is completed.

Verifications for the public housing program must be dated within 60 days from the date of the interview and not exceed 120 days in age, prior to admission to the unit. The family will be

questioned prior to admission in regard to any change in status. If changes are reported, they will be verified to determine their effect on eligibility, preference rating (if any), rent, and unit size required.

The applicant file shall contain documentation of all verifications.

### **Systems of Verification**

**Upfront Income Verification (UIV):** The verification of income at admission or before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals. HUD's **Enterprise Income Verification System (EIV)** is considered to be this method.

To assure that the data upon which determinations of eligibility, preference status (if any), rent to be paid, and size of dwelling unit required are based on full, true, and complete information to the best of staff's ability, the data on each applicant shall be verified and consist of the following types and systems of verification:

SMHA will consult the EIV system on all applicants. The EIV will be used to determine if the applicant is in the HUD system, determine if they are being assisted by other programs in the HUD data-base, and determine if they were previously assisted by another PHA.

SMHA shall use the streamlined verification system allowed by HUD whenever possible. Thus simplifying the income verification process.

At the time of unit offer and final eligibility determination, current 3<sup>rd</sup> party verification as defined by HUD must be obtained to calculate anticipated annual income.

Bank statements are not permitted to be used as verification of Social Security or SSI benefits.

The SMHA will not delay the final eligibility determination of an applicant beyond 10 working days if they have submitted a 3<sup>rd</sup> party verification request and the 3<sup>rd</sup> party information provider does not provide the verification in a timely manner.

For applicants, verifications used to determine adjusted income may not be more than **60 days** old at the time of the original lease. For residents, they are valid for **120 days** from date of receipt. All tenant supplied documents supplied should be dated within the last **60 days** of the interview or reexamination. Pay stubs should be current and consecutive.

After admission, an EIV Income Report must be run for all households to confirm income within **120 days** of admission date.

Criminal History Reports will be useable as a valid verification for no longer than 120 calendar days. If the criminal history report is older than 120 days at the time of lease-up, the property manager must do a local online records search to ensure no further charges against the applicant have been made since their initial preliminary approval and document that they have done this. Local online records can be checked at [www.starkcjis.org](http://www.starkcjis.org)

#### **E. FINAL DETERMINATION AND NOTIFICATION OF ELIGIBILITY**

After the verification process is completed, SMHA will make a final determination of eligibility. This decision is based upon information provided by the family, the verification completed by SMHA, and the tenant suitability determination (see Chapter on Eligibility for Admission).

Because HUD can make changes in rules or regulations and family circumstances may have changed during the review process that affect an applicant's eligibility, it is necessary to make final eligibility determination.

The household is not actually eligible for a unit offer until this final determination has been made, even though they may have been listed on the waiting list.

Any time after final eligibility determination, applicants must report changes in family status, including income, family composition, and address, in writing, within 30 days of the change. If the family did not report the change within the required time frame, the family will be determined ineligible and offered an opportunity for informal hearing.

## **Chapter 4**

### **TENANT SELECTION AND ASSIGNMENT PLAN**

(Includes Preferences and Managing the Waiting List)

[24 CFR 960.203, 960.204, 960.205, 960.206]

#### **INTRODUCTION**

It is SMHA's policy that each applicant shall be assigned an appropriate place on a semi-jurisdiction-wide Waiting List unless the applicant has applied for a development subject to a Site-based Waiting List. Applicants will be listed in sequence based upon size and type of unit required, Preference(s), date and time the application is received. In filling actual or expected vacancies, SMHA will offer the dwelling unit to an applicant in the appropriate sequence, with the goal of filling units timely, and accomplishing deconcentration of poverty and income-mixing objectives. SMHA will offer the unit in the proper applicant sequence until it is accepted. This chapter describes SMHA's policies with regard to the number of unit offers that will be made to applicants selected from the Waiting List.

#### **SMHA's Objectives**

SMHA policies will be followed consistently and will affirmatively further HUD's fair housing goals.

It is SMHA's objective to ensure that families are placed in the proper order on the waiting list so that the offer of a unit is not delayed to any family unnecessarily or made to any family prematurely. This chapter explains the policies for the management of the waiting list.

When appropriate units are available, families will be selected from the waiting list in their preference-determined and date and time sequence.

By maintaining an accurate waiting list, SMHA will be able to perform the activities that ensure that an adequate pool of qualified applicants will be available to fill unit vacancies in a timely manner. Based on the SMHA's turnover and the availability of appropriate sized units, groups of families will be selected from the waiting list to form a final eligibility "pool." Selection from the pool will be based on completion of updated verifications.

#### **Site-Based Waiting Lists (Not Applicable)**

Per the Quality Housing and Work Responsibility Act of 1998, SMHA is now allowed to implement site-based waiting lists upon approval of the Annual Plan or upon HUD's approval to the SMHA's request before the submission of the Annual Plan. **SMHA currently does not use site-based waiting lists.**

#### **Semi-Jurisdictional Wide Waiting Lists**



SMHA will utilize a semi-jurisdictional wide waiting list to better manage vacancy rates throughout the Housing Authority. SMHA will employ seven (7) regional waiting lists broken down by location throughout the SMHA jurisdiction. This list further allows site-based waiting list for certain properties in the SMHA inventory. The jurisdictional waiting lists will be as follows:

**Alliance Area:** SMHA properties included in this wait list are Hart Apartments, Pike Ave. Homes, Mahoning Ave. Homes, Garfield Ave. Homes, Louisville, and scattered sites

**Massillon Area:** SMHA properties included in this waiting list are Willow Homes, Witmer Arms, Franklin Homes, Lincoln Apartments, Underhill Gardens, Ledgewood Blvd Apartments, Navarre, and scattered sites

**SW Canton Area:** SMHA properties included in this waiting list are Linwood Acres, and scattered sites.

**NW Canton Area:** SMHA properties included in this waiting list are Neal Court Apartments, Kimberle Gardens, Plaza Terrace Apartments

**SE Canton Area:** SMHA properties included in this waiting list are Jackson Sherrick Apartments, Sunset Gardens

**NE Canton Area:** SMHA properties included in this waiting list are Ellisdale Homes, Gables Creeks Crossing Apartments, Leshdale Homes, Girard Gardens, Mahoning Manor

**Outlying Areas:** Properties in this waiting list are outside of Canton, Massillon and Alliance proper. Areas included in this waiting list are Waynesburg (site-based), Canal Fulton (site-based), North Canton (site-based), and Hartville (site-based).

When completing the SMHA pre-application, applicants will have the opportunity to select any, or all, of the waiting lists that they prefer and if qualified. Any applicant who does not select a preferred waiting list at the time of application will automatically be added to all of the SMHA waiting lists.

#### **A. MANAGEMENT OF THE WAITING LIST**

SMHA will administer its waiting list as required by 24 CFR Part 5, Subparts E and F, Part 945 and 960.201 through 960.215. The waiting list will be maintained in accordance with the following guidelines:

- The application will be a permanent part of the file.
- Applications equal in preference will be maintained by date and time sequence.
- All applicants must meet applicable income and other eligibility requirements as established by HUD and SMHA.
- All applicants in the pool (eligible and verified families) will be maintained in order of preference and in order of date and time of application receipt.

#### **Opening and Closing the Waiting Lists**

SMHA, at its discretion, may restrict pre-application intake, suspend pre-application intake, and

close waiting lists in whole or in part.

The decision to close the waiting list will be based on the number of applicants available for a particular size and type of unit, and the ability of SMHA to house an applicant in an appropriate unit within a reasonable period of time.

When SMHA opens the waiting list, SMHA will advertise through public notice in the following newspapers, minority publications and media entities. Location(s), and program(s) for which pre-applications are being accepted will be advertised in the local paper of record, "minority" newspapers, and other media, but not limited to:

- Canton Repository

Other publications in the area that can be utilized are:

Local Television Channels:

- Massillon Local Program Station
- Canton Local Program Station
- Local Radio Stations:
  - 1480 & 94.1 WHBC; 93.1 WZAK; 97.5 WONE; 98.1 WKDD

To reach persons with disabilities, SMHA will provide notice to local organizations representing the interests and needs of the disabled. Local organizations serving the disabled population include, but are not limited to, the following:

- Local disability organizations
- Tri-County Independent Living

The notice at a minimum will contain:

- The dates, times, and the locations where families may apply.
- Any system of site-based waiting list offered by SMHA- if applicable.
- The programs for which pre-applications will be taken.
- A brief description of the program.
- Limitations, if any, on who may apply.

The notices will be made in an accessible format if requested. They will provide potential applicants with information that includes the SMHA address and telephone number, how to submit a pre-application, and information on eligibility requirements.

Upon request from a person with a disability, additional time, not to exceed 30 days, will be given as an accommodation for submission of a pre-application after the closing deadline. This accommodation is to allow persons with disabilities the opportunity to submit a pre-application in cases when a social service organization provides inaccurate or untimely information about the closing date.

### **When Pre-Application Taking is Suspended**

The SMHA may suspend the acceptance of pre-applications if there are enough applicants currently on the waiting list to fill anticipated openings for the next 24 months.

The waiting list may not be closed if it would have a discriminatory effect inconsistent with applicable civil rights laws.

During the period when the waiting list is closed, SMHA will not maintain a list of individuals who wish to be notified when the waiting list is open.

Suspension of pre-application taking is announced in the same way as opening the waiting list.

The open period shall be long enough to achieve a waiting list adequate to cover projected turnover over the next twenty four (24) months. SMHA will give at least thirty (30) days' notice prior to opening or closing the list. SMHA will add the new applicants to the list by:

Unit size, local preferences, and date and time of application receipt.

SMHA may update the waiting list at least annually by removing the names of those families who are no longer interested, no longer qualify for housing, or cannot be reached by mail. At the time of submission of a pre-application, SMHA will advise families of their responsibility and requirement to notify SMHA when their mailing address changes.

### **Reopening the List**

If the waiting list is closed and SMHA decides to open the waiting list, SMHA will publicly announce the opening. Any reopening of the list is done in accordance with the HUD requirements.

### **Limits on Who May Apply**

When the waiting list is open,

Any family asking to be placed on the waiting list for Public Housing rental assistance will be given the opportunity to complete a pre-application.

If there are sufficient applications from elderly, disabled, and near-elderly, pre-applications may not be accepted from other singles.

When the pre-application is received by SMHA:

It establishes the family's date and time of application for placement order on the waiting list. .

### **Multiple Families in Same Household**

When families apply that consist of two families living together, (such as a mother and father, and a daughter with her own husband or children), if they apply as a family unit, they will be treated as a family unit. No family, or part of a family, will be permitted to be on two applications at the same time.

## **B. SITE BASED WAITING LISTS**

Per the Quality Housing and Work Responsibility Act of 1998, SMHA is now allowed to implement site-based waiting lists upon approval of the Annual Plan or upon HUD's approval to the SMHA's request before the submission of the Annual Plan.

**SMHA does have site-based and regional waiting lists and further allows families to apply for any waiting list that is open.**

## **C. WAITING LIST PREFERENCES**

A preference does not guarantee admission to the program. Preferences are used to establish the order of placement on the Waiting List. Every applicant must meet the SMHA's Selection Criteria as defined in this policy. The Waiting List will depict families with preference ahead of other families without preference, regardless of date and time of application.

The SMHA's preference system will work in combination with requirements to match the characteristics for the family to the type of unit available, including units with targeted populations, and further deconcentration of poverty in public housing. When such matching is required or permitted by current law, the SMHA will give preference to qualified families.

Families who reach the top of the waiting list will be contacted by the SMHA to re-verify their preference and other factors for final eligibility so a unit may be offered.

Among applicants with equal preference status, the waiting list will be organized by **date and time**.

If the preference verification indicates that an applicant does not qualify for the preference, the applicant will be returned to the waiting list and ranked without the Local Preference and given an opportunity for an informal review.

### **Local Preferences**

Preference may be given for non-public housing over-income families.

The SMHA may adopt a preference for admission of non- public housing over-income families paying the alternative non-public housing rent and are on a NPHOI lease who become an income-eligible low- income family as defined in § 5.603(b) of the

regulation and are eligible for admission to the public housing program.

SMHA Policy

No preference will be given to non-public housing over-income families.

Local preferences will be used to select among applicants on the waiting list. Public hearing/ public notice with opportunity for public comment will be held before the SMHA adopts any local preference.

The hearing will be publicized using the same guidelines as those for opening and closing the waiting list.

The notice will be distributed following the same guidelines as those used for opening or closing the waiting list.

The SMHA uses the following Local Preferences:

**Date and time of receipt** of a completed application.

**Veteran preference**: Veterans or surviving spouses of veterans. (2 Points)

**Elderly Family**: Family in which the head, spouse or only member is 62 years of age or older. (2 Points)

**Disabled family**: Family in which the head, spouse or only member is disabled. (2 Points)

**Homeless**: (5 points)

*Individuals and families who **lack a fixed, regular, and adequate nighttime residence**, meaning:*

- a. An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; **or***
- b. An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low- income individuals); **or***
- c. An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.*

Applicants qualifying for this preference must have a valid Certified Homeless Certificate which must be verified through the Stark County Homeless Hotline.

**Victims of Domestic Violence**: Any individual or family who is fleeing, or is attempting

to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence and has no other residence and lacks resources or support networks, e.g. family, friends, and faith-based or other social networks, to obtain other permanent housing. Applicants qualifying for this preference must have a valid Homeless Certificate which must be verified through the Stark County Homeless Hotline. **(3 points)**

**Broad Range of Income/Deconcentration of Poverty**

SMHA's preference system will work in combination with requirements to match the characteristics of the family to the type/size of unit available. Except those applicant households requiring units with accessibility features for person(s) with disabilities (see Chapter 1, E, Other Accommodations), applicants on the Waiting List that are selected will also be monitored in such a manner that ensures SMHA is meeting the deconcentration of public housing units and income targeting requirements mandated by HUD.

SMHA shall assure a mixed range of incomes and deconcentration of its public housing units by selecting from the List of qualified applicants, households whose incomes would promote deconcentration of poverty. As such, SMHA shall select from the List of qualified applicants, those applicants whose income reflect a Broad Range of Income as defined by SMHA's most current Broad Range of Income/Rent Range policy promoting deconcentration and income targeting requirements.

SMHA shall admit to public housing in each fiscal year, at least forty percent (40%) of households whose income does not exceed 30% of the area median income or poverty level- whichever is the greater of the two, except as may be documented through "fungibility credits" (further defined in the Quality Housing and Work Responsibilities Act of 1998), which permits SMHA to lower the number of households admitted at the 30% threshold by the lowest of one of the following amounts:

If admissions to SMHA's HCV Program during the fiscal year exceeds the 75% minimum income targeting requirement for the HCV Program, SMHA's public housing program may reduce the minimum targeting requirement for the Public Housing program. The fiscal year credit shall not exceed:

Ten percent of the public housing waiting list admissions during the SMHA's fiscal year;

Ten percent of the waiting list admissions to the SMHA's tenant-based assistance program during the fiscal year;

The number of qualifying low income families who, during the fiscal year, commence occupancy of SMHA's units that (a) are located in housing developments located in census

tracts having a poverty rate of 30% or more, and (b) are made available for occupancy, and actually occupied in that year, by very low income families.

This fungibility provision discretion is also reflected in SMHA's Administrative Plan for the Section 8 Voucher Program.

Fungibility shall only be utilized if SMHA anticipates a shortfall of its 40% goal for new admissions to public housing.

Gross annual income is used for income limits at admission, income targeting, and for income-mixing purposes.

Skipping a family on the Waiting List specifically to reach another family with a lower or higher income is not to be considered an adverse action to the family. Such skipping will be uniformly applied until the target threshold is met and in order to comply with SMHA's Broad Range of Income Policy.

Admission policies related to the deconcentration efforts do not impose specific quotas since Broad Range of Income imposes specific quotas aimed at maintaining a mix of incomes within each development in order to achieve budgetary viability.

#### **Singles Preference and Designated Senior Units**

The Singles Preference is no longer mandated by statute, and therefore SMHA will no longer utilize this preference.

SMHA has the following properties that have been designated elderly only or elderly/disabled only properties:

- None

#### **Other Preferences**

The SMHA no longer utilizes any other preferences, either former federally mandated or local optional preferences, besides those previously listed in this chapter and identified in Section C. Local Preferences.

#### **D. ORDER OF SELECTION FOR GENERAL OCCUPANCY (FAMILY DEVELOPMENTS)**

The SMHA has established the following local admissions preferences for general occupancy (family) developments:

The SMHA has established the following system to apply local preferences and applicants will be selected in the following order:

1. Total of all local preference points
2. Date and time of pre-application

**E. VERIFICATION OF PREFERENCE QUALIFICATION**

When the family is selected from the waiting list for the final determination of eligibility, the preference will be verified by SMHA.

The SMHA will re-verify a preference claim, if the SMHA feels the family's circumstances have changed, at any time up until final determination of eligibility to receive an offer of housing.

If the preference verification indicates that an applicant does not qualify for the preference, the applicant will be returned to the waiting list and ranked without the Local Preference.

**Change in Circumstances**

Changes in an applicant's circumstances while on the waiting list may affect the family's entitlement to a preference. Applicants are required to notify the SMHA via website when their circumstances change. Persons with disabilities that prohibit them from being able to submit a pre-application via SMHA's website may still submit changes in writing. When an applicant claims an additional preference, s/he will be placed on the waiting list in the proper order of their newly-claimed preference."

**F. DENIAL OF PREFERENCE**

If SMHA denies a preference, SMHA will notify the applicant in writing of the reasons why the preference was denied and offer the applicant an opportunity for an informal review. The applicant will have fifteen (15) working days to request the meeting in writing. If the preference denial is upheld as a result of the meeting, or the applicant does not request a meeting, the applicant will be placed on the Waiting List without benefit of the preference. Applicants may exercise other rights if they believe they have been discriminated against.

If an applicant falsifies documents or makes false statements in order to qualify for a preference, they will be denied housing and taken off of the Waiting List with notification to the family.

**G. INCOME TARGETING**

SMHA will monitor its admissions to ensure that at least 40 percent of families admitted to public housing in each fiscal year shall have incomes that do not exceed 30% of area median income of SMHA's jurisdiction.

Hereafter families whose incomes do not exceed 30% of area median income will be referred to as "extremely low income families."

SMHA shall have the discretion, at least annually, to exercise the "fungibility" provision of the



QHWRA by admitting less than 40% of “extremely low income families or the poverty rate-whichever is the greater of the two” to public housing in a fiscal year, to the extent that SMHA has provided more than 75% of newly available vouchers to “extremely low income families.” This fungibility provision discretion by SMHA is also reflected in SMHA’s Administrative Plan.

If admissions to SMHA’s HCV Program during the fiscal year exceeds the 75% minimum income targeting requirement for the HCV Program, SMHA’s public housing program may reduce the minimum targeting requirement for this program. The fiscal year credit shall not exceed:

Ten percent of the public housing waiting list admissions during the SMHA’s fiscal year;

Ten percent of the waiting list admissions to the SMHA’s tenant-based assistance program during the fiscal year;

The number of qualifying low income families who, during the fiscal year, commence occupancy of SMHA’s units that (a) are located in housing developments located in census tracts having a poverty rate of 30% or more, and (b) are made available for occupancy, and actually occupied in that year, by very low income families.

**The Fungibility Floor:** Regardless of the above amounts, in a fiscal year, at least 30% of SMHA’s admissions to public housing will be to extremely low-income families. The fungibility floor is the number of units that cause SMHA’s overall requirement for housing extremely low-income families to drop to 30% of its newly available units.

Fungibility shall only be utilized if SMHA is anticipated to fall short of its 40% goal for new admissions to public housing.

#### **Very Low-Income Family Admissions**

As long as SMHA has met the 40% targeted income requirement for new admissions of extremely low-income families, SMHA will fill the remainder of its new admission units with families whose incomes do not exceed 80% of the HUD approved area median income.

### **H. MIXED POPULATION UNITS**

A mixed population development is a public housing development, or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character). In accordance with local preferences, elderly families whose head spouse or sole member is at least 62 years of age, and disabled families whose head, co-head or spouse or sole member is a person with disabilities, will receive equal preference to such units.

No limit will be established on the number of elderly or disabled families that may occupy a mixed population property. *SMHA does not maintain any mixed population units.*

### **I. GENERAL OCCUPANCY UNITS**

General occupancy units are designed to house all populations of eligible families. In accordance with SMHA's occupancy standards, eligible families not needing units designed with special features or units designed for special populations will be admitted to SMHA's general occupancy units.

All families with children, elderly families and disabled families, will have an admission preference over "Other Singles."

#### **J. DECONCENTRATION OF POVERTY AND INCOME-MIXING**

SMHA's admission policy is designed to provide for deconcentration of poverty and income-mixing.

Gross annual income is used for income limits at admission, income targeting, and for income-mixing purposes.

Skipping of a family on the waiting list specifically to reach another family with a lower or higher income is not to be considered an adverse action to the family. Such skipping will be uniformly applied until the target threshold is met and in order to comply with SMHA's Broad Range of Income policy.

##### **Deconcentration and Income-Mixing Goals**

SMHA's deconcentration and income-mixing goal, in conjunction with the requirement to target at least 40 percent of new admissions to public housing in each fiscal year to "extremely low-income families", will be to admit higher income families to lower income developments, and lower income families to higher income developments.

##### **Project Designation Methodology**

SMHA will determine and compare tenant incomes at all general occupancy developments. Skipping of families for deconcentration purposes will be applied uniformly to all families.

#### **K. PROMOTION OF INTEGRATION**

Beyond the basic requirement of nondiscrimination, SMHA shall affirmatively further fair housing to reduce racial and national origin concentrations. SMHA shall not require any specific income or racial quotas for any development or developments.

SMHA shall not assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations.

#### **L. OFFER OF PLACEMENT ON THE SECTION 8 WAITING LIST**

SMHA does not maintain a merged Waiting List for the public housing and Section 8 program.

Per 24 CFR 982.205, if the Section 8 Waiting List is open when the applicant is placed on the public housing list, SMHA will offer to place the family on both Lists. If the public housing Waiting List is open at the time an applicant applies for Section 8, SMHA will offer to place the family on the public housing Waiting List so long as units of appropriate size are managed by SMHA.

All programs owned, operated, managed by SMHA maintain separate Waiting Lists.

**M. PURGING AND REMOVAL FROM WAITING LIST**

The waiting list may be purged at least once a year or as necessary by a mailing to all applicants to ensure that the waiting list is current and accurate. The mailing will ask for current information and confirmation of continued interest.

If an applicant fails to respond to the request for confirmation of continued interest within 20 calendar days, s/he will be withdrawn from the waiting list. If a letter is returned by the Post Office without a forwarding address, the applicant will be withdrawn without further notice and the envelope and letter will be maintained in the file.

If an applicant is withdrawn from the waiting list for failure to respond, they will not be entitled to reinstatement unless a person with a disability requests a reasonable accommodation for being unable to reply with the prescribed period and verification of such is received by SMHA.

Purge mailing requests will be made available in accessible format upon the request of a person with a disability. An extension to reply to the purge notification will be considered as an accommodation if requested by a person with a disability.

Applicants are notified at the time of submission of their pre-application and at the application briefing for completion of their full application, that they are responsible for notifying the SMHA within 10 days, if they have a change of address.

**N. OFFER OF ACCESSIBLE UNITS**  
**(See Accessible units in Chapter 1 on Fair Housing)**

The SMHA will make modifications to the unit in keeping with the Section 504 Transition Plan as the need arises and until the agency determines that an adequate number of units have been rehabilitated in numbers sufficient to evidence compliance with the Plan.

**See “Leasing” Chapter**

**O. PLAN FOR UNIT OFFERS**

The SMHA plan for selection of applicants and assignment of dwelling units to assure equal opportunity and non-discrimination on grounds of race, color, sex, religion, or national origin is a requirement.

The first qualified applicant in sequence on their selected waiting list(s) will be given one offer of a unit of the appropriate size. Because applicants have selected to be placed a the semi-jurisdictional waiting list most appropriate for their needs, refusal of the unit offered will result in the applicant being removed from the Public Housing waiting list.

Once a qualified applicant has risen, in sequence, to the top of their selected waiting list(s) and given one offer of housing and has refused to accept the offer of a lease; the first offer will be the final offer and their application will be withdrawn from the waiting list(s). (see “Good Cause” refusal under Section P of page 4-18.)

If at anytime more than one unit of the appropriate type and size is vacant, the first unit to be offered to the first qualified applicant will be the first unit that is ready for occupancy.

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

**P. CHANGES PRIOR TO UNIT OFFER**

Changes that occur during the period between initial eligibility determination and an offer of a suitable unit that may affect the family’s eligibility, unit size the family qualifies for according to the occupancy standard or Total Tenant Payment **must be re-verified prior to making the offer.** This is part of the final eligibility process that must occur prior to offering the applicant a housing unit. The family will be notified in writing if their eligibility or level of benefits has changed and they will be offered an informal review when applicable (See Chapter on Complaints, Grievances, and Appeals)

**Q. APPLICANT STATUS AFTER FINAL UNIT OFFER**

When an applicant refuses to execute a lease for their final unit offer SMHA will:

Remove the applicant from the waiting list. They can reapply at anytime for any waiting list that is open.

Families may reject units for “good cause”. “Good Cause” reasons include, proximity to work, school and child care; VAWA, or health related issues.

**R. TIME-LIMIT FOR ACCEPTANCE OF UNIT**

Applicants must accept a unit offer within **24 hours** from the time the offer is made. Offers made over the telephone will be confirmed by letter. If unable to contact an applicant by telephone, the SMHA will send a **letter**. Failure to accept an offer within **3** calendar days will result in no further offers and the application being withdrawn from the waiting list.

Multiple offer letters may be sent for an available unit. The first applicant to accept the unit and have the proper security deposit and first months’ rent will be housed.

**Applicants With a Change in Family Size or Status**

Changes in family composition, status, or income that have been reported in a timely manner by the applicant (within 10 days) at any time between submission of the pre-application up until the final eligibility determination must be processed prior to issuing a unit offer. SMHA shall not lease a unit to a family whose occupancy will overcrowd or underutilize the unit.

Exceptions to this policy for over-housing may be made in order to meet occupancy goals when there are insufficient applicants on the waiting list to otherwise fill vacant units.

As long as the applicant family has reported changes in a timely manner prior to being offered a unit, the family will be returned the appropriate place on the waiting list according to the date and time of their application and being selected for a unit offer and sent to a management site will not count as one of their two offers. If a family waits to report a change until after they have received an offer of housing, and the change affects their eligibility for the unit offered, the offer will still count as one of their two due to their failure to report the change.

**S. REFUSAL OF OFFER**

If an applicant has indicated they have special housing needs in order to accommodate an individual's disability(ies) on their full application but is still offered a unit that is inappropriate for the applicant's disabilities, the family will retain their position on the waiting list and the offer will not count.

If a family does not request or indicate that they have special housing needs in order to accommodate an individual's disability(ies) and waits to report this until after they have received an offer of housing, but further provides verification of need, the offer of housing will not count as their unit offer due to their failure to notify SMHA of their need prior to receiving an offer of housing.

If the unit offered is refused for other reasons, SMHA will follow the applicable policy as listed in the "Plan for Unit Offers" section and the "Applicant Status After Final Offer" section.

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**Chapter 5**

**OCCUPANCY GUIDELINES**

**INTRODUCTION**

The Occupancy Guidelines are established by SMHA to ensure that units are occupied by families of the appropriate size. This policy maintains the maximum usefulness of the units, while preserving them from excessive wear and tear or underutilization. This Chapter explains the Occupancy Guidelines used to determine minimum and maximum unit sizes for various sized families when they are selected from the waiting list, or when a family's size changes, or when a family requests an exception to the occupancy guidelines.

**A. DETERMINING UNIT SIZE**

SMHA does not determine who shares a bedroom/sleeping room, but there must be at least one person per bedroom. SMHA's Occupancy Guideline standards for determining unit size shall be applied in a manner consistent with Fair Housing guidelines.

For occupancy standards, an adult is a person 18 years or older, or an emancipated minor.

All guidelines in this section relate to the number of bedrooms in the unit. Dwelling units will be assigned using the following guidelines:

Generally SMHA will assign one bedroom to two people within the following guidelines:

Adults of different generations (15-20 years), persons of the opposite sex (other than spouses), and unrelated adults will not be required to share a bedroom.

Separate bedrooms should be allocated for persons of the opposite sex (other than adults who have a spousal relationship).

Separate bedrooms should be allocated for persons of the same sex, but have differing generation of 5 years or more.

Foster children will be included in determining unit size only if they will be in the unit for more than 3 months.

Live-in attendants will generally be provided a separate bedroom. No additional bedrooms are provided for the attendant's family. Over-crowding will not be allowed for accommodation.

Space will not be provided for a family member who will be absent most of the time (183 days absent from the unit), such as a member who is away in the military.

A family will be given the option to include and consider in determining unit size, a family member who will be absent most of the time; such as a member who is away in the military or an adult child away at school but who may come home for breaks. A family will not be given this option for a member that is incarcerated. If a family decides to include a member that is away most of the time, the Head of Household will be responsible for obtaining the member's signature on all paperwork that is required for annual recertification or at any other time requested by the Housing Authority.

Single-person families shall be allocated zero/one bedroom.

The living room will not be used as a bedroom except at the determination of the family and so long as it does not constitute an overcrowded unit or for purposes of reasonable accommodation.

### **GUIDELINES FOR DETERMINING BEDROOM SIZE**

| Bedroom(s) Size | Persons in Household:<br>(Minimum #) | Persons in Household:<br>(Maximum #) |
|-----------------|--------------------------------------|--------------------------------------|
| 0 Bedroom       | 1                                    | 1                                    |
| 1 Bedroom       | 1                                    | 2                                    |
| 2 Bedrooms      | 2                                    | 4                                    |
| 3 Bedrooms      | 3                                    | 6                                    |
| 4 Bedrooms      | 4                                    | 8                                    |
| 5 Bedrooms      | 5                                    | 10                                   |
| 6 Bedrooms      | 6                                    | 12                                   |

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### **B. EXCEPTIONS TO OCCUPANCY STANDARDS**

SMHA will grant exceptions from the guidelines in cases where it is the family's request or the SMHA determines the exceptions are justified by the relationship, age, sex, health or disability of family members, or other individual circumstances, and there is a vacant unit available. If an applicant requests to be listed on a smaller or larger bedroom size waiting list, the following guidelines will apply:

Applicants may request to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, (as long as the unit is not overcrowded according to local codes). The family must agree not to request a transfer until their family composition changes.

The SMHA may offer a family a unit that is larger than required by the SMHA's occupancy standards, if the waiting list is short of families large enough to fill the vacancy.

The family may request to be placed on a larger bedroom size waiting list than indicated by the SMHA's occupancy guidelines. The request must explain the need or justification for a larger bedroom size, and must be verified by SMHA before the family is placed on the larger bedroom size list. SMHA will consider these requests:

### **Person with Disability**

The SMHA will grant an exception upon request as a reasonable accommodation for persons with disabilities if the need is appropriately verified and meets requirements in the "Service and Accommodations Policy" section of Chapter 1.

### **Other Circumstances**

Circumstances may dictate a larger size than the occupancy standards permit when:

- Persons cannot share a bedroom because of a need for medical equipment due to its size and/or function. Requests for a larger bedroom due to medical equipment must be verified by a medical professional.

Requests based on health-related reasons must be verified by a medical professional, SMHA will verify that the space is being used for the intended purpose and the live-in aide remains qualified to perform the function.

The SMHA may offer a family a unit that is larger than required by SMHA's occupancy standards if there is no waiting list for families large enough to fill the vacancy, or the SMHA determines that the common area for the project is insufficient for accommodating any additional large families.

In all cases, where the family requests an exception to the general occupancy standards, the SMHA will evaluate the relationship and ages of all family members and the overall size of the unit.

### **Other Circumstances**

The SMHA will assign a larger bedroom size due to authorized additions of family members including live-in aide, birth, adoption, marriage, or court-awarded custody.

All individuals occupying the unit and members of the family residing in the unit must be approved by the SMHA. The family must obtain approval of any additional family member before the person occupies the unit except for additions by birth, adoption, or court-awarded custody, in which case the family must inform the SMHA within **ten (10) working** days.



To avoid vacancies, the SMHA may provide a family with a larger unit than the occupancy standards permit. The family must agree to move to a suitable, smaller unit when another family qualifies for the larger unit and there is a suitable smaller unit available. This requirement is a provision of the lease.

### **Live-in Aides**

One reason SMHA allows an additional bedroom is related to live-in aides. Although a health care provider must document the need for a live-in aide (which would result in the issuance of an additional bedroom size), the live-in aide must be identified by the family and approved by the SMHA first.

The definition of a live-in aide is recorded in HUD policy which states that a live-in aide is a person who resides with one or more elderly persons, near-elderly persons or persons with disabilities and who is: (1) determined to be essential to the care and well-being of the persons; (2) is not obligated for the support of the persons; and (3) would not be living in the unit except to provide the necessary supportive services. It should be noted that the definition applies to a specific person. In accordance with this definition, a live-in aide is not a member of the assisted family and is not entitled to the unit as the remaining member of the tenant family.

The SMHA must approve the person identified as the live-in aide. The SMHA will disapprove such a person if s/he has: (1) committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; (2) committed drug-related criminal activity or violent criminal activity; or (3) currently owes rent or other amounts to the SMHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act; or has previously violated program requirements in assisted housing. Additionally, the SMHA must establish standards to determine the number of bedrooms needed for families of different sizes and compositions. Consequently, PHAs may not approve an unidentified live-in aide, nor a larger unit than the family qualifies for under the SMHA's standards for an unidentified live-in aide.

*Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom should not be approved for a caretaker under these circumstances.*

**Other Reasonable Accommodation Issues.** A family may always request a reasonable accommodation to permit program participation by individuals with disabilities. A family's composition or circumstances may warrant the provision of an additional bedroom to permit disability-related overnight care and allow the family equal use and enjoyment of the unit.

The SMHA must consider requests for an exception to the established subsidy standards on a case-by-case basis and provide an exception, where necessary, as a reasonable accommodation. The SMHA shall document the justification for all granted exceptions.

**Medical Equipment.** Although SMHA may approve an additional bedroom for medical equipment if the need is documented by a health care provider, the actual equipment in the extra bedroom should be verified by the SMHA during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the SMHA must reduce the bedroom standard.

However, the SMHA may take further action, if it believes any lease or family obligations were violated.

**C. INCENTIVES TO ATTRACT HIGHER INCOME FAMILIES TO LOWER INCOME DEVELOPMENTS**

**See Chapter on Tenant Selection and Assignment.**

**D. ACCESSIBLE UNITS**

The PHA has units designed for persons with mobility, sight and hearing impairments. These units were designed and constructed specifically to meet the needs of persons requiring the use of wheelchairs and persons requiring other modifications.

Preference for occupancy of these units will be given to families with disabled family members who require the modifications or facilities provided in the units.

Accessible units will be offered and accepted by non-mobility impaired applicants only with the understanding that such applicants must accept a transfer to a non-accessible unit at a later date if a person with a mobility impairment requiring the unit applies for housing and is determined eligible.

## Chapter 6

### DETERMINATION OF TOTAL TENANT PAYMENT [24 CFR 5.609, 5.611, 5.613, 5.615, Subpart E and F; 24 CFR 960, Subpart C]

#### **INTRODUCTION**

The accurate calculation of Annual Income and Adjusted Income will ensure that families are not paying more or less money for rent than their obligation under the regulations. HOTMA made significant changes to income, exclusions, deductions, assets, etc. This can also be contained in PIH 2023-27.

This Chapter defines the allowable deductions from Annual Income and how the presence or absence of household members may affect the Total Tenant Payment (TTP). Income and TTP are calculated in accordance with 24 CFR Part 5, Subpart F and further instructions set forth in HUD Notices, Memoranda, Addenda, and HOTMA. However, the Quality Housing and Work Responsibility Act and HOTMA gives SMHA broader flexibility in certain areas on policies. SMHA's policies in this Chapter address those areas that allow the SMHA discretion to define terms and to develop standards in order to assure consistent application of the various factors that relate to the determination of TTP.

#### **A. MINIMUM RENT and TTP**

The minimum rent for SMHA is \$50. The minimum rent refers to a minimum total tenant payment and not a minimum tenant rent.

The Total Tenant Payment is the greater of:

30% of the adjusted monthly income

10% of the monthly income

The Minimum rent as established by SMHA

For Public Housing only, the alternative non-public housing rent, as determined in accordance with 24 CFR 960.102

Alternative non-public housing rent is:

A monthly rent equal to the greater of—

(i) The applicable fair market rent, as defined in 24 CFR part 888, subpart A, for the unit; or

(ii) The amount of the monthly subsidy provided for the unit, which will be determined by adding the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund.

(A) For the Public Housing Capital Fund, the amount of Capital Funds provided to the unit will be calculated as the per unit Capital Fund assistance provided to a PHA for the development in which the family resides for the most recent funding year for which Capital Funds have been allocated;

(B) For the Public Housing Operating Fund, the amount of Operating Funds provided to the unit will be calculated as the per unit amount provided to the public housing project where the unit is located for the most recent funding year for which a final funding obligation determination has been made;

(C) HUD will publish such funding amounts no later than December 31 each year.

The Total Tenant Payment does not include other charges.

SMHA recognizes that in some instances even the minimum rent may create a financial hardship for families. SMHA will review all relevant circumstances brought to the SMHA's attention regarding financial hardship as it applies to minimum rent. The following section states the SMHA's procedures and policies in regard to minimum rent financial hardship as set forth by the QHWRA. If the SMHA establishes a minimum rent greater than zero, the SMHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the SMHA determines that a hardship exists, the TTP is the highest of the remaining components of the family's calculated TTP.

#### **SMHA Procedures for Notification to Families of Hardship Exceptions**

SMHA will notify all participant families subject to a minimum rent of their right to request a minimum rent hardship exception under the law.

SMHA notification will advise the family that hardship exception determinations are subject to SMHA grievance procedures.

SMHA will review all tenant requests for exception from the minimum rent due to financial hardships.

All requests for minimum rent exception are required to be in writing.

Requests for minimum rent exception must state the family circumstances that qualify the family for an exception.

#### **Exceptions to Minimum Rent**

SMHA will immediately suspend the minimum rent to all families who request it.

The Minimum Rent will be suspended until SMHA determines whether the hardship is:

Covered by statute

Temporary or long term

If SMHA determines that the minimum rent is not covered by statute, SMHA will impose a minimum rent including payment for minimum rent from the time of suspension.

SMHA will use its standard verification procedures to verify circumstances that have resulted in financial hardship, such as loss of employment, death in the family, etc.

**HUD Criteria for Hardship Exception**

In order for a family to qualify for a hardship exception the family's circumstances must fall into one of the following criteria:

The family has lost eligibility or is awaiting an eligibility determination for Federal, State, or local assistance;

The family would be evicted as a result of the imposition of the minimum rent requirement;

The income of the family has decreased because of changed circumstances, including:

Loss of employment or decreased hours

Death in the family

Other circumstances as determined by SMHA or HUD

\$115/month Disability Assistance from Job & Family Services is household's only income

**SMHA Policy:**

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

For a family to qualify under the eviction provision, the cause of the potential eviction must be the family's failure to pay rent or tenant-paid utilities. The family must have received an eviction notice.

In order to qualify under the death has occurred in the family provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

### **Implementation of Hardship Exemption**

#### ***Determination of Hardship***

When a family requests a financial hardship exemption, the SMHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

The SMHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

#### **SMHA Policy**

The SMHA defines temporary hardship as a hardship expected to last 90 days or less. Long term hardship is defined as a hardship expected to last more than 90 days.

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

When the minimum rent is suspended, the TTP reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

| <b>Example: Impact of Minimum Rent Exemption</b>        |                                |   |                                |
|---|--------------------------------|---|--------------------------------|
| Assume the SMHA has established a minimum rent of \$50. |                                |   |                                |
| <b>TTP – No Hardship</b>                                |                                | <b>TTP – With Hardship</b>                |                                |
| \$0   | 30% of monthly adjusted income | \$0                                       | 30% of monthly adjusted income |
| \$15  | 10% of monthly gross income    | \$15                                      | 10% of monthly gross income    |
| N/A   | Welfare rent                   | N/A                                       | Welfare rent                   |
| \$50  | Minimum rent                   | \$50                                      | Minimum rent                   |
| Minimum rent applies.<br>TTP = \$50                     |                                | Hardship exemption granted.<br>TTP = \$15 |                                |

#### **SMHA Policy**

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

The SMHA will make the determination of hardship within 30 calendar days.

#### ***No Financial Hardship***

If the SMHA determines there is no financial hardship, the SMHA will reinstate the minimum rent and require the family to repay the amounts suspended.

For procedures pertaining to grievance hearing requests based upon the SMHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

**SMHA Policy**

The SMHA will require the family to repay the suspended amount within 30-90 calendar days of the SMHA's notice that a hardship exemption has not been granted depending upon how long the minimum rent was suspended.

***Temporary Hardship***

If the SMHA determines that a qualifying financial hardship is temporary, the SMHA must reinstate the minimum rent from the beginning of the first of the month following the date of the family's request for a hardship exemption.

The family must resume payment of the minimum rent and must repay the SMHA the amounts suspended. HUD requires the SMHA to offer a reasonable repayment agreement, on terms and conditions established by the SMHA. The SMHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

For procedures pertaining to grievance hearing requests based upon the SMHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

**SMHA Policy**

The SMHA will enter into a repayment agreement in accordance with the SMHA's repayment agreement policy (see Chapter 16).

***Long-Term Hardship***

If the SMHA determines that the financial hardship is long-term, the SMHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

**SMHA Policy**

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.

- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

**Repayment Agreements for Temporary Hardship**

SMHA will offer a repayment agreement to the family for any such rent not paid during the temporary hardship period.

If the family owes SMHA money for rent arrears incurred during the minimum rent period, SMHA will calculate the total amount owed and divide it by 3 to arrive at a reasonable payment increment that will be added to the family's regular monthly rent payment. The family will be required to pay the increased amount until the arrears are paid in full.

Minimum rent arrears that are less than \$50 will be required to be paid in full the first month following the end of the minimum rent period.

If the family goes into default on the repayment agreement for back rent incurred during a minimum rent period, SMHA will reevaluate the family's ability to pay the increased rent amount and:

Determine whether the family has the means to meet the obligation and, if so determined, initiate eviction proceedings for nonpayment of rent; or

Determine that the repayment agreement is a financial hardship to the family and if so, restructure the existing repayment agreement.

SMHA's policies regarding repayment agreements are further discussed in the chapter entitled "Family Debts to the SMHA."

**B. INCOME AND ALLOWANCES**

Income: Includes all monetary and non-monetary income or benefit amounts that are received on behalf of the family. For purposes of calculating the Total Tenant Payment, HUD defines what is to be calculated and what is to be excluded in the federal regulations. In accordance with this definition, all income that is not specifically excluded in the regulations is counted.

*Earned income* means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits. 24 CFR § 5.100

Unearned Income *means* any annual income, as calculated under § 5.609, that is not earned income.



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

**Annual income.**

**Regulations:** 24 CFR §§ 5.609(a)(1)–(a)(2); and 891.105

Annual income includes all amounts received from all sources by each member of the family who is 18 years of age or older, the head of household, or spouse of the head of household, in addition to unearned income received by or on behalf of each dependent who is under 18 years of age. Annual income does not include amounts specifically excluded in 24 CFR § 5.609. All amounts received by the head of household, co-head, or spouse, including the income of a day laborer, independent contractor, and seasonal worker are included in annual income regardless of age, unless otherwise excluded in 24 CFR § 5.609.

**Note:** Annual income includes “all amounts received,” not the amount that a family **may be** legally entitled to receive but which they do not receive. For example, a family’s child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family.

Annual income also includes all actual anticipated income from assets even if the asset is excluded from net family assets but the income from the asset is not otherwise excluded. Imputed returns on net family assets are included in annual income only when net family assets exceed \$50,000 (a figure that is annually adjusted for inflation) and actual asset income cannot be calculated for all assets SMHA will not impute income from assets if the total value of net family assets is equal to or less than \$50,000 (as adjusted by inflation).

Annual income includes, with respect to the family:

- (1) All amounts, not specifically excluded in the definition under Annual Income received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and
- (2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

Annual Income does not include the following:

- (1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

- (2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments. This income exclusion also applies to Kinship Guardian Assistance Payments (Kin- GAP), kinship care payments, and other state-based kinship or guardianship payments that are alternatives to traditional foster care programs.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation continue to be included in annual income.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled. Any amounts recovered are excluded irrespective of whether they are received periodically or in a lump sum payment.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income;

Section 479B provides that certain types of student financial assistance are to be excluded in determining eligibility for benefits made available through federal, state, or local programs financed with federal funds. The types of financial assistance listed below are considered 479B student financial assistance programs; however, this list is not exhaustive, and 479B will be updated as of July 1, 2024.

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Student financial assistance received under the Bureau of Indian Education;
- Higher Education Tribal Grant;
- Tribally Controlled Colleges or Universities Grant Program;
- Employment training program under section 134 of the Workforce Innovation and Opportunity Act (WIOA); and

(iii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from—

- (1) The Federal government;
- (2) A State, Tribe, or local government;
- (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
- (4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- (5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

- (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
- (2) Financial support provided to the student in the form of a fee for services performed (*e.g.*, a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section);
- (3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii)(E) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

- (1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).
- (2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

- (i) the total amount of student financial assistance received under

this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, “baby bond” accounts created, authorized, or funded by Federal, State, or local government are excluded from income and net family assets.

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

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

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

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

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

(14) Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611. Full-time students must be dependent family members for this exclusion to apply. This exclusion does not apply to the head of household, spouse, or

co-head. This means that the first amount equal to the dependent deduction of the income earned by dependent full-time students will be included in the family's calculation of annual income.

The dependent deduction will be adjusted annually in accordance with the (CPI-W). Full-time dependent students that are working are eligible to receive both the dependent deduction and the exclusion described in this paragraph (as adjusted for inflation).

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611. This amount will be adjusted annually in accordance with the CPI-W. All dependents, including adopted family members, are eligible to receive the dependent deduction and the exclusion (as adjusted for inflation).

(16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse. Certain veterans are eligible for "aid and attendance" payments from the Veterans Affairs (VA) Administration. These payments are distinct from payments made to veterans under other VA programs, including the Veterans Pension program. SMHA should carefully review any income documentation provided by the family, because many types of VA income, including the Veterans Pension and the VA Survivors Pension, are included in annual income.

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

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit. A family member with a disability qualifies for this income exclusion. Amounts received may be intended for items such as services, equipment, and compensation provided to a family member. The payments are excluded from income as long as the amounts are provided to enable a family member with a disability to remain in the family's assisted unit. Both the person providing the care and the person who has the disability must be family members (not household members) and must live in the same assisted household. The exclusion does not apply to income earned by the family for other caregiving services provided to individuals outside of the assisted household.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (*e.g.*, proceeds

received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car). The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable. Loan proceeds may include, but are not limited to, personal loans (with a loan agreement) and student loans, regardless of whether the proceeds are received in the form of a refund to the student.

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the **Federal Register** to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing “gap” payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing “gap” payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing “gap” payments. Replacement housing “gap” payments should cover a minimum of 42 months of tenancy at the new unit.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family’s upcoming annual reexamination period will be excluded from a family’s annual income as nonrecurring income. This does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. For example, an increasing number of cities and states are piloting guaranteed income programs that have discrete beginning and end dates. This income can be excluded as nonrecurring in the final year of the pilot program.

For example, for an annual reexamination effective 2/1/2024, guaranteed income that will be repeated in the coming year but will end before the next reexamination on 2/1/2025 will be fully excluded from annual income.

Income amounts excluded under this category may include, but are not limited to, nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities, eviction prevention, security deposits to secure housing, payments for participation in research studies depending on the duration, and general one-time payments received by or on behalf of

the family.

(a) Day laborer by regulation means *an* individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future. 24 CFR § 5.603.

Income earned as a day laborer is not considered nonrecurring income under 24 CFR § 5.609(b)(24) and must be included, unless specifically excluded in 24 CFR § 5.609(b) (e.g., earnings of full-time students in excess of the dependent deduction (24 CFR §§ 5.609(b)(3), (b)(14), etc.).

(b) Independent contractor by regulation means an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. 24 CFR § 5.603

In general, an individual is an independent contractor if they have the right to control or direct only the conduct of the work. For example, while instructions and route information are generally provided, third-party delivery and transportation service providers are considered independent contractors unless state law dictates otherwise. In addition, individuals considered “gig workers,” such as babysitters, landscapers, rideshare drivers, and house cleaners, typically fall into the category of independent contractor.

Income earned as an independent contractor is not considered nonrecurring income and must be included unless specifically excluded in 24 CFR § 5.609(b) (e.g., 24 CFR §§ 5.609(b)(3), (b)(14), etc.).

(c) Seasonal worker by regulation means an individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry. 24 CFR § 5.609(b)

A seasonal worker may be in a short-term position (e.g., for which the customary employment period for the position is 6 months or fewer); and 2) the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the employer or industry.

Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver.

Income earned as a seasonal worker is not considered nonrecurring income and must be included unless specifically excluded in 24 CFR § 5.609(b) (e.g., § 5.609(b)(14), etc.).

Nonrecurring income includes:



(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (*e.g.*, wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization. When calculating annual income SMHA is prohibited from assigning monetary value to non-monetary in-kind donations received by the family. Non-recurring, non-monetary in-kind donations from friends and family may be excluded as non-recurring income. See (24 CFR § 5.609(b)(24)).

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings. However, if invested may be a part of the net family assets.

SMHA may accept a self-certification from the family stating that the income will not be repeated in the coming year.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay. Historically HUD has followed a practice of excluding from income civil rights settlements and judgments as lump-sum additions to assets, which would include amounts received as a result of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under nondiscrimination laws. However, this new exclusion clarifies that even where such payments are not lump-sum payments but instead may have a payment schedule, such payments are excluded. Additionally, this exclusion applies to back pay received by the family pursuant to a civil rights settlement or judgment.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and

(ii) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

**(c) Calculation of Income.** The SMHA must calculate family income as follows:

**(1) Initial occupancy or assistance and interim reexaminations.**

The SMHA must estimate the income of the family for the upcoming 12-month period:

(i) To determine family income for initial occupancy or for the initial provision of housing assistance; or

(ii) To determine family income for an interim reexamination of family income under §§ 5.657(c), 960.257(b), or 982.516(c) of this title.

**(2) Annual Reexaminations.**

(i) The SMHA or owner must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the SMHA uses a streamlined income determination under §§ 5.657(d), 960.257(c), or 982.516(b) of this title.

(ii) In determining the income of the family for the previous 12-month period, the PHA or owner must take into consideration any redetermination of income during the previous 12-month period resulting from an interim reexamination of family income under §§ 5.657(c), 960.257(b), or 982.516(c) of this title.

(iii) The SMHA must make adjustments to reflect current income if there was a change in income during the previous 12-month period that was not accounted for in a redetermination of income.

**(3) Use of other programs' determination of income.**

(i) The SMHA may, using the verification methods in paragraph (c)(3)(ii) of this section, determine the family's income prior to the application of any deductions applied in accordance with § 5.611 based on income determinations made within the previous 12-month period for purposes of the following means-tested forms of Federal public assistance:

(A) The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, *et seq.*).

(B) Medicaid (42 U.S.C. 1396 *et seq.*).

(C) The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 *et seq.*).

(D) The Earned Income Tax Credit (26 U.S.C. 32).

(E) The Low-Income Housing Credit (26 U.S.C. 42).

(F) The Special Supplemental Nutrition Program for Woman, Infants, and Children (42 U.S.C. 1786).

(G) Supplemental Security Income (42 U.S.C. 1381 *et seq.*).

(H) Other programs administered by the Secretary.

(I) Other means-tested forms of Federal public assistance for which HUD has established a memorandum of understanding.

(J) Other Federal benefit determinations made in other forms of means-tested Federal public assistance that the Secretary determines to have comparable reliability and announces through the **Federal Register**.

(ii) If a PHA or owner intends to use the annual income determination made by an administrator for allowable forms of Federal means-tested public assistance under this paragraph (c)(3), the PHA or owner must obtain it using the appropriate third-party verification. If the appropriate third-party verification is unavailable, or if the family disputes the determination made for purposes of the other form of Federal means-tested public assistance, the PHA or owner must calculate annual income in accordance with 24 CFR part 5, subpart F. The verification must indicate the tenant's family size and composition and state the amount of the family's annual income. The verification must also meet all HUD requirements related to the length of time that is permitted before the third-party verification is considered out-of-date and is no longer an eligible source of income verification.

(4) *De minimis errors.* The PHA or owner will not be considered out of compliance with the requirements in this paragraph (c) solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA or owner determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

(i) The PHA or owner must still take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent or family share as a result of the de minimis error in the income determination, but families will not be required to repay the PHA or owner in instances where a PHA or owner has miscalculated income resulting in a family being undercharged for rent or family share.

(ii) HUD may revise the amount of de minimis error in this paragraph (c)(4) through a rulemaking published in the **Federal Register** for public comment.

**Adjusted Income. 24 CFR § 5.611**

*Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

**(a) Mandatory deductions.**

(1) \$480 for each dependent, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25;

(2) \$525 for any elderly family or disabled family, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25;

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

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

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

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

**(b) Additional deductions.**

(1) For public housing, the Housing Choice Voucher (HCV) and the Section 8 moderate rehabilitation programs (including the moderate rehabilitation Single-Room Occupancy (SRO) program), SMHA may adopt additional deductions from annual income.

(i) *Public housing.* A PHA that adopts such deductions will not be eligible for an

increase in Capital Fund and Operating Fund formula grants based on the application of such deductions. The PHA must establish a written policy for such deductions.

SMHA Policy

The SMHA does not provide any additional optional deductions.

***(c) Financial hardship exemption for unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses.***

(1) *Phased-in relief.* This paragraph provides financial hardship relief for families affected by the statutory increase in the threshold to receive health and medical care expense and reasonable attendant care and auxiliary apparatus expense deductions from annual income.

(i) *Eligibility for relief.* To receive hardship relief under this paragraph (c)(1), the family must have received a deduction from annual income because their sum of expenses under paragraph (a)(3) of this section exceeded 3 percent of annual income as of January 1, 2024.

(ii) *Form of relief.* (A) The family will receive a deduction totaling the sum of the expenses under paragraph (a)(3) of this section that exceed 5 percent of annual income.

(B) Twelve months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed 7.5 percent of annual income.

(C) Twenty-four months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed ten percent of annual income and the only remaining relief that may be available to the family will be paragraph (d)(1) of this section.

(D) A family may request hardship relief under paragraph (c)(2) of this section prior to the end of the twenty- four-month transition period. If a family making such a request is determined eligible for hardship relief under paragraph (c)(2) of this section, hardship relief under this paragraph ends and the family's hardship relief shall be administered in accordance with paragraph (c)(2) of this section. Once a family chooses to obtain relief under paragraph (c)(2) of this section, a family may no longer receive relief under phase-in.

(2) *General.* This paragraph (c)(2) provides financial relief for an elderly or disabled family or a family that includes a person with disabilities that is experiencing a financial hardship.

(i) *Eligibility for relief.* (A) To receive hardship relief under this paragraph (c)(2), a family must demonstrate that the family's applicable health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses increased or the

family's financial hardship is a result of a change in circumstances (as defined by the responsible entity) that would not otherwise trigger an interim reexamination.

(B) Relief under this paragraph (c)(2) is available regardless of whether the family previously received deductions under paragraph (a)(3) of this section, is currently receiving relief under paragraph (c)(1) of this section, or previously received relief under paragraph (c)(1) of this section.

(i) Form and duration of relief.

(A) The family will receive a deduction for the sum of the eligible expenses in paragraph (a)(3) of this section that exceed 5 percent of annual income.

(B) The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever comes earlier. However, responsible entities may, at their discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues.

(d) Exemption to continue child care expense deduction.

A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue the child care expense deduction under paragraph (a)(4) of this section. The responsible entity must recalculate the family's adjusted income and continue the child care deduction if the family demonstrates to the responsible entity's satisfaction that the family is unable to pay their rent because of loss of the child care expense deduction, and the child care expense is still necessary even though the family member is no longer employed or furthering his or her education. The hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. Responsible entities, at their discretion, may extend such hardship exemptions for additional 90-day periods based on family circumstances.

(e) Hardship policy requirements.

(1) Responsible entity determination of family's inability to pay the rent.

The SMHA must establish a policy on how it defines what constitutes a hardship under paragraphs (c) and (d) of this section, which includes determining the family's inability to pay the rent, for purposes of determining eligibility for a hardship exemption under paragraph (d) of this section.

(2) Family notification.

The SMHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from the hardship exemption. The notice must also inform the family of when the hardship exemption will begin and expire (i.e., the time periods specified under paragraph (c)(1)(ii) of this section or within 90 days or at such time as the responsibility entity determines the exemption is no longer necessary in accordance with paragraphs (c)(2)(ii)(B) or (d) of this section).

## Anticipating Expenses

### SMHA Policy

Generally, the SMHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), the SMHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the SMHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The SMHA may require the family to provide documentation of payments made in the preceding year.

## Dependent Deduction

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

### **Regulation:** 24 CFR § 5.611(a)(1)

Effective January 1, 2024, the dependent deduction amount is \$480. This amount will be adjusted annually and applies to a family's next annual or interim reexamination after the annual adjustment, whichever is sooner. Not later than September 1 annually, HUD will publish the CPI-W adjusted dependent deduction to the HUDUser Web site. SMHA must implement the adjusted dependent deduction for all income examinations that are effective on January 1 or later.

### **Elderly and Disabled Family Deduction Regulation:** 24 CFR § 5.611(a)(2)

Effective January 1, 2024, the elderly/disabled family deduction increases from \$400 to \$525 and applies to a family's next interim or annual reexamination, whichever is sooner. The amount of the deduction will be adjusted annually no later than September 1 annually, HUD will publish the CPI-W adjusted elderly/disabled family deduction to the HUDUser Web site. SMHA must implement the adjusted elderly/disabled family deduction for all income examinations that are effective on January 1 or later.

## Unreimbursed Health and Medical Care Expenses and Reasonable Attendant Care and Auxiliary Apparatus Expenses Deduction

### **New Higher Threshold for Deducting Health and Medical Care Expenses and Unreimbursed Reasonable Attendant Care and Auxiliary Apparatus Expenses**

#### **Regulation:** 24 CFR § 5.611(a)(3)

HOTMA establishes that the sum of unreimbursed health and medical care and reasonable attendant care and auxiliary expenses that exceed 10 percent of the family's annual income can be deducted from annual income. Prior to January 1,

2024, the threshold was 3 percent of the family's annual income.

**New Definition of Unreimbursed Health and Medical Care Expenses and Reasonable Attendant Care and Auxiliary Apparatus Expenses Deduction**

**Regulation:** 24 CFR § 5.603

Health and medical care expenses, as defined in 24 CFR § 5.603, include costs incurred for the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed. Medical insurance premiums continue to be eligible health and medical care expenses. However, health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

Although HUD revised the definition of health and medical care expenses to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting SMHA to specifically align their policies with IRS Publication 502 for determining which expenses are included in HUD's mandatory deduction for health and medical care expenses. IRS Publication 502, in some instances, may instruct that certain expenses are not to be considered medical expenses that would otherwise be allowed under HUD's definition of health and medical care expenses. SMHA must review each expense to determine whether it is eligible in accordance with HUD's definition of health and medical care expenses.

**SMHA Policy**

When IRS 502 and HUD regulations of allowable expenses are in conflict, the SMHA will use the HUD definition of allowable expenses to determine the deduction.

**Unreimbursed Reasonable Attendant Care and Auxiliary Apparatus Expenses**

**Regulation:** 24 CFR § 5.611(a)(3)(ii)

Auxiliary apparatus items can include, for example, expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read, or type or special equipment to assist a person who is deaf or hard of hearing. Some examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day.

In order to claim the deduction for the cost of unreimbursed reasonable



attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed. If the unreimbursed reasonable attendant care and auxiliary apparatus expense exceeds the amount earned by the person who was enabled to work, the deduction will be capped at the amount earned by that individual.

### **Hardship Exemptions for Health and Medical Care Expenses and Reasonable Attendant Care and Auxiliary Apparatus Expenses**

**Regulations:** 24 CFR §§ 5.611(c)(1); 5.611(c)(1)(D); and 5.611(c)(2)

The threshold to deduct health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses has been increased from an excess of 3 to an excess of 10 percent of annual income. Concurrently with this increase, the regulations provide financial hardship exemptions for unreimbursed health and medical care expenses, and for reasonable attendant care and auxiliary apparatus expenses for eligible families. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of 5 percent of annual income. In order to claim **unreimbursed health and medical care expenses**, the family must have a head, co-head, or spouse that is elderly or a person with a disability. In order to claim **unreimbursed reasonable attendant care and auxiliary apparatus expenses**, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

To initiate, extend, or conclude a hardship exemption only, SMHA will process and submit a non-interim reexamination transaction in accordance with HUD requirements.

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

**Note:** A family receiving phased-in relief may request to receive general hardship relief instead; **once a family chooses to obtain general relief, a family may no longer receive the phased-in relief.**

#### **Phased-in Relief**

The phased-in relief for families affected by the statutory increase in the threshold to receive unreimbursed health and medical care and reasonable attendant care and auxiliary apparatus expense deductions from annual income.

All families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024, will begin receiving the 24- month phased-in relief at their next annual reexamination or interim reexamination, whichever occurs first after January 1, 2024. Families who receive phased-in relief will have eligible expenses deducted that exceed 5 percent of annual income for 12 months. Twelve months after the 5 percent

phase-in began, families will have eligible expenses deducted that exceed 7.5 percent of annual income for the immediately following 12 months. After the family has completed the 24 months phase-in at the lower thresholds, as described above, the family will remain at the 10 percent threshold, unless the family qualifies for relief under the general hardship relief provision.

When an eligible family's phased-in relief begins at an interim reexamination, the SMHA will need to process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

### **General Relief for Medical and Disability Expense Deductions**

General relief may be granted when a family is eligible for general relief related to the health and medical care expense and reasonable attendant care and auxiliary apparatus expense deduction.

To receive general relief, a family must demonstrate that the family's unreimbursed health and medical care expenses or unreimbursed reasonable attendant care and auxiliary apparatus expenses increased, or the family's financial hardship is a result of a change in circumstances that would not otherwise trigger an interim reexamination.

Relief is available regardless of whether the family previously received an unreimbursed health and medical care expense deduction, unreimbursed reasonable attendant care and auxiliary apparatus expense deduction, are currently receiving phased-in hardship relief, or were previously eligible for either this general relief or the phased-in relief.

If SMHA determines that a family is eligible for general relief, the family will receive a deduction for the sum of the eligible expenses that exceed 5 percent of annual income. The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever comes earlier. However, SMHA may, pursuant to their own discretionary policy, extend the relief for one or more additional 90-day periods while the family's hardship condition continues.

### **SMHA Discretionary Policy**

SMHA must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. SMHA must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

SMHA circumstances constituting a financial hardship may include the following situations:

- The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;
- The family's income decreased because of a loss of employment, death of a

family member, or due to a natural or federal/state declared disaster; or

- Other circumstances as determined by the SMHA.

SMHA must not conduct an interim reexamination to add, remove, or to extend a hardship exemption, unless another change experienced by the family triggers an interim reexamination under the applicable regulation or in accordance with the SMHA's discretionary policies on conducting interim reexaminations for adjusted income decreases that are less than ten percent. Instead, the SMHA will process and submit a non-interim reexamination transaction as described in PIH Notice 2023-27 Section 16.4 (Non-Interim Reexamination Transactions).

### **Definition of Health and *Medical Care Expenses***

Health and medical care expenses are any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

#### **SMHA Policy**

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to help clarify the costs that qualify as medical expenses. However, when in conflict with the regulations, SMHA will use the HUD regulations.

| <b>Summary of Allowable Medical Expenses from IRS Publication 502</b>                                |   |
|--|---|
| Services of medical professionals  | Substance abuse treatment programs  |
| Surgery and medical procedures that are necessary, legal, non-cosmetic                               | Psychiatric treatment   |
| Services of medical facilities   | Ambulance services and some costs of transportation related to medical expenses   |
| Hospitalization, long-term care, and in-home nursing services  | The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) |
| Prescription and non-prescription medicines and insulin.   | Cost and continuing care of necessary service or companion animals  |
| Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails) | Medical insurance premiums or the cost of a health maintenance organization (HMO)   |

**Note:** This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

## **Families That Qualify for Both Medical and Disability Assistance Expenses**

### SMHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the SMHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

## **Disability Assistance Expense Deduction [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed ten percent of annual income, and (4) do not exceed the earned income received by the adult family members who is enabled to work.

## **Earned Income Limit on the Disability Assistance Expense Deduction**

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work.

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. This will be determined by the amount of the earned income that is included in the Annual Income.

### SMHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the SMHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the SMHA determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members’ incomes.

### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows: “Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals” [PH Occ GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work [HCV GB, p. 5-30].

HUD advises SMHAs to further define and describe auxiliary apparatus [VG, p. 30].

### ***Eligible Auxiliary Apparatus***

#### SMHA Policy

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

### ***Eligible Attendant Care***

The family determines the type of attendant care that is appropriate for the person with disabilities.

#### SMHA Policy

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the SMHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### ***Payments to Family Members***

No disability expenses may be deducted for payments to a member of a tenant family or live-in aide [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are not reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### SMHA Policy

The SMHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the SMHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the SMHA will consider, the family's justification for costs that exceed typical costs in the area.

### **Families That Qualify for Both Medical and Disability Assistance Expenses**

#### SMHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the SMHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

### **Childcare Expense Deduction and Hardship Exemption to Continue Child-Care Expenses Deduction**

**Regulation:** 24 CFR §§ 5.603 Child-Care Expenses and 5.611(d)

See also [Attachment I](#) (paragraph I.4) (Non-Interim Reexamination Transactions in PIH 2023-27).

Under 24 CFR § 5.611(d), any reasonable child-care expenses necessary to enable a member of the family to be employed or to further their education are deducted from income. Reasonable child-care expenses are defined in 24 CFR § 5.603(a) and are expenses for the care of children (including foster children if the unreimbursed child-care expenses are paid from the family's annual income and not from another source, such as a stipend from the child welfare agency), age 12 and younger, when all the following statements are true:

- The care is necessary to enable a family member to be employed or to further his or her education (e.g., work, look for work, or further their education (academic or vocational));
- The expense is not reimbursed by an agency or individual outside the household; and
- The expenses incurred to enable a family to work do not exceed the amount of employment income that is included in annual income.

A family whose eligibility for the child-care expense deduction **is ending** may receive a hardship exemption to continue receiving a child-care expense deduction in certain circumstances when the family no longer has a member that is working, looking for work, or seeking to further their

education, and the deduction is necessary because the family is unable to pay their rent.

When a family requests a hardship exemption to continue receiving a child-care expense deduction that is ending, the SMHA must recalculate the family's adjusted income and continue the child-care deduction if the family demonstrates to the SMHA's satisfaction that the family is unable to pay their rent because of loss of the child-care expense deduction and the child-care expense is still necessary even though the family member is no longer working, looking for work, or furthering their education. The hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. The SMHA, at their discretion, may extend such hardship exemptions for additional 90-day periods based on family circumstances.

To initiate, extend or conclude a hardship exemption, SMHA will submit a non-interim transaction code on form HUD-50058, unless there is an accompanying event that triggers an interim reexamination.

### **Hardship Policy Requirements**

#### **Policy for Determination of the Family's Inability to Pay Rent**

**Regulation:** 24 CFR § 5.611(e)

SMHA must establish policies on how they define what constitutes a hardship (i.e., when a family is unable to pay rent, triggering eligibility for a hardship exemption).

**SMHA Discretionary Policy:** SMHA has discretion to establish policies for the purpose of determining eligibility for general hardship relief for the child-care expense hardship exemption. PHAs/MFH Owners must describe these policies in their ACOPs, Administrative Plans, or Tenant Selection Plans, as applicable.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (child-care expenses or health and medical expenses) is more than 45 percent (for example) of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent. SMHA may use different percentage thresholds or methods for determining a family's inability to pay rent.

**Family Notification of Hardship Exemption Regulation:** 24 CFR § 5.611(e)(2)

SMHA must promptly notify families in writing of the change in the determination of adjusted income and the family's rent resulting from the application of the hardship exemption. The written notice must also inform the family of the dates that the hardship exemption will begin and expire and the requirement for the family to report to the SMHA if the circumstances that made the family eligible for relief are no longer applicable. The notice must also state that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption. SMHA must provide families 30 days' notice of any increase in rent. SMHA is encouraged to communicate the availability of hardship exemptions and how to request a hardship to all applicants and families prior to January 1, 2024.

SMHA Policy

SMHA will notify the family within 30 days of the requested hardship and will further notify them of the ending of a hardship within 30 days.

**Family Notification of Hardship Exemption Denial**

SMHA must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. The notification must specifically state the reason for the denial.

SMHA Policy

SMHA will notify the family within 30 days of the requested hardship and will further notify them of the ending of a hardship within 30 days.

**Family Notification of Hardship Exemption Termination**

SMHA must notify the family if the hardship exemption is no longer necessary and will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

SMHA Policy

SMHA will notify the family within 30 days of the requested hardship and will further notify them of the ending of a hardship within 30 days.

**Extension of Hardship Exemption for Additional 90-Day Period(s)**

SMHA may at their discretion extend hardship exemptions for additional 90-day periods if the hardship continues pursuant to the SMHA's hardship policies. This provision applies to families receiving hardship exemptions for the child-care expenses deduction and general hardship relief for health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses.

SMHA may extend the hardship relief for as many 90-day periods as the hardship continues to affect the family. Policies for extending hardship relief for additional 90-day periods must be established in SMHA's Administrative Plans or ACOPs, and in MFH Owners' Tenant Selection Plans.

SMHA must obtain third-party verification of the family's inability to pay rent or must document in the file the reason that third-party verification was not available. SMHA must attempt to obtain third-party verification prior to the end of the 90-day period.

SMHA Policy

Families must make a written request for the hardship and provide documentation of the need to extend. SMHA will provide at least 30 days written notice of the approval or denial of the hardship.



### **Clarifying the Meaning of *Child* for This Deduction**

Childcare expenses do not include child support payments made to another on behalf of a minor who is not living in a tenant family's household [VG, p. 26].

#### SMHA Policy

For the purposes of childcare expenses, the SMHA defines *child* to include any foster children under the age of 13 living in a tenant family's household.

### **Qualifying for the Childcare Deduction**

#### ***Determining Who Is Enabled to Pursue an Eligible Activity***

#### SMHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a childcare deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, the SMHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

#### ***Seeking Work***

#### SMHA Policy

If the childcare expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the childcare expense being allowed by the SMHA.

#### ***Furthering Education***

#### SMHA Policy

If the childcare expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the childcare claimed.

#### ***Being Gainfully Employed***

#### SMHA Policy

If the childcare expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that childcare is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

### **Earned Income Limit on Childcare Expense Deduction**

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for childcare – although the care must still be necessary and reasonable. However, when childcare enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, childcare costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, childcare expenses are limited to \$5,000.

The SMHA must not limit the deduction to the least expensive type of childcare. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

#### **SMHA Policy**

When the childcare expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the SMHA generally will limit allowable childcare expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

### **Eligible Childcare Expenses**

The type of care to be provided is determined by the tenant family. The SMHA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide childcare [VG, p. 26].

### ***Allowable Childcare Activities***

#### **SMHA Policy**

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of childcare.

The costs of general housekeeping and personal services are not eligible. Likewise, childcare expenses paid to a family member who lives in the family's unit are not eligible; however, payments for childcare to relatives who do not live in the unit are eligible.

If a childcare provider also renders other services to a family or childcare is used to enable a family member to conduct activities that are not eligible for consideration, the SMHA will prorate the costs and allow only that portion of the expenses that is attributable to childcare for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the childcare provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### ***Necessary and Reasonable Costs***

Childcare expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the childcare provider verifies, that the expenses are not paid or reimbursed by any other source.

#### **SMHA Policy**

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For childcare that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of childcare costs, the SMHA will use the schedule of childcare costs from the local welfare agency. Families may present, and the SMHA will consider, justification for costs that exceed typical costs in the area.

### **Permissive Deductions**

SMHA may, but is not required to, establish an additional deduction or deductions from a family's annual income. These deductions are also known as "permissive deductions." Note that the public housing Operating Fund formula is not revised to account for any decrease in SMHA revenue attributable to implementing permissive deductions. Likewise, the subsidy costs attributable to implementing permissive deductions will not be taken into consideration in determining the SMHA's HCV renewal funding or moderate rehabilitation funding. Should SMHA adopt permissive deductions, they are required to incorporate these policies as part of the Administrative Plan or ACOP, as applicable.

**Additional (Permissive) Deductions: Public Housing Only Regulation: 24 CFR § 5.611(b)(1)(i)**

SMHA may continue to adopt additional deductions from annual income in the Public Housing program. Permissive deductions may be used to incentivize or encourage self-sufficiency and economic mobility. **A PHA that adopts such deductions will not be eligible for an increase in Capital Fund and Operating Fund formula grants based on the application of such deductions**, so the financial impact of implementing permissive deductions must be carefully evaluated. PHAs may adopt permissive deductions for Public Housing only if they have established a written policy for such deductions. PHAs must put the total dollar amounts of any

permissible deductions in column 8d and line 8e of the form HUD-50058.

SMHA Policy

**SMHA does not permit additional permissive deductions.**

### Household Composition and Income

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

| Summary of Income Included and Excluded by Person                          |  |
|--|--|
| Live-in aides  | Income from all sources is excluded  |
| Foster child or foster adult   | Income from all sources is excluded  |
| Head, spouse, or co-head<br>Other adult family members                     | All sources of income not specifically excluded by the regulations are included.   |
| Children under 18 years of age   | Employment income of a minor is excluded.<br><br>All other sources of income, except those specifically excluded by the regulations, are included.                             |
| Full-time students 18 years of age or older (not head, spouse, or co-head) | Employment income above the dependent deduction per year is excluded.<br><br>All other sources of income, except those specifically excluded by the regulations, are included. |

### Temporarily Absent Family Members

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

#### *Absent Full-Time Students*

SMHA Policy

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

#### *Court-Ordered Absences*

SMHA Policy

If a member of the family is subject to a court order that restricts the member from the home, the SMHA will determine whether the person will be considered temporarily or permanently absent. If the court order specifies a permanent restriction or if the court restriction exceeds 180 days, the person will no longer be considered a family member. If

the individual intends to return to the unit at the end of the restriction, the individual is subject to the eligibility and screening requirements discussed in the chapter on eligibility.

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

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

##### **SMHA Policy**

If a child has been placed in foster care, the SMHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member for up to 12 months after being removed from the home.

#### ***Absences Due to Incarceration***

##### **SMHA Policy**

If a family member is expected to be incarcerated for more than 180 consecutive days, the person will not be considered a family member. If the individual intends to return to the unit following incarceration, the individual is subject to the eligibility and screening requirements discussed in the chapter on eligibility.

#### **Family Members Permanently Confined for Medical Reasons**

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted .

##### **SMHA Policy**

The SMHA will request verification from a responsible medical professional to determine whether the confinement is temporary or permanent and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent and their income will still be included in the rent calculation. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualifies as an elderly person or a person with disabilities.

#### **Joint Custody of Children**

##### **SMHA Policy**

In the case of joint custody, only one family may claim a child as a dependent. When two assisted families could conceivably claim the child, the two families must resolve the issue and declare which household will receive the dependent deduction. If the two households are unable to resolve the issue, the SMHA will make the determination on the basis of such factors as who is designated as the residential or custodial parent, which parent's address is used for school purposes and how much time the child spends in each household.

## **Guardian for a Child**

### SMHA Policy

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

- (1) If a responsible agency has determined that another adult is to be brought into the unit to care for a child for an indefinite period, the designated guardian will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a guardian has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the guardian will be treated as a visitor for 90 days. After the 90 days has elapsed, the guardian will be considered a family member unless information is provided that would confirm that the guardian's role is temporary. In such cases the SMHA will extend the guardian's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a guardian, the lease will be transferred to the guardian, as head of household.
- (4) During any period that a guardian is considered a visitor, the income of the guardian is not counted in annual income and the guardian does not qualify the family for any deductions from income.

In all situations, the SMHA must approve any guardian that is to remain in the unit on a permanent basis according to the established eligibility and screening criteria.

## **Types of Earned Income Included in Annual Income**

*Earned income* means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits. 24 CFR § 5.100

### SMHA Policy

For persons who regularly receive bonuses or commissions, the SMHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the SMHA will use the prior year amounts. In either case the family may provide, and the SMHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the SMHA will count only the amount estimated by the employer.

***Some Types of Military Pay.*** All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

***Income Earned under Certain Federal Programs.*** Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

***Resident Service Stipend.*** Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the SMHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the SMHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

***State and Local Employment Training Programs.*** Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

#### **SMHA Policy**

The SMHA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period to time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

The SMHA defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the SMHA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the SMHA's interim reporting requirements (see chapter on reexaminations).

***HUD-Funded Training Programs.*** Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

SMHA Policy

To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs.

***Earned Income Tax Credit.*** Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

**C. DISALLOWANCE OF EARNED INCOME FROM RENT DETERMINATIONS**

***Limitation.*** This section applies to a family that is receiving the disallowance of earned income and in the window of opportunity under this section on December 31, 2023 or Eligible to receive the Jobs Plus program rent incentive pursuant to the Jobs Plus FY2023 notice of funding opportunity (NOFO) or earlier appropriations and distributed through prior Jobs Plus NOFOs.

The Earned Income Disregard (EID) will not apply to any family who is not eligible for and already participating in the disallowance as of December 31, 2023.

***Sunset.*** This section will lapse on all families including Job Plus on January 1, 2030.

Although HOTMA eliminates the EID from HUD regulations, families who were receiving the EID benefit as of December 31, 2023, may continue to receive the full benefit until the remaining timeframe for an individual family's EID expires. Because the EID lasts up to 24 consecutive months, no family will still be receiving the EID benefit after December 31, 2025.

**Note:** The EID policies described above are distinct from similar policies in the Jobs Plus program. Families eligible to receive the Jobs Plus program rent incentive (Jobs Plus Earned Income Disregard (JPEID)) pursuant to the FY2023 Notice of Funding Opportunity (NOFO) or earlier appropriation distributed through prior Jobs Plus NOFOs may continue to receive JPEID



under the terms of the NOFO. The JPEID was established by HUD as an alternative requirement to EID for Jobs Plus grantees by waiving section 3(d) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(d)) and § 960.255(b) and (d). For more information about JPEID waivers and alternative requirements, please review the following *Federal Register* notices: [80 FR 13415](#) (March 13, 2015) and [83 FR 13506](#) (March 29, 2018).

The annual income for qualified families may not be increased as a result of increases in earned income of a family member beginning on the date on which the increase in earned income begins and continuing for an initial 12 calendar month period. For calculation purposes, the disallowance shall begin the first of the month after the employment begins. After the initial 12 calendar months expires, the following 12 calendar month period will include a phase-in of half the allowable earned income exclusion from annual income.

A family qualified for the earned income exclusion is a family that is receiving assistance under the public housing program; and

- Whose annual income increases as a result of employment of an adult family member and who was previously unemployed for one or more years prior to employment;
- Whose annual income increases as a result of increased earnings and who earned less than 10 hours @ minimum wage x 50 weeks during the previous 12 months?
- Whose annual income increases as a result of increased earnings by an adult family member during participation in any economic self-sufficiency or other job training program; or
- Whose annual income increases, as a result of new employment or increased earnings of an adult family member during or within six months after receiving assistance, benefits or services under any State program for TANF provided that the total amount over a six-month period is at least \$500. The qualifying TANF assistance may consist of any amount of monthly income maintenance, and/or at least \$500 in such TANF benefits and services as one-time payments, wage subsidies and transportation assistance.

The HUD definition of "previously unemployed" includes a person who has earned in the previous 12 months no more than the equivalent earnings for working 10 hours per week for 50 weeks at the minimum wage. Minimum wage is the prevailing minimum wage in the State or locality if it is higher than the federal minimum wage.

The HUD definition of economic self-sufficiency program is any program designed to encourage, assist, train or facilitate economic independence of assisted families or to provide work for such families. Such programs may include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as substance abuse or mental health treatment).

Qualifying increases are any earned income increases of a family member during participation in an economic self-sufficiency or job training program and may include increases that occur after participation provided the training provides assistance, placement, training or mentoring after the training that leads to employment.

The amount that is subject to the disallowance is the amount of incremental increase in income of a family member. The incremental increase in income is calculated by comparing the amount of the family member's income before the beginning of qualifying employment (baseline) to the amount of such income after the employment.

#### **Initial Twelve-Month Exclusion**

During the initial 12-calendar month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the SMHA will exclude from annual income 100% of any incremental increase in income of the family member as a result of employment over the prior income of that family member (baseline).

#### **Second Twelve-Month Exclusion and Phase-in**

During the second 12-calendar month period after the expiration of the initial 12-calendar month period referred to above, the SMHA must exclude from annual income 50% of any incremental increase in income of the family member as a result of employment over the prior income of that family member (baseline) before the beginning of such employment.

#### **Maximum Two Year Disallowance**

The earned income disallowance is limited to a 24-calendar month period for each family member during their entire lifetime; regardless of whether they go to a different federally subsidized housing provider. For each family member, the disallowance only applies for a maximum of the initial 12 calendar months period of full exclusion of incremental increase, and a maximum of 12 calendar months period of phase-in exclusion during the -24 calendar month period starting from the date of the initial exclusion. There is a lifetime limit of 24 months once the initial time period begins, even if the family member does not use their whole 12 month full and/or 12 month phase-in exclusion period.

If the initial period of increased income does not last for 12 consecutive months, the 100% disallowance period will expire even if the family member's income has not been excluded for each of the 12 months. The second 12 calendar months phase in period will immediately follow the initial 12 calendar months. Increase in earned income that starts and stops during the 24 calendar month total exclusion period, will be excluded at the rate in effect when the increased

income resumes (the initial 12-month full exclusion and the second 12-month phase-in exclusion).

No earned income disallowance will be applied after the 24 calendar-month period following the initial date the exclusion was applied.

**Applicability to Child Care Expense Deductions**

The amount deducted for childcare necessary to permit employment shall not exceed the amount of employment income that is included in annual income. Therefore, for families entitled to the earned income disallowance, the amounts of the earned income that is included in the Annual Income after the application of the earned income disallowance will be used in determining the cap for childcare deduction in the case of the deduction that is allowed due to employment.

**Applicability to Disability Expense Deductions**

The amount deducted for disability expense deduction that is necessary to permit employment shall not exceed the amount of employment income that is included in Annual Income. Therefore, for families entitled to the earned income disallowance, the amounts of the earned income that is included in the Annual Income after the application of the earned income disallowance will be used in determining the cap for the disability expense deduction.

**Applicability to Families that Receive both Child Care Expense and Disability Deductions**

The amount deducted for both childcare and disability expense deductions necessary to permit employment shall not exceed the amount of employment income that is included in Annual Income. Therefore, for families entitled to the earned income disallowance, the amounts of the earned income that is included in the Annual Income after the application of the earned income disallowance will be used in determining the cap for childcare deduction and disability expenses combined in the case of the deduction that is allowed due to employment.

**Tracking the Earned Income Exclusion**

The earned income exclusion will be reported on the HUD 50058 form. Documentation will be included in the family's file to show the reason for the reduced increase in rent.

\*Such documentation will include:

- Date the increase in earned income was reported by the family
- Name of the family member whose earned income increased
- Reason (new employment, participation in job training program, within 6 months after receiving TANF) for the increase in earned income
- Amount of the increase in earned income (amount to be excluded)
- Date the increase in income is first excluded from annual income
  - Date the 12-month phase-in period began
  - Ending date of the maximum 24 calendar-month (two year) disallowance period (24 months from the date of the initial earned income disallowance)

The SMHA will maintain a tracking system to ensure correct application of the earned income disallowance.

It is a SMHA policy decision to conduct an interim reexamination for income increases for the purpose of calculating the earned income disallowance during the initial, phase in and expiration periods.

**Inapplicability to Admission**

The earned income disallowance is only applied to determine the Annual Income of families who are participants in the public housing program, and therefore does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

**D. INDIVIDUAL SAVINGS ACCOUNTS**

SMHA chooses not to establish a system of individual savings accounts for families who qualify for the disallowance of earned income. This will sunset when EID sunsets.

**E. BUSINESS INCOME [24 CFR 5.609(b)(2)]**

Annual income includes “the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family” [24 CFR 5.609(b)(2)].

**Business Expenses**

Net income is “gross income less business expense” [HCV GB, p. 5-19].

**SMHA Policy**

To determine business expenses that may be deducted from gross income, the SMHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

**Business Expansion**

HUD regulations do not permit the SMHA to deduct from gross income expenses for business expansion.

**SMHA Policy**

*Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For

example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

### **Capital Indebtedness**

HUD regulations do not permit the SMHA to deduct from gross income the amortization of capital indebtedness.

#### SMHA Policy

*Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the SMHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

### **Negative Business Income**

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

### **Withdrawal of Cash or Assets from a Business**

HUD regulations require the SMHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

#### SMHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, the SMHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

### **Co-owned Businesses**

#### SMHA Policy

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

## **F. ASSETS**

### **Overview**

For Public housing and the HCV program- HUD has established an asset limitation and

homeowner limitation policy.

**24 CFR § 5.618 Restriction on assistance to families based on assets.**

***(a) Restrictions based on net assets and property ownership.***

(1) A dwelling unit in the public housing program may not be rented, and assistance under the Section 8 (tenant-based and project-based) programs may not be provided, either initially or upon reexamination of family income, to any family if:

(i) The family's net assets (as defined in § 5.603) exceed \$100,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers; or

(ii) The family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell, based on State or local laws of the jurisdiction where the property is located, real property that is suitable for occupancy by the family as a residence, except this real property restriction does not apply to:

(A) Any property for which the family is receiving assistance under 24 CFR 982.620; or under the Homeownership Option in 24 CFR part 982;

(B) Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;

(C) Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking, as defined in this part 5 (subpart L); or

(D) Any family that is offering such property for sale.

(2) A property will be considered "suitable for occupancy" under paragraph (a)(1)(ii) of this section unless the family demonstrates that it:

(i) Does not meet the disability-related needs for all members of the family (*e.g.*, physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);

(ii) Is not sufficient for the size of the family;

(iii) Is geographically located so as to be a hardship for the family (*e.g.*, the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);

(iv) Is not safe to reside in because of the physical condition of the property (*e.g.*,

property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or

(v) Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

***(b) Acceptable documentation; confidentiality.***

(1) A PHA or owner may determine the net assets of a family based on a certification by the family that the net family assets (as defined in § 5.603) do not exceed \$50,000, which amount will be adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(2) A PHA or owner may determine compliance with paragraph (a)(1)(ii) of this section based on a certification by a family that certifies that such family does not have any present ownership interest in any real property at the time of the income determination or review.

(3) When a family asks for or about an exception to the real property restriction because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA or owner must comply with the confidentiality requirements under § 5.2007. The PHA or owner must accept a self-certification from the family member, and the restrictions on requesting documentation under § 5.2007 apply.

***(c) Enforcement.***

(1) When recertifying the income of a family that is subject to the restrictions in asset limitations, a PHA or owner may choose not to enforce such restrictions, or alternatively, may establish exceptions to the restrictions based on eligibility criteria.

(2) The PHA or owner may choose not to enforce the restrictions in asset limitations or establish exceptions to such restrictions only pursuant to a policy adopted by the PHA or owner.

(3) Eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. Such policies must be in conformance with all applicable fair housing statutes and regulations.

***(d) Delay of eviction or termination of assistance.*** The PHA or owner may delay for a period of not more than 6 months the initiation of eviction or termination proceedings of a family based on noncompliance under this provision unless it conflicts with other provisions of law.

**(e) Applicability.** This section applies to the Section 8 (tenant-based and project-based) and public housing programs.

### **Net Family Assets- Definition**

**Regulations:** 24 CFR §§ 5.100 and 5.603

(1) Net family assets are the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, SMHA must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are:

(i) The value of necessary items of personal property, See (Necessary and Non-Necessary Personal Property);

(ii) The combined value of all non- necessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) See (Necessary and Non-Necessary Personal Property);

(iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals;

(iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located. Examples of this include but are not limited to: co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; inherited property in dispute.;

(v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out



of law, that resulted in a family member being a person with a disability;

(vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government.

(vii) Interests in Indian trust land;

(viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982;

(ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982;

(x) Family Self-Sufficiency Accounts; and

(xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(xii) The full amount of assets held in an irrevocable trust.

(xiii) The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household.

(4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

**Necessary and Non-Necessary Personal Property Regulation:**

**24 CFR § 5.603**

Necessary personal property is excluded from net family assets. Non-necessary personal property with a combined value greater than \$50,000, as adjusted by inflation, is considered part of net family assets. When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

All assets are categorized as either real property (e.g., land, a home) or personal property. Personal property includes tangible items, like boats, as well as intangible items, like bank accounts. For example, a family could have non-necessary personal property with a

combined value that does not exceed \$50,000 but also own real property such as a parcel of land. Even though the non-necessary personal property would be excluded from net family assets, the real property would be included in net family assets regardless of its value unless the real property meets a different exclusion under 24 CFR § 5.603.

Necessary personal property are items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability.

Necessary personal property does not include bank accounts, other financial investments, or luxury items.

Determining what is a necessary item of personal property is a highly fact-specific determination, and therefore it is incumbent on SMHA to gather enough facts to qualify whether an asset is necessary or non-necessary personal property.

Items of personal property that do not qualify as necessary personal property will be classified as non-necessary personal property.

The following table lists examples of necessary and non-necessary personal property. **This is not an exhaustive list.**

**Examples of Necessary and Non-Necessary Personal Property**

| Necessary Personal Property  | Non-Necessary Personal Property  |
|--|--|
| <ul style="list-style-type: none"> <li>• Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)</li> <li>• Furniture, carpets, linens, kitchenware</li> <li>• Common appliances</li> <li>• Common electronics (e.g., radio, television, DVD player, gaming system)</li> <li>• Clothing</li> <li>• Personal effects that are not luxury items (e.g., toys, books)</li> <li>• Wedding and engagement rings</li> <li>• Jewelry used in religious/cultural celebrations and ceremonies</li> <li>• Religious and cultural items</li> <li>• Medical equipment and supplies</li> <li>• Health care–related supplies</li> <li>• Musical instruments used by the family</li> <li>• Personal computers, phones, tablets, and related equipment</li> <li>• Professional tools of trade of the family, for example professional books</li> <li>• Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities</li> <li>• Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</li> </ul> | <ul style="list-style-type: none"> <li>• Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs))</li> <li>• Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)</li> <li>• Recreational boat/watercraft</li> <li>• Expensive jewelry without religious or cultural value, or which does not hold family significance</li> <li>• Collectibles (e.g., coins/stamps)</li> <li>• Equipment/machinery that is not used to generate income for a business</li> <li>• Items such as gems/precious metals, antique cars, artwork, etc.</li> </ul> |

**Assets with negative equity.** The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

## **General Policies**

### ***Income from Assets***

The SMHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, for admission and

interim recertifications, HUD authorizes the SMHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the SMHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the SMHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### SMHA Policy

Admission and interim, any time current circumstances or anticipated income are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the SMHA to show why the asset income determination does not represent the family's anticipated asset income.

#### ***Valuing Assets***

The calculation of asset income sometimes requires the SMHA to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash. Examples of acceptable costs include penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28 and PH, p. 121].

#### ***Lump-Sum Receipts***

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account)

#### ***Imputing Income from Assets***

When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

Imputed income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, imputed asset income must be calculated for specific assets when three conditions are met:

- The value of net family assets exceeds \$50,000 (as adjusted for inflation);
- The specific asset is included in net family assets; and
- Actual asset income cannot be calculated for the specific asset.

If the actual income from assets can be computed for some assets but not all assets, then SMHA must add up the actual income from the assets, where actual income can be calculated, then calculate the imputed income for the assets where actual income could not be calculated. After the SMHA has calculated both the actual income and imputed income, the housing provider must combine both amounts to account for income on net family assets with a combined value of over \$50,000.

When the family's net family assets do not exceed \$50,000 (as adjusted for inflation), imputed income is not calculated. Imputed asset income is never calculated on assets that are excluded from net family assets. When actual income for an asset — which can equal \$0 — can be calculated, imputed income is not calculated for that asset.

SMHA should not conflate an asset with an actual return of \$0 (as in the example above), with an asset for which an actual return cannot be computed, such as could be the case for some non-financial assets that are items of non-necessary personal property. If the asset is a financial asset and there is no income generated (for example, a bank account with a 0 percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is consistently \$0.

Annual Income does not include any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

**Actual and Imputed Income from Assets Regulation: 24 CFR § 5.609(a)(2)**

**Actual Income**

Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR § 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

***Determining Actual Anticipated Income from Assets***

It may or may not be necessary for the SMHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual

monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

### ***Withdrawal of Cash or Liquidation of Investments***

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

### ***Jointly Owned Assets***

For assets jointly owned by the family and one or more individuals outside of the assisted family, SMHA must include the total value of the asset in the calculation of net family assets, unless the asset is otherwise excluded, or unless the assisted family can demonstrate that the asset is inaccessible to them, or that they cannot dispose of any portion of the asset without the consent of another owner who refuses to comply. If the family demonstrates that they can only access a portion of an asset, then only that portion's value shall be included in the calculation of net family assets for the family. Likewise, any income from a jointly owned asset must be included in annual income, unless that income is specifically excluded or unless the family demonstrates that they do not have access to the income from that asset, or that they only have access to a portion of the income from that asset.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

#### **SMHA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the SMHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the SMHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the SMHA will prorate the asset evenly among all owners.

### ***Asset owned by business entity.***

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then

the family's asset is their ownership stake in the business, not some portion of the business's assets.

However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant).

***Assets Disposed of Less than Fair Market Value [24 CFR 5.603(b)]***

Assets disposed of for less than fair market value. In determining the value of net family assets, PHAs/MFH Owners must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received.

For example, if a family gave away a home with a net value of \$80,000, the value of the home must be included in the calculation of net family assets for two years following the transfer of property. If a family sold a home for less than fair market value, the difference between the value and the amount for which they sold it would be included in net family assets for two years following the transfer of property. For example, if a family sold a property with a fair market value of \$80,000 to a friend for \$20,000, then the difference in value (\$60,000) minus the cost to dispose of the property (\$10,000), which is in this example totals \$50,000, would be counted in net family assets for two years from the date of the property's transfer to the other party.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms.

HUD regulations require the SMHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

***Minimum Threshold***

The SMHA may set a threshold below which assets disposed of for less than fair market value will not be counted.

**SMHA Policy**

The SMHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$5,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in nonrevocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

#### *Separation or Divorce*

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

##### SMHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

#### *Foreclosure or Bankruptcy*

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

#### *Family Declaration*

##### SMHA Policy

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The SMHA may verify the value of the assets disposed of if other information available to the SMHA does not appear to agree with the information reported by the family.

### **Types of Assets**

#### ***Checking and Savings Accounts***

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

##### SMHA Policy

In determining the value of a checking account, the SMHA will use the current monthly balance.

In determining the value of a savings account, the SMHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the SMHA will multiply the value of the account by the current rate of interest paid on the account.



***Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds***

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

**SMHA Policy**

In determining the market value of an investment account, the SMHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the SMHA will calculate asset income based on the earnings for the most recent reporting period.

***Equity in Real Property or Other Capital Investments***

*Real property* as used in this chapter has the same meaning as that provided under the law of the State in which the property is located.

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [PH, p. 121].

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation

A family may not have real property as an asset, unless exempted under the asset provisions. Ownership can be in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of an exempted property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

**SMHA Policy**

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset.

***Trusts Regulations:*** 24 CFR §§ 5.603 and 5.609

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

Whether the value of a trust counts as a net family asset and whether distributions from the trust count as annual income to the family depends on the following three factors:

- Whether the trust is under the control of the family;
- Whether distributions are made from the trust's principal; and
- The purpose of the distribution, if the distribution is made from income earned on the trust's principal.

**Trusts as Net Family Assets**

The value of irrevocable trusts and revocable trusts that are not under the control of the family are both excluded from net family assets.

The distinguishing feature of a revocable trust is that the grantor can terminate and/or amend the trust at any time for any reason before his or her death. In circumstances when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family, the beneficiary does not “own” the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee.

A revocable trust that is under the control of the family or household (e.g., the grantor is a member of the assisted family or household) is included in net family assets, and, therefore, income earned on the trust is included in the family's income from assets. This also means that SMHA will calculate imputed income on the revocable trust if net family assets are more than \$50,000, as adjusted by inflation, and actual income from the trust cannot be calculated (e.g., if the trust is comprised of farmland that is not in use).

**Actual Income from a Trust**

If the SMHA Owner determines that the revocable trust is included in the calculation of net family assets, then the actual income earned by the revocable trust is also included in the family's income.

Where an irrevocable trust is excluded from net family assets, the SMHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed.

**Trust Distributions and Annual Income**

**Revocable trust considered part of net family assets:** If the value of the trust is considered

part of the family's net assets, then distributions from the trust are not considered income to the family.

**Revocable or irrevocable trust not considered part of net family assets:** If the value of the trust is not considered part of the family's net assets, then distributions from the trust are treated as follows:

All distributions from the trust's principal are excluded from income.

Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

SMHA must be careful to distinguish between distributions of principal and distributions of earnings on a trust's principal when verifying family income from irrevocable trusts and revocable trusts where the grantor is not part of the assisted family or household, so as not to unintentionally include distributions of principal that are not considered income.

**Note:** The policy implemented under HOTMA is a change from the previous policies of both PIH and MFH. Previously, PIH considered all distributions of principal or income earned on the principal as income unless the distribution qualified as an income exclusion. In determining whether a distribution from a trust should be counted as income to the beneficiary, MFH considered how the trust was funded, whether the distribution was from trust income or principal, and whether any distribution from trust income met an existing income exclusion. The policy under HOTMA aligns the policies of MFH and PIH and clarifies that the term "income" means "trust income" and not **any** distribution from the trust to the beneficiary.

#### **Federal Tax Refunds or Refundable Tax Credits: 24 CFR § 5.603**

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

Taxpayers have several options for receiving their tax refunds: via paper check or direct deposit into a checking or savings account; via Treasury Direct to buy savings bonds; via direct deposit into a Traditional, Roth, or Simplified Employee Pension Plan-IRA; or via purchase of savings bonds, a Health Savings Account, an Archer Medical Savings Account, or a Coverdell Education Savings Account. Refundable tax credits, such as the Earned Income Tax Credit (EITC), are determined as part of an overall tax return submission to the Internal Revenue Service (IRS). Taxpayers receive one federal tax refund reflecting the taxpayer's tax liability, if negative, including any applicable refundable tax credits.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of the account in which the federal tax refund or refundable tax credits were deposited. When the subtraction results in a negative number, then the balance of the asset is considered \$0. If the tax refund or refundable tax credit is deposited into another excluded asset, such as a retirement account or a

Coverdell Education Savings Account, then the deposit will have no effect on the balance of the asset (i.e., there is no need for the PHA/MFH Owner to subtract the amount of the deposit from the value of the excluded asset).

**Note:** Only the amount that the family receives is excluded from net family assets. For example, if a family anticipates a \$500 federal tax refund but only receives \$250, then only \$250 will be excluded from the net family assets because that is the amount that the family received.

SMHA is not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the SMHA does not accept self-certification of assets. SMHA must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000.

The anticipated income earned by the assets in which a family has deposited their federal tax refund or refundable tax credits must be included in the family's annual income unless the income is specifically excluded under 24 CFR § 5.609(b).

### ***Retirement Accounts***

#### ***Company Retirement/Pension Accounts***

The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plan, and retirement plans for self-employed individuals is not part of the net family assets.

Any income earned on the funds while stored in such a retirement account is not considered actual income from assets.

However, any distribution of periodic payments from the retirement account is considered income at the time it is received by the family (§ 5.609(b)(26)).

### **Civil Rights Settlements**

A civil rights settlement, regardless of how the settlement is paid (lump sum or several distributions), is excluded from annual income; however, the amounts would be considered part of net family assets, if held in a savings account, revocable trust, or in some other asset that is not excluded from the definition of net family assets.

### **Passbook Rate**

**Regulation:** 24 CFR § 5.609(a)(2)

HUD will annually publish a passbook rate based on the Federal Deposit Insurance Corporation (FDIC) National Deposit Rate for savings accounts, which is an average of national savings rates published on a monthly basis. SMHA must use the HUD-published passbook rate when calculating imputed asset income for net family assets that exceed \$50,000 (a figure that is annually adjusted for inflation). The HUD-published passbook rate will be posted to a dataset on

the HUDUser Web site, alongside annual inflationary adjustments to determine the passbook rate for the next calendar year, HUD will average the most recent three months of FDIC updates to the National Deposit Rate for savings accounts, rounded to the nearest hundredth of 1 percent. In order to ensure updated passbook rates may be used for reexaminations with an effective date of January 1, HUD will calculate the update in July each year, using FDIC data from April, May, and June. for publication on HUDUser not later than September 1.

## **Personal Property**

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

### SMHA Policy

In determining the value of personal property held as an investment, the SMHA will use the family's estimate of the value. However, the SMHA also may obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

### SMHA Policy

Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

## **Life Insurance**

The cash value of life insurance policies that are available to the participant before death are included in net family assets (e.g., the surrender value of a whole life policy or a universal life policy). Net family assets will not include the value of term life insurance, which has no cash value to the individual before death.

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

## **Self-Certification of Net Family Assets Equal to or Less Than \$50,000 (as adjusted for inflation)**

**Regulations:** 24 CFR §§ 5.603; 5.609; 5.618; 5.659(e); 882.515(a); 882.808(i)(1); 891.105;

960.259(c)(2); and 982.516(a)(3)

SMHA may determine net family assets based on a self-certification by the family that the family's total assets are equal to or less than \$50,000, adjusted annually for inflation, without taking additional steps to verify the accuracy of the declaration at admission and/or reexamination. SMHA is not required to obtain third-party verification of assets if they accept the family's self-certification of net family assets. When SMHA accepts self-certification of net family assets at reexamination, the SMHA must fully verify the family's assets every three years.

SMHA may follow a pattern of relying on self-certification for two years in a row and fully verifying assets in the third year.

The family's self-certification must state the amount of income the family anticipates receiving from such assets. The actual income declared by the family must be included in the family's income, unless specifically excluded from income under 24 CFR § 5.609(b). SMHA must clarify, during the self-certification process, which assets are included/excluded from net family assets.

SMHA may combine the self-certification of net family assets and questions inquiring about a family's present ownership interest in any real property into one form.

#### **SMHA Policy**

SMHA will accept self-certification when the Net Family Assets are equal to or less than \$50,000 (as adjusted for inflation)

### **G. PERIODIC PAYMENTS**

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

#### **Periodic Payments Included in Annual Income**

Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].

Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

#### **Lump-Sum Payments for the Delayed Start of a Periodic Payment**

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security, VA or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)].

### SMHA Policy

When a delayed-start payment is received and reported during the period in which the SMHA is processing an annual reexamination, the SMHA will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the SMHA.

See the chapter on reexaminations for information about a family's obligation to report lump-sum receipts between annual reexaminations.

## **Periodic Payments Excluded from Annual Income**

Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]

### SMHA Policy

The SMHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]

Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]

Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)].  
*Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

Lump sums received as a result of delays in processing Social Security, VA and SSI payments HUD FAQ and [24 CFR 5.609(b)(4)].

## **H. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)].

## **I. WELFARE ASSISTANCE**

### **Overview**

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) or Ohio Works First (OWF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

### **Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]**

The SMHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The requirements are summarized below. This rule applies only if a family was a public housing resident at the time the sanction was imposed.

#### ***Covered Families***

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

#### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the SMHA must include in annual income “imputed” welfare income. The SMHA must request that the welfare agency inform the SMHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

#### ***Offsets***

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

### **J. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]**

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with a tenant family.

#### **Alimony and Child Support**

The SMHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

#### **SMHA Policy**



The SMHA will count court-awarded amounts for alimony and child support unless the SMHA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

### **Regular Contributions or Gifts**

The SMHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

#### SMHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the SMHA. For contributions that may vary from month to month (e.g., utility payments), the SMHA will include an average amount based upon past history.

### **K. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
- (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))

- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.)
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (t) ABLE accounts are excluded from the definition of net family assets, and therefore

income generated from such accounts is not considered when calculating income from assets. Distributions from these accounts are also excluded from income. HUD developed specific guidance on ABLE accounts based on language included in the ABLE Act of 2014. Certain contributions deposited into ABLE accounts are excluded in addition to the above-mentioned exclusions. See *Treatment of ABLE Accounts in HUD- Assisted Programs* (Notice H 2019–06/PIH 2019–09).

**L. TRAINING PROGRAMS FUNDED BY HUD**

All training income from a HUD sponsored or HUD funded training program, whether incremental or not, is excluded from the resident's Annual Income while the resident is in training. Income from a Resident Services training program, which is funded by HUD, is excluded.

Upon employment with SMHA, the full amount of employment income received by the person is counted, but subject to the earned income disallowance provisions.

**M. AVERAGING INCOME**

When Annual Income cannot be anticipated for a full twelve months, SMHA will:

Annualize current income and conduct an interim reexamination if income changes.

If there are bonuses or overtime that the employer cannot anticipate for the next twelve months, then the SMHA will anticipate the income will include the bonuses and overtime received the previous year.

If by averaging, an estimate can be made for those families whose income fluctuates from month to month, this estimate will be used so that the housing payment will not change from month to month.

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

**N. MINIMUM INCOME**

There is no minimum income requirement. Families who report zero income or extremely low income will have the income be re-verified through EIV every 90 days for income changes and are further required to complete a written no/low income certification every 180 days and undergo an interim recertification every 180 days. If any increases in income are indicated in any of the above information or other verification at any time, then the family will be reviewed for an interim and the rent will be adjusted accordingly.

Families that report zero or extremely low income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, etc.

SMHA may request additional credit checks for all adult members of families that report zero or extremely low income.

Where credit reports show credit accounts open and payments current, SMHA will take action to investigate the possibility of unreported or underreported income, fraud or program abuse.

**O. INCOME OF PERSON PERMANENTLY/TEMPORARILY CONFINED TO NURSING HOME**

If a family member is permanently confined to a hospital or nursing home and there is a family member left in the household, SMHA will calculate the Total Tenant Payment by:

Excluding the income of the person permanently confined to the nursing home and not giving the family deductions for medical expenses of the confined family member.

If the family member is temporarily confined in a hospital or nursing home, SMHA will calculate the TTP by:

Including the income of the person temporarily confined to the nursing home and giving the family the medical deductions allowable on behalf of the person in the nursing home, if they are an elderly or disabled family..

**P. REGULAR CONTRIBUTIONS AND GIFTS [24 CFR 5.609(a)(7)]**

Regular contributions and gifts received from persons outside the household are counted as income for calculation of the Total Tenant Payment, unless excepted.

If the family's expenses exceed their known income, SMHA will make inquiry of the family about regular contributions and gifts.

**Q. ALIMONY AND CHILD SUPPORT [24 CFR 5.609(a)(7)]**

Regular alimony and child support payments are counted as income for calculation of Total Tenant Payment.

If the amount of child support or alimony received is less than the amount awarded by the court, SMHA will use the amount that is determined to be received by the family\*.

SMHA will accept as verification that the family is receiving an amount less than the award if:

SMHA receives verification from the agency responsible for enforcement or collection.

The family furnishes documentation of child support or alimony collection action filed through a child support enforcement/collection agency, or has filed an enforcement or collection action through an attorney.

It is the family's responsibility to supply documentation and a copy of the divorce decree.

\*SMHA will use the following guidelines for calculating amounts when less than award amount:

- If the amounts received are consistent within the past 3-6 months, then the amounts will be used to calculate the next 12 months (ie: started 3 months ago at \$250 per month equals \$250 times 12 months).
- If the amounts are sporadic during the past 12 months, then the total amount received during the past 12 months will be used.
- If the amount(s) received have completely stopped, the family must furnish the information outlined above along with a statement that the support is not being received and that they understand they must report the change if it starts again.

**R. LUMP-SUM RECEIPTS [24 CFR 5.609(b)(5), (c)]**

Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, are not included in income, but may be included in assets, if the amount has been invested in an allowable asset.

Lump-sum payments caused by delays in processing periodic payments (unemployment or welfare assistance) are counted as income. Lump sum payments from Social Security, VA or SSI are excluded from income, but any amount remaining that is invested will be considered an asset. Deferred periodic payments that have accumulated due to a dispute will be treated the same as periodic payments which are deferred due to delays in processing.

In order to determine amount of retroactive tenant rent that the family owes as a result of the lump sum receipt:

SMHA uses a calculation method that calculates retroactively or prospectively depending on the circumstances.

SMHA will calculate prospectively if the family reported the payment within 10 days and retroactively to date of receipt if the receipt was not reported within that time frame.

**Prospective Calculation Methodology**

If the payment is reported on a timely basis, the calculation will be done prospectively and will result in an interim adjustment calculated as follows:

The entire lump-sum payment will be added to the annual income at the time of the interim.

SMHA will determine the percent of the year remaining until the next annual recertification as of the date of the interim (three months would be 25% of the year).

At the next annual recertification, SMHA will apply the percentage balance (75% in this

example) to the lump sum and add it to the rest of the annual income.

The lump sum will be added in the same way for any interims that occur prior to the next annual recertification.

**Retroactive Calculation Methodology**

SMHA will go back to the date the lump-sum payment was received, or to the date of admission, whichever is closer.

SMHA will determine the amount of income for each certification period, including the lump sum, and recalculate the tenant rent for each certification period to determine the amount due SMHA.

At SMHA's option, SMHA may enter into a Repayment Agreement with the family.

The amount owed by the family is a collectible debt even if the family becomes unassisted.

**Attorney Fees**

The family's attorney fees may be deducted from lump-sum payments when computing Annual Income if the attorney's efforts have recovered a lump-sum compensation, and the recovery paid to the family does not include an additional amount in full satisfaction of the attorney fees.

**S. CONTRIBUTIONS TO RETIREMENT FUNDS – ASSETS**

Contributions to company retirement/pension funds are handled as follows:

While an individual is employed, count as assets only amounts the family can withdraw without retiring or terminating employment.

After retirement or termination of employment, count any amount the employee elects to receive as a lump sum less the amount the employee contributed to the retirement.

**T. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE**

SMHA must count assets disposed of for less than fair market value during the two years preceding the date of divestiture. SMHA will count the difference between the market value and the actual payment received for less than market value in calculating total assets.

Assets disposed of as a result of foreclosure or bankruptcy is not considered to be assets disposed of for less than fair market value. Assets disposed of as a result of a divorce or separation are not considered to be assets disposed of for less than fair market value.

SMHA's minimum threshold for counting assets disposed of for less than Fair Market value is \$5,000. If the total value of assets disposed of within the two-year period is less than \$5,000 , they

will not be considered an asset.

#### U. CHECKING AND SAVINGS ACCOUNTS

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

- In determining the value of a checking account, the SMHA will use the current balance.
- In determining the value of a savings account, the SMHA will use the current balance.
- In determining the anticipated income from an interest-bearing checking or savings account, the SMHA will multiply the value of the account by the current rate of interest paid on the account.

In lieu of the calculation described above, the SMHA can use the actual received over the last calendar year in determining the anticipated amount of interest if it is anticipated that the average balance will remain constant (similar to the balance for the last twelve months).

#### V. CHILD CARE EXPENSES

Child-care expenses for children under 13 may be deducted from annual income, to determine adjusted income, if they enable an adult to work or attend school, or to actively seek employment.

**In the case of a child attending private school, only after-hours care can be counted as child-care expenses.**

Child care expenses must be reasonable. Reasonable is determined by what the average child care rates that have been determined by the TANF Agency in the SMHA's jurisdiction.

Allowance of deductions for child-care expenses is based on the following guidelines:

**Child-care to work:** The maximum child-care expense allowed cannot exceed the amount of earned income by the person enabled to work which is included in the family's annual income. **The "person enabled to work" will be the adult member of the household that is now released to perform work.**

**Child-care for school:** The number of hours claimed for child-care may not exceed the number of hours the family member is attending school and study time, including reasonable travel time to and from school.

**For determining reasonable child-care expenses for education, training or seeking employment:** The SMHA will determine reasonable limits to be the amount determined by the state welfare agency. If the rate per child verified by the family exceeds the guideline, the SMHA may use the state welfare agency's determination

**for the area to be the cap in order to calculate the allowance. Family's seeking employment must provide additional documentation (verification) of where the family member has sought employment.**

**Child Care Expense Verification Information/Form**

The form to be completed by the child care provider that will be used to verify child care expense will include:

- The name of the care provider;
- The address of the care provider;
- The telephone number of the care provider;
- The Social Security number of the care provider;
- The names and ages of the children for whom care is being provided;
- The hours of care provided for each child for each day of the week;
- The amount actually paid by the family;
- The amount reimbursed from other sources for the child care expenses

**W. MEDICAL EXPENSES [24 CFR 5.603]**

When it is unclear in the HUD rules as to whether or not to allow an item as a medical expense, or the amount that will be allowed, the current IRS Publication 502 will be used as a guide.

Nonprescription medicines must be doctor-ordered in order to be considered a medical expense.

Nonprescription medicines may be counted toward medical expenses for families who qualify if the family furnishes legible receipts with identification of the type of purchase.

Chiropractic services are included under IRS Publication 502 and will be considered allowable medical expenses.

**X. PRORATION OF ASSISTANCE FOR "MIXED" FAMILIES [24 CFR 5.520]**

**Applicability**

Proration of assistance must be offered to any "mixed" applicant or participant family. A "mixed" family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible members.

Applicant mixed families are entitled to prorated assistance. Tenant families that become mixed families by the addition of an ineligible member are entitled to prorated assistance.



**Prorated Assistance Calculation**

Prorated assistance will be calculated by subtracting the Total Tenant Payment from the applicable Maximum Rent for the unit the family occupies to determine the Family Maximum Subsidy. The specific method of prorating assistance for Public Housing covered programs is as follows:

1. Step 1. Determine total tenant payment in accordance with applicable public housing regulations, 24 CFR 960. (Annual Income includes income of all family members, including any family member who has not established eligible immigration status).
2. Step 2. Family maximum rent is equal to the applicable flat rent for the unit size to be occupied by the family.
3. Subtract the total tenant payment from the family maximum rent. The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").
4. Step 3. Divide the family's maximum subsidy by the number of persons in the family, (all persons), to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy, per eligible family member, is the "member maximum subsidy".
5. Step 4. Multiply the "member maximum subsidy" by the number of family members who have citizenship or eligible immigration status ("eligible family members"). The product of this calculation is the "eligible subsidy".
6. Step 5. The mixed family TTP is the maximum rent minus the amount of eligible subsidy.
7. Subtract any applicable utility allowance from the mixed family TTP. The result of this calculation is the mixed family tenant rent.

When the mixed family's TTP is greater than the maximum rent, SMHA must use the TTP as the mixed family's TTP.

Mixed families paying the flat rent shall receive a prorated rent calculation as defined by the HUD 50058. An adult member that is ineligible for assistance in a mixed family is also ineligible for an earned income disallowance.

**Y. INCOME CHANGES RESULTING FROM WELFARE PROGRAM REQUIREMENTS**

QHWRA revised the situations in which a SMHA is required to reduce rent for special cases. In order to comply with the requirement, SMHA will make income revisions for changes resulting from Welfare program requirements as follows:

The SMHA will not reduce the rental contribution for families whose welfare assistance is reduced specifically because of:

- fraud by a family member in connection with the welfare program; or
- failure to participate in an economic self-sufficiency program; or
- noncompliance with a work activities requirement

However, the SMHA will reduce the rental contribution if the welfare assistance reduction is a result of:

- The expiration of a lifetime time limit on receiving benefits; or
- A situation where a family member has not complied with a general welfare agency requirements that is not related to an economic self-sufficiency program; or
- A situation where a family member has complied with welfare agency economic self-sufficiency or work activities requirements but cannot or has not obtained employment, such as the family member has complied with welfare program requirements, but the durational time limit, such as a cap on the length of time a family can receive benefits, causes the family to lose their welfare benefits; or
- A situation of an inadvertent overpayment.

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 rental contribution. Imputed welfare income is not included in annual income if the family was not an assisted resident at the time of sanction.

The amount of imputed welfare income is offset by the amount of additional income (new income) a family receives that begins after the sanction was imposed.

When additional income is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

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

SMHA will obtain written verification from the welfare agency stating that the family's benefits have been reduced for fraud or noncompliance before denying the family's request for rent reduction.

### **Cooperation Agreements**

SMHA has an unwritten cooperation agreement in place with the local welfare agency that assists the SMHA in obtaining the necessary information regarding welfare sanctions.

## **Z. UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS**

If the cost of utilities (excluding cable and telephone) is not included in the Tenant Rent, a utility allowance will be deducted from the total tenant payment. The Utility allowance is intended to help defray the cost of utilities not included in the rent. The allowances are based on the monthly cost of reasonable consumption utilities in an energy conservative household, not on a family's actual consumption.

When the Utility Allowance exceeds the family's Total Tenant Payment, SMHA will provide a Utility Reimbursement Payment for the family each month. The check will be made out directly to the tenant.

### **Resident-Paid Utilities**

The following requirements apply to residents living in developments with resident-paid utilities or applicants being admitted to such developments:

If a resident or applicant is unable to get utilities connected because of a previous balance owed to the utility company, the resident/applicant will not be permitted to move into a unit with resident paid utilities. This may mean that a current resident cannot transfer to a scattered site or that an applicant cannot be admitted to a unit with resident-paid utilities.

Paying the utility bill is the resident's obligation under the lease. Failure to pay utilities is grounds for eviction.

### **Utility Allowance Revisions**

The SMHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more from the rate on which the allowance was based.

Upon revision, the SMHA must readjust the resident payment retroactive to the first day of the month following the month in which the last rate change taken into account became effective .

## **AA. EXCESS UTILITY PAYMENTS**

Residents in units where SMHA pays the utilities will be charged for excess utilities if additional appliances or equipment are used in the unit. When there is a checkmeter, if the tenant uses in excess of the consumption allowance, the tenant shall pay the excess. This charge shall be applied as specified in the lease. [24CFR 966.4(b)(2)] Residents that are paying flat rent and in units that are individually metered will be charged for the excess utilities used above the allowable level.

## **BB. FAMILY CHOICE IN RENTS**

### **Authority for Family to Select**

SMHA shall provide for each family residing in a public housing unit to elect annually whether the rent paid by such family shall be 1) determined based on family income or 2) the flat rent. SMHA may not at any time fail to provide both such rent options for any public housing unit owned, assisted or operated by SMHA.

Annual choice: SMHA shall provide for families residing in public housing units to elect annually whether to pay income-based or flat rent at the time of the annual recertification.

### **Allowable Rent Structures**

### Flat Rents

SMHA has established, for each dwelling unit in public housing, a flat rental amount for the dwelling unit, which:

Is based on 80% of the Fair Market Rent as published by HUD on an annual basis. ; and

Is designed so that the rent structures do not create a disincentive for continued residency in public housing by families who are attempting to become economically self-sufficient through employment or who have attained a level of self-sufficiency through their own efforts.

SMHA shall review the income of families paying flat rent not less than once every three years.

### Income-Based Rents

The monthly Total Tenant Payment amount for a family shall be an amount, as verified by the SMHA, that does not exceed the greatest of the following amounts:

- 30 percent of the family's monthly adjusted income
- 10 percent of the family's monthly gross income (annual income divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the SMHA
- For Public Housing only, the alternative non-public housing rent, as determined in accordance with 24 CFR 960.102

### Switching Rent Determination Methods Because of Hardship Circumstances

In the case of a family that has elected to pay SMHA's flat rent, SMHA shall immediately provide for the family to pay rent in the amount determined under income-based rent, during the period for which such choice was made, upon a determination that the family is unable to the flat rent because of financial hardship, including:

- Situations in which the income of the family has decreased because of changed circumstances, loss of or reduction of employment, death in the family, and reduction in or loss of income or other assistance; or
- An increase, because of changed circumstances, in the family's expenses for medical costs, child care, transportation, education, or similar items; or
- Such other situations as may be determined by SMHA.

All hardship situations will be verified.

### Annual Reexamination

120 days in advance of annual reexamination, the family will be notified of their annual reexamination. During this reexamination period, the family will be given the option to choose flat rent or income-based rent. SMHA will provide a form that states what the flat rent would be and

what the family's income-based rent would be. The family will be required to make a choice and sign the form prior to the effective date of their reexamination. The form will be retained in the tenant's file. (See Chapter 11 for further details).

Whether the family indicates they choose income-based or a flat rent, a reexamination appointment will be scheduled according to SMHA policy. The family during the reexamination will be provided information on the anticipated rent and may choose to pay flat rent prior to the new rent going into effect.

## **CC. SMHA'S FLAT RENT METHODOLOGY**

SMHA has set a flat rent for each public housing unit, based on unit size and 80% of the Fair Market Rent as published by HUD on an annual basis. The SMHA shall review the flat rent schedule annually and make any adjustments to the schedule in the future.

### **Setting Flat Rents Properly (24 CFR 960.253(b))**

To calculate a flat rent, SMHA is required to take into consideration the following for each property:

- Location (this will include the value and quality of neighboring housing);
- Quality (need for rehabilitation);
- Unit size (both number of bedrooms and square footage);
- Unit type (Generally single-family units are valued the highest, with semi-detached and town-home next, then walk-up or garden-type apartments. Elevator buildings are usually considered the least popular for family housing, although that is not necessarily the case in mixed population housing.);
- Age of property;
- Amenities at the property and in immediate neighborhood (e.g. laundry facilities, child care, recreation room, play areas, open space, parking, public transportation, schools, shopping, etc.);
- Housing services provided;
- Maintenance provided by the SMHA; and
- Utilities provided by the SMHA.

In determining Flat Rent, SMHA will use the following methods:

- Documentation on the method used to determine flat rents will be retained by the SMHA
- There is no utility allowance or reimbursement with flat rents. Instead, the SMHA takes the utility payment into consideration in setting the flat rents. In two otherwise identical properties, the flat rent would be higher for the property with SMHA supplied utilities and lower for the property with tenant-paid utilities.
- SMHA will comply with the following HUD requirements when establishing the applicable flat rents for public housing units. The following formula establishes a **minimum rate** for which the flat rents must be set.

- SMHA will determine 80 percent of the current Fair Market Rent (FMR) for each bedroom-size, then reduce that amount by the applicable utility allowance in place for that unit. This is the minimum amount at which the flat rent can be set for each public housing unit.
- Limitation on yearly increase in the flat rent. When determining a new flat rent through the annual review process and utilizing the HUD formula (80% of FMR minus UA), SMHA may not increase the flat rent by more than 35% of what it is presently. If an additional increase in the flat rent would be needed to reach the HUD mandated minimum amount (80% of FMR minus UA) the needed increase would be phased in yearly as to not increase the flat rent by more than 35% per year.
- If the FMR falls from the previous year amount at HUD annual review, SMHA may, but is not required to lower the flat rent amount to 80% of the new FMR minus the applicable utility allowance.
- Upon issuance of the new FMR's by HUD, SMHA will: 1) Determine if the current flat rent is at least 80% of the new FMR; 2) Update the flat rent amounts if necessary to meet the 80% requirement within a reasonable time but no later than 90 days of HUD publishing new FMR's; 3) Apply the new flat rents to all new admissions and to existing families at the next annual recertification.

### **Annual Review of Flat Rents (24 CFR 960.253)**

At least once each year the SMHA is required to review flat rent levels and make adjustments as needed to ensure that flat rents continue to meet the minimum threshold of 80% of the FMR

**Residents paying flat rents would not have their flat rents adjusted (up or down) until their annual reexamination, even if the re-determination of the flat rent amount is completed mid-year.**

The Schedule of Flat Rents is posted at the public housing developments and designated posting areas within the SMHA.

### **DD. SMHA'S CEILING RENT**

**The ceiling rent will mirror the flat rent** (of exactly the same amount as the flat rent plus the utility allowance).

Ceiling rents, which capped income-based rents are optional rents that SMHA may adopt and maintain. The institution of flat rents, under QHWRA, has changed the future function and usefulness of ceiling rents. Some general principles concerning ceiling rents include:

- SMHA had ceiling rents in effect on October 1, 1999 and has the optioned to continue these rents. SMHA is required to adjust these ceiling rents to the level of flat rents.
- With ceiling rents, utility allowances are retained in the calculation;
- Ceiling rents fostered upward mobility and income-mixing;
- Once the SMHA has established flat rents, ceiling rents are set at the same level (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities).

At this point, the function of the ceiling rent is to assist flat rent families whose incomes are

reduced, causing the families to be placed on income-based rents. SMHA has not maintained ceiling rents above or beyond our flat rents.

## **EE. CALCULATING RENT**

### **Overview**

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by the SMHA.

#### SMHA Policy

SMHA pays the utility reimbursement payments directly to the tenants.

### **TTP Formula [24 CFR 5.628]**

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income
- 10 percent of the family's monthly gross income (annual income divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the SMHA
- For Public Housing only, the alternative non-public housing rent, as determined in accordance with 24 CFR 960.102

The SMHA has authority to suspend and exempt families from minimum rent when a financial hardship exists.

### ***Welfare Rent [24 CFR 5.628]***

#### SMHA Policy

Welfare rent does not apply in this locality.

### ***Minimum Rent [24 CFR 5.630]***

#### SMHA Policy

The minimum rent for this locality is \$50.

### **Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2) and PH, pp. 131-134]**

SMHA has been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory

deductions. At the discretion of the SMHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

The SMHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to SMHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

**SMHA Policy**

The SMHA has chosen not to adopt a permissible deduction to designed income-based rents.

**Ceiling Rents [24 CFR 960.253(d)]**

**SMHA Policy**

The SMHA chooses to continue with ceiling rents.

**Utility Reimbursement [24 CFR 960.253(c)(3)]**

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits the SMHA to pay the reimbursement to the family or directly to the utility provider.

**SMHA Policy**

The SMHA will make utility reimbursements to the family.



## **Chapter 7**

### **VERIFICATION**

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, 960.259]

#### **INTRODUCTION**

The SMHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The SMHA must not pass on the cost of verification to the family.

The SMHA will follow the verification guidance provided by HUD in PIH Notice 2004-01, PIH 2010-19 Verification Guidance, PIH 2012-26, PIH 2013-3, PIH 2013-4, PIH 2013-23, PIH 2013-26, PIH 2015-02, PIH 2015-04 streamlining verification, HOTMA provisions, PIH 2023-27 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary SMHA policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the SMHA.

### **PART I. GENERAL VERIFICATION REQUIREMENTS**

#### **A. FAMILY CONSENT TO RELEASE OF INFORMATION**

**Regulations:** 24 CFR §§ 5.230; 5.232; 891.105; 891.410(b)-(c); and 891.610(b)-(c)

In accordance with the final rule, all applicants must sign the consent form at admission, and participants must sign the consent form no later than their next interim or regularly scheduled income reexamination. After an applicant or participant has signed and submitted a consent form either on or after January 1, 2024 (regardless of SMHAs compliance date), they do not need to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination except under the following circumstances:

- ☐ When any person 18 years or older becomes a member of the family;
- ☐ When a member of the family turns 18 years of age; and
- ☐ As required by HUD or the PHA in administrative instructions.

These consent forms contain provisions authorizing HUD and the SMHA to obtain necessary information for verification of an application or to maintain a family's assistance, including income information and tax return information. The executed consent forms will remain effective

until the family is denied assistance, the assistance is terminated, or if the family provides written notification to the PHA to revoke consent. If a family voluntarily leaves a HUD program, the family's assistance is considered to be terminated and the signed consent forms will no longer be in effect.

HUD will publish a new form HUD-9886-A to conform with the final rule. HUD will include language in the forms allowing SMHA to obtain financial records from financial institutions whenever the PHA determines that such a record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits.

**SMHA Discretion:** SMHA has the discretion to establish policies around when family members must sign the consent forms when they turn 18 between reexaminations. SMHA must establish these policies in their ACOPs, Administrative Plans, and Tenant Selection Plans, if requiring family members to sign consent forms at intervals other than at reexamination.

#### SMHA Policy

SMHA will require signatures upon admission and if needed at the Annual or Interim Recertification

#### Revocation of Consent

**Regulations:** 24 CFR §§ 5.230(c)(5)(iii); 24 CFR 5.232(c); 891.105; 891.410(g)(3)(ii); and 891.610(g)(3)(ii)

The executed consent forms will remain effective until the family is denied assistance, the assistance is terminated, or if the family provides written notification to the SMHA to revoke consent. Revocation of consent or refusal to sign the consent forms prohibits the SMHA from requesting and accessing income information and financial records, including pulling EIV reports and using the EIV data to verify income (although the data matches between HUD and other agencies will continue to occur automatically if the family is not terminated from the program). SMHA will not be able to process interim or annual reexaminations of income, including when a family's income decreases and the family requests an interim reexamination to decrease tenant rent, without the family's executed consent form(s).

Families have the right to revoke consent by providing written notice to the SMHA; however, revoking consent may result in termination of assistance or denial of admission, if the SMHA has a policy that the revocation of consent will result in termination of assistance or denial of admission. When the SMHA does not establish such a policy, the family is required to sign a new consent form by the next reexamination, whichever occurs first, in order to avoid termination of assistance or be reviewed for eligibility for admission. SMHA must explain to families the consequences, if any, of revoking their consent.

**SMHA must notify their local HUD office of a family's revocation of consent.**

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**SMHA Discretion:** SMHA may decide whether revocation of a family's consent will result in termination of assistance or denial of admission. Such a policy must be included in the SMHA's Administrative Plan, ACOP, or Tenant Selection Plan, as applicable.

#### **SMHA Policy**

SMHA will deny the admission and/or terminate the family for failure to execute all release forms including the HUD-9886

#### **Consent Forms**

It is required that all adult applicants and participants sign form HUD-9886-A, Authorization for Release of Information. The purpose of form HUD-9886-A is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the SMHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). All adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

#### **Penalties for Failing to Consent [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, the SMHA will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with SMHA procedures.

### **B. OVERVIEW OF VERIFICATION REQUIREMENTS**

#### **Overview**

On December 29, 2009 and additional updates, HUD issued the final rule entitled *Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System-Amendments*, which requires PHAs to use the EIV system in its entirety to verify tenant employment and income information during mandatory reexaminations of family composition and income; and reduce administrative and subsidy payment errors in accordance with 24 CFR §5.236 and administrative guidance issued by HUD.

Using EIV as an upfront income verification (UIV) technique is valuable in validating tenant-reported income during interim and annual reexaminations of family income; as well as streamlining the income verification process. This will result in less administrative burden in complying with third party verification requirements. Additionally, EIV will help to identify and cure inaccuracies in housing subsidy determinations, which will benefit PHAs, tenants, and taxpayers by ensuring that the level of benefits provided on behalf of families is proper and will prevent fraud and abuse within Public and Indian Housing (PIH) rental assistance programs.

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**SMHA Policy**

The SMHA is required to use the EIV system in its entirety. This means the SMHA must use all features of the EIV system to:

- Verify tenant employment and income information during mandatory reexaminations of family composition and income in accordance with 24 CFR §5.236, and HUD administrative guidance; and
- Reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

**Streamlining Verification of Assets**

The SMHA has elected to use the streamlining verification of assets. For a family with net assets equal to or less than \$50,000, the SMHA may accept, for purposes of recertification of income, a family's declaration that it has net assets equal to or less than \$50,000, without taking additional steps to verify the accuracy of the declaration.

- The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.
- The MHA must obtain third-party verification of all family assets every 3 years.

**Streamlining Verification of Income**

SMHA has elected to use the streamlining verification of income. For any family member with a fixed source of income, the MHA may elect to determine that family member's income by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

The "Family member with a fixed source of income" is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:

- Social Security, Supplemental Security Income, Supplemental Disability Insurance;
- Federal, state, local, or private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

In using the streamlining, the SMHA must use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. The SMHA must verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party– generated documentation. If no such verification is available, then the MHA must obtain third-party verification of income amounts in order to calculate the change in income for the source.

For any family member whose income is determined pursuant to a streamlined income determination, the SMHA must obtain third-party verification of all income amounts every 3 years. If 90 % of the annual income for a family is received from a fixed income source, the SMHA will apply the streamlining process and reverify the fixed income every 3 years. All other incomes will be verified annually.

### **C. THE EIV SYSTEM**

#### **Mandated and Discretionary use of HUD’s Enterprise Income Verification (EIV) System**

**Regulation:** 24 CFR § 5.233

The regulation clarifies that SMHA must use EIV to verify tenant employment and income information at annual and streamlined reexaminations of family composition and income. However, SMHA is no longer required to use EIV to verify tenant employment and income information during an interim reexamination of family composition and income.

SMHA is still required to use EIV in its entirety, including using all of the required reports, such as the Existing Tenant Search and Income Reports, to verify tenant employment and income information at all other times.

HUD intends to update the discrepancy logic for the Public Housing Income Discrepancy Reports and the Income Verification Tools (IVTs) to conform to the requirements of the final rule. SMHA is not required to investigate discrepancies resulting from the Public Housing Income Discrepancy Reports and the IVT Tools until HUD updates the discrepancy logic. HUD will notify SMHA when the new reports are ready for use.

The Table provides guidance on the frequency with which individual EIV reports must be utilized by the SMHA.

**Table Mandatory and Discretionary Use of EIV by PHA (SMHA)**

| <b>Report Title</b> | <b>Report Description</b> | <b>Frequency of Use</b> | <b>PHAs</b> |
|---------------------|---------------------------|-------------------------|-------------|
|---------------------|---------------------------|-------------------------|-------------|

|   |  |   |       |
|---|--|---|-------|
| Debts Owed to PHAs & Terminations                     | Allows users to access information concerning former tenants who left owing a debt to a PHA or who had their voucher terminated for cause.   | At the time of processing an applicant family for admission, and to enter debt information or terminations for families who have ended program participation. | PHAs  |
| Deceased Tenants Report                               | Identifies tenants reported by Social Security Administration (SSA) as being deceased.   | At least quarterly  | PHAs  |
| Existing Tenant Search                                | Identifies applicants who may be receiving assistance at another Multifamily project or PIH location.  | At the time of processing an applicant family for admission   | PHAs  |
| Failed EIV Prescreening Report                        | Identifies tenants who have missing or invalid personal identifiers (last name, date of birth, SSN) in HIP/TRACS. These tenants will not be sent to SSA from EIV for the SSA identity test.  | Monthly   | PHAs  |
| Failed Verification Report (Failed SSA Identity Test) | Identifies tenants whose personal identifiers (last name, date of birth, SSN) do not match the SSA database. *PHAs that admit families using a self-certification of SSN must review the Failed SSN Verification Report monthly to identify and follow up on new issues. | Monthly   | PHAs/ |
| Identity Verification Report                          | Identifies tenants that, failed SSA verification, and failed EIV pre-screening.  | Monthly   | PHAs  |
| Income Information for PIH Programs                   | Provides employment and income reported by HHS and SSA for each household member that passes the SSA identity test.<br><br>Identifies tenants who: <ul style="list-style-type: none"> <li>May not have reported complete and accurate</li> </ul>                         | Must be used at annual reexamination; not required at interim reexaminations. PHAs may use, if desired. PHAs are not required to use at annual                | PHAs  |

|  |  |  |      |
|--|--|--|------|
|  | <p>income information; and/or</p> <ul style="list-style-type: none"> <li>May be receiving multiple subsidies.</li> </ul>   | reexamination if they use Safe Harbor verification to determine the family's income.   |      |
| Income Validation Tool Report for PIH Programs | <p>Provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with the Department of Health and Human Services (HHS) using the National Directory of New Hires (NDNH) database, and the SSA.</p> | <p>PHAs are required to obtain an EIV Income and Income Validation Tool Report for each family any time the PHA conducts an annual reexamination of family income and composition. PHAs may use the report at other intervals, in accordance with the PHA's ACOP or Administrative Plan. PHAs are not required to use the report at annual reexamination if they used Safe Harbor verification to determine the family's income at the last reexamination. *See note under Summary above about updates to the Public Housing Income Discrepancy Reports.</p> | PHAs |
| Multiple Subsidy Report                        | Identifies tenants who may be receiving rental assistance at more than one location.   | At least quarterly   | PHAs |
|  |  | <p>PHAs must review this information at annual reexamination except when the PHA uses Safe Harbor verification to determine the family's income. PHAs that do not require families to undergo interim reexaminations (IRs) for income increases</p>  | PHAs |

|                                  |  |  |      |
|----------------------------------|--|--|------|
| New Hires Report                 | Identifies tenants who have new employment within the last six months. Report is updated monthly.  | after an IR decrease do not need to review this report at all between a family's annual reexamination. If the PHA's policy is to require an IR for increases in income after an IR decrease, then the PHA must review the report quarterly after the family's IR decrease. |      |
| No Income Reported by HHS or SSA | Identifies tenants who passed the SSA identity test but where no income was reported by HHS or SSA. This scenario does not mean that the tenant does not have any income.<br><br>PHAs/MFH Owners must obtain written, third-party verification of any income reported by the tenant. | As identified in a PHA's ACOP or Administrative Plan or have written EIV policies and procedures.  | PHAs |

### **SMHA Discretion on EIV at Interim Reexaminations**

SMHA may choose to use EIV to verify tenant employment and income information at interim reexaminations of family composition and income. If SMHA chooses to use EIV to verify income information at interim reexaminations must include this information in the SMHA's ACOP and/or Administrative Plan. Any policy adopted by the SMHA must be applied consistently for all households.

#### **SMHA Policy**

SMHA may use the EIV reports during an interim reexamination but is not required in all circumstances.

The EIV System is a web-based application, which provides SMHA with employment, wage, unemployment compensation and social security benefit information of tenants who participate in the Public Housing and various Section 8 programs under the jurisdiction of the Office of Public and Indian Housing (PIH). This system is available to SMHA. Information in EIV is derived from computer matching programs initiated by HUD with the Social Security Administration (SSA) and the U.S. Department of Health and Human Services (HHS), for all program participants with valid personal identifying information (name, date of birth (DOB), and social security number (SSN)) reported on the form HUD-50058.



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SMHA is required to review the EIV Income Report of each family before or during mandatory annual and interim reexaminations of family income and/or composition to reduce tenant under reporting of income and improper subsidy payments. EIV is classified as an UIV technique (or automated written third party verification), which helps to identify income sources and/or amounts that the tenant may not have disclosed. This UIV technique in many instances will reduce the need to mail or fax third party verification request forms to an income source. EIV also provides various reports to assist SMHA with the following:

- Identifying tenants whose reported personal identifiers do not match the SSA database;
- Identifying tenants who need to disclose a SSN;
- Identifying tenants whose alternate identification number (Alt ID) needs to be replaced with a SSN;
- Identifying tenants who may not have reported complete and accurate income information;
- Identifying tenants who have started a new job;
- Identifying tenants who may be receiving duplicate rental assistance;
- Identifying tenants who are deceased and possibly continuing to receive rental assistance;
- Identifying former tenants of PIH rental assistance programs who voluntarily or involuntarily left the program and have a reportable adverse status and/or owe money to a PHA or Section 8 landlord.

### SMHA Policy

All SMHA staff (including SMHA-hired management agents), who have a need to access the EIV system, is required to complete and submit the EIV Access Authorization Form & Rules of Behavior and User Agreement to their designated EIV Coordinator in the local HUD office. The form is available online at:

<http://www.hud.gov/offices/pih/programs/ph/rhiip/uivsystem.cfm>.

The user's access must be approved by the SMHA Executive Director or designee in order for the local HUD office to process all EIV access requests. Individuals who will not directly access the EIV system, but will have access to the EIV data in printed or electronic form is also required to complete the EIV Access Authorization Form & Rules of Behavior and User Agreement and maintain on file (do not submit the form to the local HUD office).

### **Requirements for Acceptable Documents**

### PHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 calendar days of the date they are provided to the PHA. The documents must not be damaged, altered or in any way illegible.

The PHA will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the PHA would accept the most recent report.

Print-outs from web pages are considered original documents.

The PHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed in the presence of a PHA representative.

### **File Documentation**

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

### **The Verification Hierarchy**

**Regulation:** 24 CFR §§ 5.240(c); 5.659(d); 891.105; 891.410(b)-(c) and (g); 891.610(b)-(c) and (g); 960.259(c); 982.201(e); and 982.516(a)(2)

SMHA is responsible for obtaining third-party verification of reported family annual income, the value of assets, expenses related to deductions from annual income, and other factors that affect the determination of adjusted income. Third-party verification is a process by which SMHA gathers information (e.g., about the family's annual income, value of assets, etc.) independently from the source of the income, assets, expenses, or other factors that affect the determination of adjusted income. Third-party verification may be obtained directly from the third party or through the family. SMHA must document in the tenant file the reason why third-party verification was not available unless HUD's regulations specifically permit families to self-certify a particular component of adjusted income.

HUD developed a hierarchy that describes verification documentation from most acceptable to least acceptable. The SMHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed (e.g., net family assets that do not exceed \$50,000).

**SMHA Policy**

The SMHA will begin with the highest level of verification techniques. The SMHA is required to access the EIV system and obtain an Income Report for each household. The SMHA is required to maintain the Income Report in the tenant file along with the form HUD-50058 and other supporting documentation to support income and rent determinations for all mandatory annual reexaminations of family income and composition.

If the Income Report does not contain any employment and income information for the family, the SMHA will attempt the next lower level verification technique, as noted in the below chart.

**Level Verification Technique Ranking**

| Level | Verification Technique   | Ranking   |
|-------|--|---|
| 6     | <b>Upfront Income Verification (UIV)</b> using HUD’s Enterprise Income Verification (EIV) system (generally not available for income verifications of applicants)                        | Highest (Mandatory)<br><br>SMHA must pull the EIV Income Report for each family at every Annual Reexamination.<br><br>EIV may be used as the sole verification of Social Security income.<br><br>EIV income information may be used to calculate other types of annual income when family agrees. See Level 4 for more information. |
| 5     | <b>Upfront Income Verification (UIV)</b> using non-HUD system (e.g., The Work Number, web-based state benefits systems, etc.)  | Highest   |
| 4     | <b>Written third Party Verification</b><br><br>Written, third-party verification from the source, also known as “tenant-provided verification”<br><br>OR<br><br>EIV + Self-Certification | High<br><br><ul style="list-style-type: none"> <li>Written, third-party verification is used when tenant disputes EIV-reported employment and income information.</li> <li>The EIV Income Report may be used to verify and calculate income</li> </ul>  |

|   |  |  |
|---|--|--|
|   | SMHA can choose either option when both are available to verify income. SMHA must use written, third-party verification when the income type is not available in EIV (e.g., self-employment, Go Fund Me accounts, general public assistance, Veterans Administration benefits, etc.) | if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information from EIV.  |
| 3 | <b>Written Third Party Verification Form</b>   | <b>Medium</b> <ul style="list-style-type: none"> <li>• Use if Level 5 or Level 4 verification is not available or is rejected by the SMHA and when the applicant or tenant is unable to provide acceptable documentation.</li> <li>• May substitute Level 2 for written, third-party verification form, only completing one of the two forms of verification before moving to self-certification.</li> </ul> |
| 2 | <b>Oral Third Party Verification</b>   | <b>Low</b> (Mandatory if written third party verification is not available)  |
| 1 | <b>Self-Certification/Tenant Declaration (not third-party verification)</b>  | <b>Low</b><br>Use as a last resort when unable to obtain any type of third-party verification or if specifically permitted, such as to determine actual income from assets when the family certifies that net family assets do not exceed \$50,000.  |

This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not always available for verifying income of applicants. The SMHA is still required to use EIV for applicants to determine other factors as relates to eligibility and maintain

a copy of the record in the file.

### **Third-Party Verification Descriptions and Guidance**

- **Upfront Income Verification (UIV) (Level 6/5):** The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals. It should be noted that the EIV system is available to SMHA as a UIV technique and that SMHA is required to use EIV in its entirety (see Mandated and Discretionary Use of EIV). SMHA is encouraged to continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to verify tenant-reported income.
- **Written, Third-Party Verification (Level 4):** An original or authentic document generated by a third-party source dated within 120 days of the date received by the SMHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

Such documentation may be in the possession of the tenant (or applicant) and is commonly referred to as tenant-provided documents. SMHA may obtain any tenant-provided documents and follow up directly with the third-party source to obtain necessary verification of information, when necessary.

Examples of acceptable tenant-provided documentation (generated by a third-party source) include but are not limited to the following: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

SMHA is required to obtain a minimum of two current and consecutive pay stubs for determining annual income from wages when they do not elect to use EIV + Self-Certification or the income type is not reported in EIV. For new income sources or when two pay stubs are not available, the SMHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

When verification of assets is required, SMHA is required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

EIV may be used as Level 4 verification and may be used to calculate income as long as the family agrees with the information in EIV; this practice is known as "EIV + Self-Certification." The SMHA may use their discretion to determine which method of

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calculation is reasonable: the last 4 quarters combined or an average of any number of quarters. The EIV Income report must be pulled within 120 days prior to the reexamination effective date.

- **Written, Third-Party Verification Form (Level 3):** This practice is also known as “traditional third-party verification.” This type of verification is a form developed by the SMHA and used uniformly for all families when needed to collect information from a third-party source. The form is completed by the third party by hand (in writing or typeset). SMHA sends the form directly to the third-party source by mail, fax, or email.

The SMHA may skip this level of verification before attempting Level 2, which means they will have only completed Level 3 or Level 2 verification before moving to Self-Certification.

- **Oral Third-Party Verification (Level 2):** Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique, or identified by the family, via telephone or in-person visit. SMHA staff must document in the tenant file the date and time of the telephone call (or visit to the third party) and the name of the person contacted and their telephone number, along with the confirmed information.

This verification method is commonly used when the independent source does not respond to the SMHA’s faxed, mailed, or e-mailed request for information in a reasonable time frame (e.g., 10 business days).

The SMHA may skip this level of verification if they attempted Level 3, which means they will have only completed Level 3 or Level 2 verification before moving to Self-Certification.

- **Non-Third-Party Verification Technique: Self-Certification (Level 1):** The tenant submits a signed statement of reported income and/or expenses to the SMHA. This verification method should be used as a last resort when the SMHA has not been successful in obtaining information via all other required verification techniques. When the SMHA relies on self-certification to verify income or expenses, the SMHA must document in the tenant file why third-party verification was not available.

HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

Sample language: “I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)”

**Exceptions to Third Party Verification Requirements 24 CFR §960.259(c)(1) and §982.516(a)(2)**

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The exception to third party verification is, “The PHA must obtain and document in the family file third party verification of the following factors, **or must document in the file why third party verification was not available.**”

Third party verification may not be available for a variety of reasons. These reasons include:

- The SMHA may have made numerous attempts to obtain the required verifications with no success, or
- It may not be cost effective to obtain third party verification of income, assets, or expenses, when the impact on total tenant payment is minimal.

In these cases, the SMHA is **required to document in the family file the reason(s) why third party verification was not available.**

The exception to third party verification can be found at 24 CFR §960.259(c)(1) and §982.516(a)(2).

**Third party verification requirements 24 CFR §960.259(c)(1) and 24 CFR §982.516(a)(2)**

In accordance with requirements for the Public Housing and the HCV programs, respectively, the SMHA 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:

- Reported family annual income
- The value of assets
- Expenses related to deductions from annual income
- Other factors that affect the determination of adjusted income.

**Compliance and reduction of the administrative burden of third party verification requirements of family annual income**

SMHA can comply with and reduce administrative burden of third party verification requirements for employment, wage, unemployment compensation and social security benefits, and any other information that is verifiable using EIV by all of the following:

- Reviewing the EIV Income Report to confirm/validate tenant-reported income
- Printing and maintaining an EIV Income Report (or an EIV Individual Control Number (ICN) page for interim reexaminations) in the tenant file
- Obtaining current acceptable tenant-provided documentation to supplement EIV information
- Using current tenant-provided documentation and/or third party verification to calculate annual income.

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**Note:** Social Security benefit information in EIV is updated every three months. If the tenant agrees with the EIV-reported benefit information, SMHA does not need to obtain or request a benefit verification letter from the tenant..

The SMHA may also reduce the administrative burden of obtaining third party verification by relying on acceptable documents that are generated by a third party, but provided by the tenant. Many documents in the possession of the tenant are derived from third party sources (i.e. employers, federal, state and/or local agencies, banks, etc.).

The SMHA must request written third party verification under the following circumstances:

- When the tenant disputes the EIV information and is unable to provide acceptable documentation to support his/her dispute (24 CFR §5.236(b))
- When the SMHA requires additional information that is not available in EIV and /or the tenant is unable to provide the SMHA with current acceptable tenant-provided documentation.

Examples of additional information, includes but is not limited to:

- Effective dates of income (i.e. employment, unemployment compensation, or social security benefits)
- For new employment: pay rate, number of hours worked per week, pay frequency, etc.
- Confirmation of change in circumstances (i.e. reduced hours, reduced rate of pay, temporary leave of absence, etc.)

**Note:** 24 CFR §5.236(a), prohibits SMHA from taking adverse action based solely on EIV information.

**Types of file documentation required to demonstrate SMHA compliance with mandated use of EIV as a third party source to verify tenant employment and income information (24 CFR §5.233(a)(2)(i)).**

1. For each new admission (form HUD-50058 action type 1), the SMHA is required to do the following:
  - Review the EIV Income Report to confirm/validate family-reported income within 120 days of the PIC submission date; and
  - Print and maintain a copy of the EIV Income Report in the tenant file; and
  - Resolve any income discrepancy with the family within 60 days of the EIV Income Report date.



2. For each historical adjustment (form HUD-50058 action type 14), the SMHA is required to do the following:
  - Review the EIV Income Report to confirm/validate family-reported income within 120 days of the PIC submission date; and
  - Print and maintain a copy of the EIV Income Report in the tenant file;
  - Resolve any income discrepancy with the family within 60 days of the EIV Income Report date.
3. For each interim reexamination (form HUD-50058 action type 3) of family income and composition, the PHA is required to have the following documentation in the tenant file:
  - **ICN Page** when there is **no** household income discrepancy noted on the household's Income Discrepancy Report tab or Income Discrepancy Report. The SMHA has the discretion to print the EIV Income report, however, only the ICN page is required.

**EIV Income Report** when there **is** an income discrepancy noted on the household's Income Discrepancy Report tab or Income Discrepancy Report.

For each annual reexamination of family income and composition, the SMHA is required to have the following documentation in the tenant file:

- **No Dispute of EIV Information:** EIV Income Report, current acceptable tenant-provided documentation, and *if necessary* (as determined by the SMHA), traditional third party verification form(s).
- **Disputed EIV Information:** EIV Income report, current acceptable tenant- provided documentation, and/or traditional third party verification form(s) for disputed information.
- **Tenant-reported income not verifiable through EIV system:** Current tenant-provided documents, and *if necessary* (as determined by the SMHA), traditional third party verification form(s).

### **Tenants That Do Not Provide the SMHA with Requested Information**

If the tenant does not provide the requested information, the SMHA may mail or fax a third party verification request form to the third party source. The SMHA is **required** to request third party verification when the tenant disputes EIV information and the tenant is unable to provide acceptable documentation to support disputed information. However, the SMHA shall remind the

tenant that s/he is required to supply any information requested by the SMHA for use in a regularly scheduled annual or interim reexamination of family income and composition.

The SMHA may determine that the tenant is not in compliance with program requirements and terminate tenancy or assistance, or both, if the tenant fails to provide the requested information in a timely manner,

**Using the EIV to Reduce Administrative and Subsidy Payment Errors.**

EIV has the ability to identify other potential issues, which may impact a family's level of assistance. EIV contains stand-alone reports, which the SMHA may generate at any time i.e.;

- Deceased Tenants Report,
- New Hires Report,
- Multiple Subsidy Report,
- Identity Verification Report,
- Income Discrepancy Report,
- Debts Owed to PHAs & Termination Report
- Immigration Report

However, it should be noted that the information from these stand-alone reports are contained in the Income Report for each household. The SMHA is **required** to address any and all potential issues at the time of the annual or interim re-exam, as conveyed in the Income Report.

The SMHA may use the stand-alone reports to monitor staff's progress in reducing the following administrative and subsidy payment errors by using the listed reports:

- Incorrect/invalid SSNs/name/date of birth – Identity Verification Report
- Follow- up with families who need to disclose a SSN – Immigration Report
- Duplicate rental assistance – Multiple Subsidy Report
- Unreported increase in income – Income discrepancy Report
- Improper payments on behalf of deceased tenants – Deceased Tenants Report
- Unreported new employment (PHAs with interim increase policy) – New Hires Report
- Adverse Termination/Outstanding Debt to PHA – Debts Owed to PHAs & Termination Search

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In order to ensure the SMHA is aware of potential subsidy payment errors, the SMHA is **required** to monitor the following EIV reports on a **monthly** basis:

- Deceased Tenants Report
- Identity Verification Report
- Immigration Report

In order to ensure the SMHA is aware of potential subsidy payment errors, the SMHA is **required** to monitor the following EIV reports on a quarterly basis:

- Income Discrepancy Report
- Multiple Subsidy Report
- New Hires Report (if SMHA has an interim increase policy)

### **EIV Requirements for Recertification**

To minimize tenant underreporting of income, the SMHA is required to obtain an EIV Income Report for each family any time the PHA conducts an annual or interim reexamination of family income and composition.

In accordance with 24 CFR §5.236(b)(2)(3), SMHA is required to compare the information on the EIV report with the family-reported information. If the EIV report reveals an income source that was not reported by the tenant or a substantial difference in the reported income information, the SMHA is required to take the following actions:

- Discuss the income discrepancy with the tenant
- Request the tenant to provide any documentation to confirm or dispute the unreported or underreported income and/ or income sources;
- In the event the tenant is unable to provide acceptable documentation to resolve the income discrepancy, the SMHA is required to request from the third party source, any information necessary to resolve the income discrepancy
- If applicable, determine the tenant's underpayment of rent as a result of unreported or underreported income, retroactively.

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Take any other appropriate action as directed by HUD or the SMHA's administrative policies.

- The SMHA is required to determine the retroactive rent as far back as the existence of complete file documentation (form HUD-50058 and supporting documentation) to support such retroactive rent determinations.

***Note:** A substantial difference is defined as an amount equal to or greater than \$2,400, annually.*

When there is an unsubstantial or no disparity between tenant-reported and EIV-reported income information, the SMHA is required to obtain from the tenant, any necessary documentation to complete the income determination process. As noted previously, the SMHA may reject any tenant-provided documentation, if the SMHA deems the documentation unacceptable. The SMHA may reject documentation provided by the tenant for only the following HUD-approved reasons:

- The document is not an original; or
- The original document has been altered, mutilated, or is not legible; or
- The document appears to be a forged document (i.e. does not appear to be authentic).

The SMHA will explain to the tenant, the reason(s) the submitted documents are not acceptable and request the tenant to provide additional documentation. If at any time, the tenant is unable to provide acceptable documentation that the SMHA deems necessary to complete the income determination process, the SMHA is required to submit a traditional third party verification form to the third party source for completion and submission to the SMHA.

If the third party source does not respond to the SMHA's request for information, the SMHA is required to document the tenant file of its attempt to obtain third party verification and that no response to the third party verification request was received.

The SMHA should then pursue lower level verifications in accordance with the verification hierarchy.

### **Tenant Actions for SMHA Underpayments of Rent**

#### **SMHA Policy**

The tenant must be provided an opportunity to contest the SMHA's determination of tenant rent underpayment. HUD regulations require the SMHA to promptly notify tenants in writing of any adverse findings made on the basis of the information verified through the aforementioned income discrepancy resolution process. The tenant may contest the findings in accordance with the SMHA's established grievance procedures, as required by HUD. The SMHA may not terminate, deny, suspend, or reduce the family's assistance until the expiration of any notice or grievance period.

### **Tenant Repayment Agreement and Failure to Report Income**

Tenants are required to reimburse the SMHA if they were charged less rent than required by HUD's rent formula due to the tenant's underreporting or failure to report income. The tenant is

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required to reimburse the SMHA for the difference between the tenant rent that should have been paid and the tenant rent that was charged. This rent underpayment is commonly referred to as retroactive rent.

If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new repayment agreement, the SMHA **must** terminate the family's tenancy or assistance, or both. HUD does **not** authorize any SMHA-sponsored amnesty or debt forgiveness programs, therefore, no amnesty or debt forgiveness program will be provided.

All repayment agreements must be in writing, dated, signed by both the tenant and the SMHA, include the total retroactive rent amount owed, amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. At a minimum, repayment agreements must contain the following provisions:

- Reference to the paragraphs in the Public Housing lease or Section 8 information packet whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
- The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the SMHA.
- The terms of the agreement that may be renegotiated if there is a decrease or increase in the family's income.
- Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.
- The SMHA is required to determine retroactive rent amount as far back as the PHA has documentation of family reported income. For example, if the SMHA determines that the family has not reported income for a period of five years and only has documentation for the last three years, the SMHA is only able to determine retroactive rent for the three years for which documentation is available.

Repayments shall be in accordance with SMHA's repayment policies and agreement.

## **EIV Record Retention**

### **SMHA Policy**

The SMHA's record retention policy will determine the length of time the PHA should maintain EIV printouts in a tenant file. PHAs are authorized to maintain the EIV Income Report in the tenant file for the duration of tenancy and no longer than three years from the end of participation (EOP) date. In accordance with revised regulation, 24 CFR §908.101, the SMHA is required to maintain at a minimum, the last three years of the form HUD-

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50058, and supporting documentation for all annual and interim reexaminations of family income. All records are to be maintained for a period of at least three years from the effective date of the action.

### **Disclosure of an Individual's EIV Information**

The Federal Privacy Act (5USC§552a, as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member, unless the individual has provided written consent to disclose such information.

However, the SMHA is not prohibited from discussing with the head of household (HOH) and showing the HOH how the household's income and rent were determined based on the total family income reported and verified.

#### SMHA Policy

EIV information and any other information obtained by the SMHA for the purpose of determining eligibility and level of assistance for a PIH rental assistance program may not be disclosed to third parties for any reason (even for similar verifications under other programs, such as eligibility for low income housing tax credit units, other federal or state assistance programs), unless the tenant has authorized such disclosure in writing.

### **Incorrect EIV Information**

Sometimes the source or originator of EIV information may make an error when submitting or reporting information about tenants. HUD cannot correct data in the EIV system. Only the originator of the data can correct the information. When the originator corrects the data, HUD will obtain the updated information with its next computer matching process. Below are the procedures tenants and the SMHA will follow regarding incorrect EIV information.

***Employment and wage information*** reported in EIV originates from the employer. The employer reports this information to the local State Workforce Agency (SWA), who in turn, reports the information to HHS' (Health and Human Services) National Directory of New Hires (NDNH) database.

If the tenant disputes this information, s/he should contact the employer directly, in writing to dispute the employment and/or wage information, and request that the employer correct erroneous information.

The tenant should provide the SMHA with this written correspondence so that it may be maintained in the tenant file. If employer resolution is not possible, the tenant should contact the local SWA for assistance.

***Unemployment benefit information*** reported in EIV originates from the local SWA. If the tenant

disputes this information, s/he should contact the SWA directly, in writing to dispute the unemployment benefit information, and request that the SWA correct erroneous information. The tenant should provide the SMHA with this written correspondence so that it may be maintained in the tenant file.

***SS and SSI benefit information*** reported in EIV originates from the SSA. If the tenant disputes this information, s/he should contact the SSA at (800) 772-1213, or visit the local SSA office. SSA office information is available in the government pages of the local telephone directory or online at <http://www.socialsecurity.gov>.

***Note:*** The tenant may also provide the SMHA with third party documents which are in the tenant's possession to support their dispute of EIV information. The SMHA, with the tenant's consent, is required to submit a third party verification form to third party sources for completion and submission to the SMHA, when the tenant disputes EIV information and is unable to provide documentation to validate the disputed information. **The tenant's failure to sign the consent form is grounds for termination of tenancy and/or assistance in accordance with 24 CFR §5.232.**

***Debts owed to PHAs and termination information*** reported in EIV originates from the PHA. If a current or former tenant disputes this information, s/he should contact the PHA (who reported the information) directly in writing to dispute this information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will up date or delete the record from EIV.

Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the PIH program.

## **Identity Theft**

Seemingly incorrect information in EIV may be a sign of identity theft. Sometimes someone else may use an individual's SSN, either on purpose or by accident. SSA does not require an individual to report a lost or stolen SSN card, and reporting a lost or stolen SSN card to SSA will not prevent the misuse of an individual's SSN.

However, a person using an individual's SSN can get other personal information about that individual and apply for credit in that individual's name. So, if the tenant suspects someone is using his/her SSN, s/he should check their Social Security records to ensure their records are correct (call SSA at (800) 772-1213); file an identity theft complaint with the local police department and/or Federal Trade Commission (call FTC at (877) 438-4338, or visit their website at: <http://www.ftc.gov/bcp/edu/microsites/idtheft/>); and s/he should also monitor their credit reports with the three national credit reporting agencies (Equifax, TransUnion, and Experian). The tenant should provide the SMHA written documentation of filed identity theft complaint. (Refer back to paragraph on Employment and wage information regarding disputed EIV information related to identity theft).

Tenants may request their credit report and place a fraud alert on their credit report with the three national credit reporting agencies at: [www.annualcreditreport.com](http://www.annualcreditreport.com) or by contacting the credit reporting agency directly.

### **Security of EIV Data**

The data in EIV contains personal information on individual tenants which is protected under the Federal Privacy Act. The information in EIV may only be used for limited official purposes, as noted below

#### **Official Purposes Include:**

- The SMHA, in connection with the administration of PIH programs, for verifying the employment and income at the time of interim and annual reexaminations.
- HUD staff for monitoring and oversight of SMHA compliance with HUD program requirements.
- Independent Auditors hired by the SMHA or HUD to perform a financial audit for use in determining the SMHA's compliance with HUD program requirements, including verifying income and determining the accuracy of the rent and subsidy calculations.

### **Restrictions on disclosure requirements for Independent Auditors**

#### **Independent Auditors:**

- May only access EIV income information within family files and only within the offices of the SMHA or SMHA- hired management agent;
- May not transmit or transport EIV income information in any form;
- May not enter EIV income information on any portable media;
- Must sign non-disclosure oaths that the EIV income information will be used only for the purpose of the audit; and
- May not duplicate EIV income information or re-disclose EIV income information to any user not authorized by Section 435(j)(7) of the Social Security Act to have access to the EIV income data.

#### **Official Purposes for Disclosure of EIV Do NOT Include:**

Sharing the information with governmental or private entities not involved in the reexamination process specifically used for PIH rental assistance programs.

Disclosing the EIV information to other private or public entities for purposes other than determining eligibility and level of assistance for PIH rental assistance programs is prohibited since these entities are not a party to the computer matching agreements with the HHS and SSA.

The fact that these entities may find the EIV beneficial for similar eligibility and determination



purposes for other low- income housing programs or public benefits, does not permit these entities to use or view information in the EIV system that is covered by the computer matching agreements.

The computer matching agreements are governed by the Privacy Act and the Social Security Act. Specifically, sections 453(j)(7)(E)(ii) and (iv) of the Social Security Act (42 USC §653j) limit disclosure of the data matched between HUD and HHS' National Directory of New Hires (NDNH) database to PHAs, Independent Auditors, the Inspector General (IG) and Attorney General, private owners, management agents, and contract administrators of Multifamily Housing programs.

### **Penalties for Willful Disclosure or Inspection of EIV Data**

- **Unauthorized Disclosure** – felony conviction and fine up to \$5,000 or imprisonment up to five (5) years, as well as civil damages.
- **Unauthorized Inspection** – misdemeanor penalty of up to \$1,000 and/or one (1) year imprisonment, as well as civil damages.

### **Penalties for Noncompliance with Mandated EIV System Use**

The SMHA may be subject to sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculation or both. HUD may impose a sanction on:

- The SMHA if it does not have access to the EIV system or;
- The SMHA has access to the system, however, has not used the system within the last six months.

To avoid sanctions or disallowed costs, the SMHA will follow all formal and informal guidance provided to PHAs via webcast trainings, PIH Rental Housing Integrity Improvement Project (RHIIP) periodic electronic mailings, and any other HUD Headquarters'-generated guidance.

### **Updating of PHA Policies and Procedures**

#### **SMHA Policy**

The SMHA is required to implement all new and modified regulatory requirements of the *Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System-Amendments*.

### **Notice to Applicants and Tenants**

HUD PIH 2010-19 is providing PHAs with the attached EIV system information guide that the SMHA may provide to applicants and tenants of PIH rental assistance programs. The SMHA is **not** required to distribute this document. However, the SMHA will provide applicants and tenants with the ***What You Should Know About EIV Guide*** to educate families about EIV and inform

them of how it affects their family.

There are two versions of the document: 1) with a signature block; and 2) without a signature block. It is not required for applicants or tenants to acknowledge receipt of the document; however, the SMHA may, at their discretion, require the family to acknowledge receipt of the guide. SMHA requires families to acknowledge receipt of the guide, provide the family with a copy of the guide to take with them, and maintain a signed copy in the family file folder.

#### **D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

##### **Reasonable Effort and Timing**

Unless third-party verification is not required as described below, HUD requires the SMHA to make at least two unsuccessful attempts to obtain third-party verification before using another form of verification [VG, p. 15].

##### **SMHA Policy**

The SMHA will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

The SMHA may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. The SMHA will send a written request for verification to each required source within 5 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing. If a response has not been received by the 11<sup>th</sup> business day, the SMHA will request third-party oral verification.

The SMHA will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, SMHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the SMHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

If a third party agrees to confirm in writing the information provided orally, the SMHA will wait no more than 5 business days for the information to be provided. If the information is not provided by the 6<sup>th</sup> business day, the SMHA will use any information provided orally in combination with reviewing family-provided documents.

##### **When Third-Party Information is Late**

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When third-party verification has been requested and the timeframes for submission have been exceeded, the SMHA will use the information from documents on a provisional basis. If the SMHA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the SMHA will conduct an interim reexamination to adjust the figures used for the reexamination.

### **When Third-Party Verification is Not Required**

#### ***Primary Documents***

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

#### ***Certain Assets and Expenses***

The SMHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

The SMHA will determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification.

#### **SMHA Policy**

The SMHA will use review of documents in lieu of requesting third-party verification when the total market value of a household's asset(s) is less than \$50,000 or total household expense(s) is less than \$2,000 annually *and* the family has original documents that support the declared amount.

#### ***Certain Income, Asset and Expense Sources***

The SMHA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification. For example, the SMHA will rely upon review of documents when the SMHA determines that a third party's privacy rules prohibit the source from disclosing information.

#### **SMHA Policy**

The SMHA also will determine that third-party verification is not available when there is a service charge for verifying an asset or expense *and* the family has original documents that provide the necessary information.

If the family cannot provide original documents, the SMHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost.

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**E. REVIEW OF DOCUMENTS**

**Using Review of Documents as Verification**

SMHA Policy

If the SMHA has determined that third-party verification is not available or not required, the SMHA will use documents provided by the family as verification.

The SMHA may also review documents when necessary to help clarify information provided by third parties. In such cases the SMHA will document in the file how the SMHA arrived at a final conclusion about the income or expense to include in its calculations.

**F. SELF-CERTIFICATION**

SMHA Policy

Self-certifications will be used as permitted by streamlining and HOTMA provisions.

When information cannot be verified by a third party or by review of documents, for the Total Value of Assets below \$50,000, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the SMHA.

The SMHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the SMHA and must be signed by the family member whose information or status is being verified.

**PART II. VERIFYING FAMILY INFORMATION**

**G. VERIFICATION OF LEGAL IDENTITY**

SMHA Policy

The SMHA will require families to furnish verification of legal identity for each household member.

| Verification of Legal Identity for Adults  | Verification of Legal Identity for Children                  |
|--|--|
| Certificate of birth, naturalization papers<br>Church issued baptismal certificate<br>Current, valid driver's license or Department of Motor Vehicles identification card<br>U.S. military discharge (DD 214)<br>U.S. passport | Certificate of birth<br>Adoption papers<br>Custody agreement |

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If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the SMHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the SMHA and be signed in the presence of a SMHA representative or SMHA notary public.

## **H. VERIFICATION OF SOCIAL SECURITY NUMBERS [24 CFR 5.216]**

**Regulation:** 24 CFR § 5.216(g)(1) 891.105; 891.410(b)-(c) and (g); 891.610(b)-(c) and

(g)

It has become increasingly difficult for applicants to meet HUD's SSN disclosure requirements, particularly for those individuals experiencing homelessness. To help protect individuals' privacy, many federal, state, and local agencies no longer print an individual's SSN on official documentation. Individuals may be required to visit their local Social Security office and provide original identity documentation in order to obtain a replacement Social Security card.

HUD is adjusting what the Department considers acceptable documentation of SSN under 24 CFR § 5.216(g)(1) to make it easier for applicants to access programs even if they do not have access to their Social Security card or other documentation acceptable to HUD. SMHA must still attempt to gather third-party verification of SSN prior to admission; however, they will also have the option of accepting a self-certification and a third-party document with the applicant's name printed on it to satisfy the SSN disclosure requirement if the SMHA has exhausted all other attempts to obtain the required documentation. HUD has provided similar flexibility to PHAs through the CARES Act waivers and for Emergency Housing Vouchers.

HUD prescribes, through this notice and in accordance with 24 CFR 5.216(g)(1)(iii), that the following evidence of SSN is acceptable only after the SMHA has attempted to first obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual:

**Self-certification of SSN *and* at least one third-party document, such as a bank statement, utility or cell phone bill, benefit letter, etc., that contains the name of the individual.**

If verifying an individual's SSN using this method, the SMHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the SMHA must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

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**SMHA Policy**

The SMHA requires review of the original; however, SMHA will also accept the following documents as evidence if the SSN is provided on the document:

Other identification letter issued by a federal, state, or local agency  
that includes the SSN.

If the participant family reports an SSN but cannot provide acceptable documentation of the number, the SMHA will require a self-certification stating that documentation of the SSN cannot be provided at this time. The SMHA will require documentation of the SSN within 90 calendar days from the date of the family member's self-certification mentioned above.

If the family is an applicant family, SMHA may allow the family to become a program participant if they are waiting for verification of the SSN for household member(s) under the age of 6. An applicant family that becomes a program participant must verify the SSN for household members under the age of 6 within 90 days of being admitted to the program. An extension of an additional 90-days must be granted if the SMHA determines that, in its discretion, the applicant's failure to comply with verifying the SSN for member(s) under the age of 6 was due to circumstances that could not reasonably been foreseen and were outside of the control of the applicant

**SMHA Policy**

The SMHA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office.

For existing program participants who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 90-day period, the SMHA will grant an additional 90 calendar days to provide documentation.

Social Security Numbers must be verified only once during continuously-assisted occupancy.

. If required by the law enforcement entity for the purpose of conducting criminal background verification, the social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

**I. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

**SMHA Policy**

If an official record of birth cannot be provided or evidence of social security retirement benefits cannot be provided, the SMHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

**J. FAMILY RELATIONSHIPS**

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Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility Chapter.

SMHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

**Marriage**

SMHA Policy

Certification by the head of household is normally sufficient verification. If the SMHA has reasonable doubts about a marital relationship, the SMHA will require the family to document the marriage, except as provided by Fair Housing .

**Separation or Divorce**

SMHA Policy

Certification by the head of household is normally sufficient verification. If the SMHA has reasonable doubts about a separation or divorce, the SMHA will require the family to document the divorce, or separation.

**Custody of Non-Biological Dependents**

SMHA Policy

In the event a household contains a dependent that is not the biological child of any current household members, verification must be provided to document the custody or guardianship of the dependent. Self-certification is sufficient.

**Absence of Adult Member**

SMHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

**Foster Children and Foster Adults**

SMHA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

**K. VERIFICATION OF STUDENT STATUS**

SMHA Policy

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The SMHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family claims full-time student status for an adult other than the head, spouse, or co-head, or

The family claims a child care deduction to enable a family member to further his or her education.

The family claims an income exclusion because the student is receiving earned income and only the amount below the dependent allowance is included as income.

#### **L. DOCUMENTATION OF DISABILITY**

The SMHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The SMHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The SMHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the SMHA receives a verification document that provides such information, the SMHA will not place this information in the tenant file. Under no circumstances will the SMHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at [www.os.dhhs.gov](http://www.os.dhhs.gov).

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of methamphetamine or controlled substance

#### **Family Members Receiving SSA Disability Benefits**

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

#### **SMHA Policy**

For family members claiming disability who receive disability benefits from the SSA, the SMHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system, when it is available. If documentation from



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HUD's EIV System is not available, the SMHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the SMHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to the SMHA.

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

### **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603.

### **SMHA Policy**

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## **M. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]**

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and SMHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. Verification of non-citizens having temporary status will need to be re-verified prior to the expiration date. [24 CFR 5.508(g)(5)]

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

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The SMHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

SMHA Policy

Family members who claim U.S. citizenship or national status will be required to provide additional documentation such as a birth certificate.

**Eligible Immigrants**

***Documents Required***

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible non-citizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance.

For family members age 62 or older who claim to be eligible immigrants, proof of age is required.

For family members under the age of 62 who claim to be eligible immigrants, the SMHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The SMHA will follow all USCIS protocols for verification of eligible immigration status.

**N. VERIFICATION OF PREFERENCE STATUS**

- Any preferences must be properly verified based on admission policies.
- Homeless Families: Written statement from an agency recognized as one whose established mission is to assist homeless persons, such as the Salvation Army or a homeless shelter.
- Veterans and Service: Honorable discharge papers or a written statement from the Veteran's Administration. Current income verification may be used to evidence service status or surviving members of Veterans. Veteran Administration issued ID card may be used to evidence service status.
- Elderly/Disabled- Elderly Family and Disabled Family as defined by HUD.
- VAWA- Self certification is acceptable

**PART III. VERIFYING INCOME AND ASSETS**

Chapter 6, Part I and II of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides SMHA policies that supplement the general verification procedures specified in Part I of this chapter.

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**O. EARNED INCOME**

**SMHA Policy**

When paystubs or employer print-outs are used to verify earnings, last two (2) current consecutive, current paystubs will be required to calculate annual income from earnings. This method will be used regardless of frequency (i.e. weekly, bi-weekly, semi-monthly, monthly). Income will be annualized using these paystubs or employer records. Exceptions to this method will be documented in the tenant file.

Interruption of employment due to temporary leave of absence (i.e. maternity leave, short-term disability): upon verification that earnings have stopped, an interim will be conducted to remove the income. The family may be required to complete a Zero Income Questionnaire/Certification. The family is required to report any other income received in lieu of earnings. The family will be required to report when the income starts again. At that time an interim will be conducted to add the income back into the family budget.

**Tips**

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year. Tips and earnings will at least bring them to the minimum wage for the area.

**P. BUSINESS AND SELF-EMPLOYMENT INCOME**

**SMHA Policy**

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

The SMHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the SMHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

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**Q. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

**Social Security/SSI Benefits**

SMHA Policy

To verify the SS/SSI benefits of applicants, the SMHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the SMHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant has received the benefit verification letter they will be required to provide it to the SMHA.

To verify the SS/SSI benefits of participants, the SMHA will obtain information about social security/SSI benefits through the HUD EIV System. If benefit information is not available in HUD systems, the SMHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the SMHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the participant has received the benefit verification letter they will be required to provide it to the SMHA.

**R. ALIMONY OR CHILD SUPPORT**

SMHA Policy

The way the SMHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it ***receives regular payments***, verification will be sought in the following order.

If payments are made through a state or local entity, the SMHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments

Third-party verification from the person paying the support

Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules

Copy of the latest check and/or payment stubs

Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it ***receives irregular or no payments***, in addition to the verification process listed above, the family may provide evidence that it has taken all reasonable efforts to collect amounts due, but is not required to do so. This may include:

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A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

**S. ASSETS AND INCOME FROM ASSETS**

For a family with net family assets (as the term is defined in 24 CFR § 5.603 of the regulations) equal to or less than \$50,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, a PHA may accept, for purposes of recertification of income, a family's declaration under 24 CFR § 5.618(b) of the regulations, except that the SMHA must obtain third-party verification of all family assets every 3 years.

**SMHA Policy**

SMHA will use all the features the streamline verification on income and assets whenever possible and allowable by HUD.

**Assets Disposed of for Less than Fair Market Value**

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The SMHA needs to verify only those certifications that warrant documentation.

**SMHA Policy**

The SMHA will verify the value of assets disposed of only if:

The SMHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the SMHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The SMHA has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the SMHA will verify the value of this asset.

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**T. NET INCOME FROM RENTAL PROPERTY**

SMHA Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the SMHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

**U. RETIREMENT ACCOUNTS**

Retirement Accounts will only be verified as needed for inclusions under the HOTMA provisions for net family assets and income.

SMHA Policy

When third-party verification is not available the type of original document that will be accepted depends upon the family member's retirement status.

*Before* retirement, the SMHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

*Upon* retirement, the SMHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

*After* retirement, the SMHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

**V. VERIFICATION OF EXCLUDED INCOME**

To reduce administrative burdens on SMHA, HUD is providing guidance and clarification on the requirements for verifying excluded income.

For income sources where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR § 5.609(b) and any *Federal Register* notice on mandatory exclusions issued by HUD, the SMHA **is not** required to:

- 
- Verify the income using third-party verification;
  - Document in the tenant file as to why the third-party verification was not available as required by 24 CFR §§ 5.659(d), 960.259(c)(i), and 24 CFR 982.516(a)(2); 891.105; 891.410(b)-(c) and (g); 891.610(b)-(c) and (g); or
  - Report the income on forms HUD-50058.

SMHA may accept an applicant or participant's self-certification as verification of excluded income. The SMHA's application and reexamination questionnaire documentation may serve as the self-certification of excluded income.

SMHA has the option of verifying the income using third-party verification, if necessary, to determine if a source of income qualifies for exclusion.

Examples of excluded income categories that are verifiable through applicant or participant self-certification include:

- Supplemental Nutrition Assistance Program (SNAP) benefits, formerly known as food stamps.
- Income of a live-in aide. For a complete list of income exclusions, see 24 CFR § 5.609(b).

An income source that is partially excluded, for example, earnings in excess of \$480 for full-time students 18 years of age or older (24 CFR § 5.609(b)(14)), must be third-party verified and reported on forms HUD-50058.

#### SMHA Policy

The SMHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance).

SMHA will not verify other excluded income..

### **W. ZERO/EXTREMELY LOW ANNUAL INCOME REVIEW**

A "zero income review" is an assessment, sometimes periodic, performed by the SMHA of the income of a family who claims that they do not receive income from any source, including from assets. During such reviews, it is common for SMHA to request that families complete and sign a worksheet explaining how they pay for the household's expenses. HUD does not require SMHA to conduct periodic zero income reviews.

In calculating annual income, SMHA must not assign monetary value to non-monetary in-kind donations from a food bank or similar organization received by the family (24 CFR § 5.609(b)(24)(vi)). SMHA performs an interim reexamination only due to an increase in the family's adjusted income (24 CFR §§ 5.657(c)(3); 882.515(b)(3); 891.410(g)(2); 891.610(g)(2); 960.257(b)(3); and 982.516(c)(3)).

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SMHA will continue to perform zero income reviews and as such must update local discretionary policies, procedures, and forms to comply with the final rule requirements. For example, families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the form HUD-50058.

**SMHA Policy**

Families are required to report any and all changes and the SMHA will continue to conduct the reviews, but do so in accordance with HOTMA provisions.

**PART IV. VERIFYING MANDATORY DEDUCTIONS**

**X. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the SMHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

**Dependent Deduction**

See Chapter 6 for a full discussion of this deduction. The SMHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

**Elderly/Disabled Family Deduction**

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 for a discussion of the deduction. The SMHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

**Y. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

**Amount of Expense**

**SMHA Policy**

The SMHA will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

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Third-party verification form signed by the provider, when possible



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If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case the SMHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The SMHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, the SMHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The SMHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 of this plan.

### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 for the SMHA's policy on what counts as a medical expense.

### **Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

#### **SMHA Policy**

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

### **Expenses Incurred in Past Years**

#### **SMHA Policy**

When anticipated costs are related to on-going payment of medical bills incurred in past years, the SMHA will verify:

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The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

**Z. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

**Amount of Expense**

***Attendant Care***

**SMHA Policy**

The SMHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

***Auxiliary Apparatus***

**SMHA Policy**

Expenses for auxiliary apparatus will be verified through:

Third-party verification of anticipated purchase costs of auxiliary apparatus

If third-party is not possible; billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, the SMHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described above).
- The expense permits a family member, or members, to work.
- The expense is not reimbursed from another source.
- The expense does not exceed the amount of the earned income of the individual freed for work.

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### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The SMHA will verify that the expense is incurred for a person with disabilities.

### **Family Member(s) Permitted to Work**

The SMHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

#### SMHA Policy

The SMHA will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

#### SMHA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### **AA. CHILDCARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the SMHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable if seeking employment or furthering education.

### **Eligible Child**

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To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The SMHA will verify that the child being cared for (including foster children) is under the age of 13.

### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

#### SMHA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

### **Pursuing an Eligible Activity**

The SMHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

#### SMHA Policy

##### *Information to be Gathered*

The SMHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

##### *Seeking Work*

Whenever possible the SMHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the SMHA will request verification from the agency of the member's job seeking efforts to date and require the family to submit to the SMHA any reports provided to the other agency.

In the event third-party verification is not available, the SMHA will provide the family with a form on which the family member must record job search efforts. The SMHA will review this information at each subsequent reexamination for which this deduction is claimed.

##### *Furthering Education*

The SMHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

##### *Gainful Employment*

The SMHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members

could be permitted to work, the work schedules for all relevant family members may be verified.

### **Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

#### SMHA Policy

The SMHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6.

The SMHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The SMHA will verify the child care provider is not a family member residing in the household. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

### **Reasonableness of Expenses**

Only reasonable child care costs can be deducted for seeking employment or furthering education.

#### SMHA Policy

The actual costs the family incurs will be compared with the SMHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable. SMHA will use local welfare agency guidelines.

If the family presents a justification for costs that exceed typical costs in the area, the SMHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

The SMHA shall use the local HHS determinations as the limit on what is reasonable for the area.

### **BB. DETERMINATION OF INCOME USING OTHER MEANS TESTED PUBLIC ASSISTANCE (I.E., "SAFE HARBOR")**

**Regulation:** 24 CFR §§ 5.609(c)(3) and 891.105; 891.410(b)-(c) and (g); and 891.610(b)-(c) and (g)

SMHA may determine a family's annual income, including income from assets, prior to the application of any deductions based on income determinations made within the previous 12-month period, using income determinations from the following types of means-tested federal public assistance programs:

- The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.).

- Medicaid (42 U.S.C. 1396 et seq.).
- The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 et seq.).
- The Earned Income Tax Credit (26 U.S.C. 32).
- The Low-Income Housing Tax Credit (26 U.S.C. 42).
- The Special Supplemental Nutrition Program for Woman, Infants, and Children (42 U.S.C. 1786).
- Supplemental Security Income (42 U.S.C. 1381 et seq.).
- Other programs administered by the Secretary.
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding.
- Other federal benefit determinations made by other means-tested federal programs that the Secretary determines to have comparable reliability and announces through a *Federal Register* notice.

If SMHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family (i.e., the family members listed in the documentation must match the family's composition in the assisted unit, except for household members), and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's income, SMHA will neither further inquire about a family's net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR § 5.618.

The Safe Harbor verification may be in the form of an award letter from the relevant federal program and must show that the family's income determination was made in the previous 12 months. **HUD clarifies in PIH 2023-27 that the verification will be considered acceptable if the documentation meets the criteria that the income determination was made within the 12 months prior to the receipt of the verification by the SMHA. This satisfies all verification date requirements for Safe Harbor income determinations.**

The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the SMHA:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

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The only information that SMHA is permitted to use to determine income under this Safe Harbor is the total income determination made by the federal means-test program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information **must not** be considered by the SMHA for purposes of the HOTMA Safe Harbor provision. SMHA is not permitted to mix and match Safe Harbor income determinations and other income verifications.

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship exemption, must still be capped by the amount earned by any family member who is enabled to work as a result of the expense. SMHA is therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

It is anticipated that in many cases tenants will provide the SMHA with the Safe Harbor third-party verification for the purpose of reexamination, rather than the SMHA mailing a verification form to the third party to complete. If the SMHA does not accept Safe Harbor documentation, is unable to obtain Safe Harbor documentation, or if the family disputes the other program's income determination, the SMHA must calculate the family's annual income using the methods established in § 5.609(c)(1) and (2).

If the SMHA uses a Safe Harbor determination to determine the family's income for an income examination (New Admission/Move Ins, Initial Certification, Interim Reexamination, or Annual Reexamination), then the family is obligated to report changes in income that meet the reporting requirement and occur after the effective date of the SMHA's transaction. This might mean that a certain source of income was not considered in the family's income, because the other program does not consider the source to be income. For example, if the family begins receiving a new source of income on 2/1/2024 and the SMHA completed an annual reexamination effective 3/1/2024 using a Safe Harbor income determination, then the family does not need to report that change in income. If the family has a change in adjusted income in accordance with HUD's rules that occurs after 3/1/2024, when the Annual Reexamination was effective, then the family must report the change to the SMHA.

### **SMHA Discretion on Using Safe Harbor**

SMHA is not required to accept or use determinations of income from other federal means-tested forms of assistance.

SMHA must establish in policy whether and when they will accept Safe Harbor income determinations (e.g., at reexamination only or at admission and reexamination), including which programs from which they will accept income determinations. SMHA must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs (e.g., to accept the most recent income determination). These policies must be included in the SMHA's/ ACOP, Administrative Plan, or Tenant Selection Plan, as applicable.

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SMHA Policy

SMHA does not currently use other means tested programs, however, if and when the opportunity is available, SMHA will use any of the above permitted sources for all programs allowed and for all reexaminations and admissions.



## **Chapter 8**

### **TRANSFER POLICY**

#### **INTRODUCTION**

The transferring of families is a very costly procedure, both to the SMHA and to the families. However, it is the policy of the SMHA to permit a resident to transfer within or between housing developments when it is necessary to comply with occupancy standards or when it will help accomplish the Affirmative Housing goals of the SMHA or further its mission. The transfer policy will be carried out in a manner that does not violate fair housing.

For purposes of this transfer policy the "losing development" refers to the unit from which the family is moving from and the "gaining development" refers to the unit to which the family is transferring to.

#### **GENERAL TRANSFER POLICY**

It is the policy of the SMHA to require or permit resident transfers within and/or between SMHA public housing developments for the following reasons:

- Modernization, RAD conversions, and other program adjustments
- To abate dangerous and/or substandard living conditions;
- To accommodate verified physical conditions caused by long-term illness and/or disability; and
- To accommodate resident families that are determined to be over- or under-housed by virtue of their family size.
- To utilize UFAS accessible units for families needing such features.
- To establish tenancy in SMHA single-family / scattered site units.

Transfers will be made without regard to race, color, national origin, sex, religion, sexual orientation, or familial status. Residents can be transferred to accommodate a disability.

Residents will not be transferred to a dwelling unit of equal size except to alleviate hardship of the resident or other undesirable conditions as determined by the Executive Director or designee.

Residents will receive one offer of a transfer. Refusal of that offer without good cause will result in lease termination for mandatory transfers or the removal of the household from the transfer list for voluntary transfers.

It is the policy of SMHA to permit a resident to transfer under certain conditions and to fulfill operational or regulatory requirements.

SMHA will always consider a request to transfer as a reasonable accommodation for a person with a disability. The sole consideration in approving or denying a reasonable accommodation request is whether or not there is a disability related need for the accommodation, and that the request is reasonable.

For transfer requests that are **not** related to a reasonable accommodation request and are **not** a response to an emergency situation, transfers may be denied when the family is not in good standing with SMHA due to serious or repeated lease violations. This may include but is not limited to non-payment or not current on rent or other charges, housekeeping, history of disturbances, not current or fulfilling community service requirements, or destruction of property.

It is the policy of the SMHA not to grant a unit transfer simply to accommodate neighbors who “cannot get along.” Activities of the neighbors that impede the rights of others to the peaceful enjoyment of their unit will be treated as a lease violation and cause for termination of tenancy.

### **Security Deposits**

1. Families transferring to another development must have paid the security deposit in full at the “losing development.”
2. SMHA will charge the families for any damages to the previous unit.
3. In so far as possible, SMHA will determine any move out charges prior to completing the unit transfer. When feasible, any outstanding charges from the old unit will be billed to the tenant prior to transferring them to the new unit. In so far as it is possible, all tenant charges must be paid to the “losing development” prior to leasing up at the “gaining development.”
4. Any remaining charges, will be transferred to the ‘gaining development’. Tenant’s will immediately be billed for outstanding charges. Tenants that fail to pay for outstanding charges will be issued an eviction notice for non-payment of rent and/or other charges.

### **Eligibility for Transfer**

In order to be determined eligible to receive a transfer, residents must submit the requisite documentation to the SMHA to substantiate their request, and must be in good standing with the SMHA (ex: have no lease violations at time of transfer application).

### **SMHA Policy**

Except in emergency or approved reasonable accommodation situations, transfers will be avoided when the family is:

Delinquent in its rent;

In the process of reexamination to determine rent and eligibility; or

About to be asked to move for reasons other than non-payment of rent; or

Not in good standing with the SMHA due to rental history or a history of disturbances.

Considered to be an over-income family after 2 years.

After approval of transfer, or no later than immediately prior to actual transfer, an inspection will be conducted by site manager, maintenance and lessee.

After approval of the transfer, or no later than immediately prior to actual transfer, SMHA will re-evaluate whether the tenant is still in good standing with rent payments, lease compliance, not having any damage charges, etc. If the tenant is found to no longer be in good standing the transfer approval will be rescinded and be denied.

#### **A. TYPES OF TRANSFERS**

The order in which families are transferred shall be subject to the hierarchy by category set forth below.

##### **Category 1: Emergency Transfers**

Emergency Transfers are **mandatory** when SMHA determines that conditions pose an **immediate threat to resident life, health or safety.**

Emergency transfers may be made to:

- permit repair of unit defects hazardous to life, health, or safety;
  - alleviate verified disability problems of a life threatening nature;
  - to accommodate a request made under the VAWA of 2013.
  - remove residents who are witnesses to crimes and may face reprisals;
  - provide housing options to residents who are victims of hate crimes or extreme harassment;
- The PHA will seek input from local law enforcement regarding all requests for transfers due to criminal activity, being victims of crimes or harassment or threat of violence. Police reports and documentation from law enforcement agencies will be considered as input from local law enforcement.

SMHA will authorize an emergency transfer for a participant family when the resident's unit has been damaged by fire, flood, or other cause to such degree that the unit is not habitable, provided that the damage was not the result of an intentional, careless, or negligent act on part of the resident, resident's family, or guests of the resident. If after the transfer occurs SMHA discovers the damage was caused by the resident, resident's family or guests, an eviction action may be initiated against the resident.

Emergency Transfers will be conducted according to the following:

Executed within 7 days of documentation, verification and approval

Transfer will be within the housing development unless emergency transfer cannot be accomplished in this manner.

Ratio of transfers to waiting list applicants is not applicable

Emergency transfers are initiated by the SMHA and/or written family request.

**These transfers shall take priority over new admissions.**

### **Category 2 Reasonable Accommodation Transfers**

**Reasonable Accommodation Transfers** include **mandatory** transfers to accommodate a transfer or unit modification request for a disabled resident.

Reasonable Accommodation transfers may be made:

- when necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit;
- to permit a family that requires a unit with **accessible** features to occupy such a unit.

Reasonable Accommodation Transfers will be conducted according to the following:

Executed ASAP with documentation, verification and approval.

Transfer will be within the same housing development unless appropriate unit is not available to meet the family's needs within the development or is not readily available.

Ratio of transfers to waiting list applicants is not applicable.

Medical hardship and accessibility transfers are initiated by the SMHA, once a reasonable accommodation request has been approved.

**These transfers shall take priority over new admissions.**

Requests for these transfers will be made to the SMHA with necessary documentation to substantiate the need for such transfers.

### **Category 3 Scattered Site Incentive Transfer Program:**

**Scattered Sites Incentive Transfers will be offered to residents without regard to their race, color, religion, sex, disability, national origin, or familial status.** Families will be selected from the transfer wait list in order of date and time of approval for the Incentive Transfer Program.

### **SCATTERED SITE HOUSING TRANSFER**

This is an incentive transfer, discretionary program for residents who demonstrate positive tenancy behaviors.

Residents may request transfers to single-family housing units or other apartment units within the Scattered Site housing. The SMHA may also recommend a resident for these units to accomplish various program requirements, in order to alleviate over- and under-housed situations and/or to accomplish other administrative and program objectives of the SMHA.

The requirements that will be considered when evaluating Scattered Site transfers are as follows:

1. A SMHA resident & has lived in current unit for at least one year
2. A record of prompt rent payments for the past year
3. Limited tenant caused damages and prompt payment of damage charges for the past year
4. Housekeeping inspection for past year must be satisfactory
5. Positive relations with neighbors for the past year
6. Part or full-time employment (employment includes income from Retirement and Disability payments) for at least one year.
7. Participation in community activities, employment, education and training to assist in economic self-sufficiency. (Unless otherwise exempt from this requirement)
- 8.
9. Income changes must have been reported within 10 (ten) days of change. If tenant becomes unemployed, they must make an effort to participate in programs identified in number seven above.

At the discretion of the Executive Director, families on the wait list may be considered for this program.

#### **Category 4 Severely Under-Housed transfers**

Severely Under-Housed transfers include **mandatory transfers** to correct **serious** occupancy standards problems when a family is under-housed.

Category 4 transfers will only be made if the family size is so large that the household members would equal more than two persons per bedroom.

If a family's size is between the smallest and largest size permissible for the unit, the family may request a transfer, but it shall be considered a Category 6 voluntary transfer.

Category 4 or 5 transfers to correct occupancy standards may be recommended at time of annual re-examination or an interim redetermination.

Category 4 Severely Under-Housed Transfers will be conducted according to the

following:

Under-housed (Overcrowded)

Executed when family's name reaches the top of transfer list and authorized unit is available

Transfer will be within the same housing development unless size and type of unit required does not exist within that development's inventory or is not readily available.

Transfers are initiated by the SMHA and/or written family request.

Live-in aid

To meet occupancy standards after the approval for the additional live-in aide to the household.

**These transfers *may* take priority over new admissions.**

**Category 5 Severely Over-Housed transfers**

Severely Over-Housed transfers include **mandatory transfers** to correct **serious** occupancy standards problems when a family is over-housed.

Category 5 transfers will only be made if the family size is so small that it includes fewer persons than the number of bedrooms.

If a family's size is between the smallest and largest size permissible for the unit, the family may request a transfer, but it shall be considered a Category 6 voluntary transfer.

Category 4 or 5 transfers to correct occupancy standards may be recommended at time of annual re-examination or an interim redetermination.

Category 5 Severely Over-Housed Transfers will be conducted according to the following:

Over-housed

Executed when family's name reaches top of transfer list and authorized unit is available.

Transfer will be within the housing development unless the size and type of unit required does not exist within that development's inventory or is not readily available.

Transfers are initiated by the SMHA and/or written family request.

**These transfers *may* take priority over new admissions. These transfers may be placed on**

**hold if SMHA determines moving families out of a unit that is too large will create an occupancy problem for the larger sized unit due to lack of applicants for larger units.**

**Category 6 Voluntary transfers** may be made to:

- voluntary transfers based on occupancy standards when the family does not meet the criterion for a Category 4 or Category 5 transfer; or
- avoid concentration of the most economically and socially deprived families;

In the case of transfers to meet the deconcentration requirements and families are asked to move based on the Established Income Range, the following will apply:

These transfers will take place when the first family on the transfer list above the EIR is needed to move into a development below the EIR, or vice versa.

Ratio of transfers to waiting list applicants not applicable.

The SMHA does not offer incentives for families above the EIR to move into a development below the EIR, or vice versa.

The SMHA will not take any adverse action against any transfer family above the EIR declining an offer by the SMHA to move into a development below the EIR, and vice versa, except that the SMHA has the right to uniformly limit the number of transfer offers.

Voluntary Transfers will be conducted according to the following:

Executed when family's name reaches the top of transfer list and authorized unit is available.

Transfer will be within the same housing development unless size and type of unit required does not exist within that development's inventory or is not readily available.

Ratio shall be one transfer for every 15 move-ins from the public housing waiting list except in the case of meeting deconcentration requirements.

Transfers are initiated by the SMHA and/or written family request.

**These transfers will not take priority over new admissions. Voluntary transfers may be put on hold if SMHA determines the need to do so in order to reach occupancy goals.**

## **B. TRANSFER WAITLIST MANAGEMENT**

The Asset Management Executive office will act as the Transfer List Coordinator. This office will be responsible for making decisions on transfer requests and communicating decisions to the property staff and Intake Department. The Intake Department will be responsible for maintaining the centralized Transfer Wait List, communicating with Property Management when transfers will be taking place and assuring all of the necessary documentation is completed.

1. In certain circumstances, transfers will be considered first before referrals for the waiting list. However, due consideration shall be given to the number of vacant units prior to any transfer.
2. If for any reason the number of vacancies is significant to the extent that the transfers would place the Authority in a position of operational instability, additional restrictions to the fifteen to one (15:1) ratio of new move-ins from the waiting list to transfer from within will be imposed to maintain financial stability of the program and operations (98% lease-up/occupancy to be used as a guideline). Restrictions may include putting all transfers on hold other than those required by law (Reasonable Accommodations and Emergencies).
3. The nature of the transfer will also be considered even under these restrictions, as it is recognized that certain life endangering conditions, as may be cause for transfer cannot be restricted by operational objectives.
4. Property Managers are responsible for submitting transfer requests including necessary documentation, to the Asset Management Executive office.
  - Transfers will be sorted into their appropriate categories by SMHA. Transfers will be made in the following order:
  - **Category 1**-Emergency Transfers (*immediate threat to resident life, health or safety or VAWA*), then
  - **Category 2**- Reasonable Accommodation Transfers, (*i.e.: medical, reasonable accommodations*), then
  - **Category 3** – Scattered Sites Incentive Based Transfer Program
  - **Category 4** – Seriously Under-housed Transfers, (*i.e.: serious occupancy std. problems of family being under-housed*), then
  - **Category 5** – Seriously Over-housed Transfers, (*i.e.: serious occupancy std. problems of family being over-housed*), then
  - **Category 6**- Voluntary Transfers (*i.e.: deconcentration, voluntary transfers based on occupancy standards* ), then
5. Within each category, transfer applications will be sorted by the date the completed file (including any verification needed) is received by SMHA.

### **C. TRANSFER REQUEST AND APPROVAL PROCEDURE**

1. Residents applying for a transfer will submit a **Transfer Request Form** to their Property Manager stating the reason a transfer is being requested. Forms are not to be submitted for possible future events such as birth of a child or that the resident may get a live-in aide. The Transfer Request Form will also be used to document requests initiated by the SMHA (ie: to correct occupancy standard problem at re-exams/interims).



2. The property manager will evaluate the request and obtain the proper verification to determine if a transfer is justified. The property manager will also verify all of the criteria under the “good record requirement”.

If the interview/verification process reveals that there is a problem at the family's present site, the manager will address the problem and once solved to the manager's satisfaction, the request for transfer may be forwarded to the Asset Management Executive office.

3. All preliminary transfer requests must be forwarded to the Asset Management Executive office on a timely basis with the appropriate documentation attached. This will assure timely review and proper placement on the transfer list by the Transfer List Coordinator.
4. If the request is approved, the Transfer List Coordinator will send the family a Transfer List Notification stating that their name has been placed on the transfer list for the reason and/or bedroom size needed.
5. If the request is denied, the Transfer List Coordinator will send the family a Transfer List Notification stating the reason for denial, and offer the family an opportunity for an informal conference if they disagree with the decision.
6. The respective Property Manager will receive copies of all transfer correspondence sent to the family.
7. The approved transfer request form/file will be kept in a file arranged by bedroom size, category, and date the file/verifications were completed.

#### **D. GOOD RECORD REQUIREMENT FOR TRANSFERS**

1. In general, and in all cases of all **resident-requested transfers**, (except requests to transfer pursuant to an approved reasonable accommodation request) residents will be considered for transfers only if the head of household and any other family members for the past one year;
  - have not engaged in criminal activity that threatens the health and safety of residents and staff;
  - do not owe back rent or other charges, or evidence a pattern of late payment;
  - no delinquent repayment agreement or delinquent charges;
  - has fulfilled and is currently meet the community service requirements;
  - meet reasonable housekeeping standards and have no housekeeping lease

violations; and

- can get utilities turned on in the name of the head of household (applicable only to those select properties with tenant-paid utilities).
2. Due to a possible long time period between the date of the transfer request and actual unit offer, the good record requirement will be reviewed at both the date of the transfer request and again at the time of the unit offer.
  3. Exceptions to the good record requirements may be made for emergency transfers or when it is to SMHA's advantage to make the transfer. The exception to the good record requirement will be made by the Asset Management Executive office taking into account the recommendation of the Manager. Absent a determination of exception, the following policy also applies to transfers:
    - If back rent is owed, the resident will not be transferred until the back rent is paid in full.
    - A resident with housekeeping standards violations will not be transferred until he/she passes a follow-up housekeeping inspection.

#### **E. WAITLIST MAINTENANCE AND OFFER PROCESS**

Prior to an offer being made, an inspection of the tenant's current unit will be conducted to assure no lease violations exist, especially damage to the unit or poor housekeeping. The transfer may be denied based upon this inspection if serious violations exist, except in the cases of an emergency transfer, the need for a reasonable accommodation or SMHA mandated. Exceptions must be approved by the Executive Director.

#### **ACCESSIBLE UNIT OFFERS**

When a property manager has a unit that is either all on one floor, has at least one bedroom and bath on the first floor, has any accessibility features or is 504 handicap accessible and it is going to be vacant, they will record this information on the Routing Sheet that is on the shared drive and which the Intake Department utilizes to fill vacancies.

- A. When the Intake Department sees a unit that will meet the needs of a Reasonable Accommodation request, they will consult the Reasonable Accommodation Waiting list to determine the next tenant who is eligible for a Category 2 Reasonable Accommodation transfer.
- B. The Intake Department will contact the resident to make the offer of the accessible unit and to schedule an appointment for showing the unit. **The appointment should be scheduled within two (2) working days unless the resident requests an extension on this time.** The unit must be shown and accepted within 5 working days or the Intake Department will move on to the next person on the Reasonable Accommodation transfer list that requires the feature(s) of the unit.
- C. The Resident will be given **24 hours to accept the unit after the appointment.**
- D. The time frame between the **"appointment to show the unit" and "lease-up"** should be as short as possible, and keys for the former unit should be returned to SMHA **within 72**

**hours of signing the new lease.**

- E. SMHA will be responsible for the cost of moving a resident due to a Reasonable Accommodation request when the resident is unable to move themselves. The lease should not be signed or become effective until a moving date has been established.
- F. If the resident decides to move themselves and indicates it will take more than 72 hours, the extenuating circumstances that would cause the delay must be approved by the Asset Management Executive office.
  - 1. If the extension is approved, the extension and reason must be documented.
  - 2. If the extension is not approved, the appropriate information must be documented and the proper action on the Transfer Wait List will be taken (see Refusing an Offer).
- G. **All personal belongings must be removed from the unit**, the unit must be “broom swept” clean, and keys returned at the end the of 72 hour period. Failure to return the keys to the former unit within 72 hours of the moving date will result in additional charges being assessed and may result in eviction based on the resident residing in two assisted units.

**ACCEPTING AN OFFER FOR OTHER TRANSFERS**

When a property manager has a unit that will be coming vacant, they will record the required information on the Routing Sheet that is on the shared drive and which the Intake Department utilizes to fill vacancies.

- A. When the Intake Department reviews a vacancy on the Routing Sheet and determines that a transfer can be made into the unit, they will consult the transfer waiting list to determine who the next eligible resident on the transfer list.
- B. The Intake Department will contact the resident and schedule an appointment for showing the unit. **The appointment should be scheduled within two (2) working days.**
- C. The Resident will be given **24 hours to accept the unit after the appointment.**
- D. The unit must be shown and accepted within no more than 5 working days or the Intake Department will move on to the next person on the transfer list.
- E. The time frame between the **“appointment to show the unit” and “lease-up”** should be as short as possible, and keys for the former unit should be returned **within 72 hours of signing the new lease.**
- F. The lease should not be signed or become effective until a moving date has been established.
- G. If the resident reports that it will take more than 72 hours to move and turn in the keys, the extenuating circumstances that would cause the delay must be approved by the Asset Management Executive office.
  - 1. If the extension is approved, the extension and reason must be documented.
  - 2. If the extension is not approved, the appropriate information must be documented and the proper action on the Transfer Wait List will be taken (see Refusing an Offer).
- H. **All personal belongings must be removed from the unit**, the unit must be “broom swept” clean, and keys returned at the end the of 72 hour period. Otherwise, failure to return the keys to the former unit within 72 hours of the moving date will result in additional charges

being assessed and may result in eviction based on the resident residing in two assisted units.

### **REFUSING AN OFFER**

If a family is on the transfer list and refuses an offered unit, they will be removed from the transfer list unless SMHA determines that the refusal was made for good cause. If so, the family will be allowed to remain in their unit **but will be removed from the transfer waiting list** and no further transfer offers will be made. All offers will be documented and reason for refusal will be documented.

Only one unit will be offered to a family unless there is good cause or a hardship situation as determined by the SMHA. In the case of a mandatory unit transfer: if the resident refuses the offered unit, the lease may be terminated by the SMHA by giving a 30-day notice to the resident.

Good cause may be any of the following reasons:

- The new unit is more than 20 miles from the place of employment of at least one member of the family.
- The new unit is more than 20 miles from the school or job training program that at least one adult member of the family is attending.
- Travel to the doctor from the new unit would create a hardship for an elderly or disabled person.

The inconvenience or undesirability of changing schools for any minor child will not be considered good cause.

### **F. PROCESSING IN AND OUT OF DEVELOPMENTS**

A transfer will require good coordination and communication between the sending and receiving developments. Both sending and receiving developments involved must have a definite agreement as to when the sending development will “transfer” the resident.

A transfer between developments will not be considered a move-out.

- There will be no lapsed time between move-out and move-in. Effective dates must not overlap.
- The resident's records will show a continuous residence in public housing in one development or the other, but not in both developments at the same time.

The transferred resident, between public housing developments, does not have to meet the admission eligibility requirements pertaining to income or preference.

### **Rent Adjustments**

SMHA will notify the resident of the rent and/or security deposit change by use of a new Lease. The rent will be pro-rated as outlined in the Lease Agreement.

**Reexamination Date**

The date of the transfer does not change the reexamination date. The receiving development should be certain that the annual review is properly scheduled to give the staff time to re-determine rent in order to meet the established reexamination date. If the reexamination is in process, the receiving development will assume responsibility for completion.

The sending development will send the family's file to the receiving development once they have been notified that the family has accepted the unit and before the family is leased up. The receiving development will not attempt to lease up a family without possession of the family's file.

**G. GRIEVANCE RIGHTS**

Families disagreeing with the determination made on their transfer request may grieve the decision. See Chapter 13, Complaints, Grievances and Appeals.

**H. COST OF TRANSFERS**

Residents shall bear the cost of voluntary transfers to correct occupancy standards, resident requested transfers, incentive transfers, and other voluntary transfers.

SMHA will bear the reasonable cost of mandatory transfers SMHA requests for demolition, disposition, rehabilitation, building system failures, or emergency conditions due to no fault of the tenant. SMHA will bear the reasonable cost of transfers needed as a reasonable accommodation for residents with disabilities. The reasonable cost of transfers includes not just the cost of packing, moving, and unloading, but also the cost of connecting and reconnecting any existing resident-paid services such as telephone and cable. [Public Housing Occupancy Guidebook Chapter 11.7; page 150]

**I. MANDATORY TRANSFERS**

If a required change in the size of unit is needed, it will be necessary for the resident to move to a unit of an appropriate size and a new lease will be executed.

If an appropriate unit is not available, the resident will be placed on a transfer list and moved to such unit when it does become available.

The SMHA will place all families requiring a mandatory transfer due to occupancy standards on a transfer list, which will be reviewed for need-based transfers before any unit is offered to a family on the waiting list.

If a family that is required to move refuses the offered unit, the SMHA will evaluate the reason for the refusal and determine if it is one of good cause. If the SMHA determines that there is no good cause, the SMHA may begin lease termination proceedings.

The SMHA will offer the family an opportunity for an informal conference before terminating the family's lease. The family will have 10 working days from the issue date of the Notice to Terminate to request an informal conference.

**J. NON-MANDATORY TRANSFERS**

When a unit becomes available, and after the transfer list has been reviewed for families requiring a mandatory transfer, the transfer list will be reviewed for other families desiring a transfer.

If there is a participant family waiting for transfer to an available and appropriately sized unit, the participant family will be offered the unit.

A voluntary transfer, rather than a new admission from the waiting list, will fill one in 15 units filled. For every 15 applicants housed from the waiting list, a family who had requested a voluntary transfer will be housed. This ratio does not apply for reasonable accommodation transfer requests.

SMHA maintains an inventory-wide transfer list and if a family refuses an offered unit, they will be removed from the transfer list unless the SMHA determines that the refusal was made for good cause. If so, the family will be allowed to remain in their unit and will remain on the transfer list until another unit is offered.

Good cause may be any of the following reasons:

The new unit is more than 20 miles from the place of employment of at least one member of the family.

The new unit is more than 20 miles from the school or job training program that at least one adult member of the family is attending.

Travel for medical treatment from the new unit would create a hardship for an elderly or disabled person.

The inconvenience or undesirability of changing schools for any minor child will not be considered good cause.

**K. TRANSFERS OF RESIDENTS AND APPLICANTS WITH DISABILITIES INTO SMHA'S UFAS-ACCESSIBLE UNITS**

Transfers of residents with disabilities and placement of applicants with disabilities requiring UFAS-Accessible Units will be centrally coordinated between SMHA's Section 504 Coordinator, Intake Department and the Property Manager.

Reasonable Accommodation Transfer requests must include the following information:

- Name of the household member with the disability
- Special features required to address the disability
- Required location of the new unit that will address the disability, if appropriate (e.g. a tenant needs a unit in Massillon to be closer to medical provider)

Tenants are required to update their Reasonable Accommodation request as their needs change. All requests must be submitted and approved prior to a unit offer in order for them to be considered when a unit offer is made.

When an accessible unit becomes available, the unit will first be offered to a current resident with

disabilities in the same AMP who requires the accessibility features of the vacant, accessible unit and occupying a unit not having those features. Residents on the Reasonable Accommodation transfer waiting list will be given one unit offer that addresses their specific reasonable accommodation request. If a unit has been identified that adequately meets the needs identified in the tenant's reasonable accommodation request, the resident will be required to accept the unit. Failure to accept the unit offer will result in the tenant being removed from the reasonable accommodation waiting list, and no further unit offers will be made. If a unit offer is made, which does not properly address the reasonable accommodation request, the resident may decline the unit offer and will remain on the reasonable accommodation waiting list until a more suitable offer is made. All requests for accommodations must be made and approved prior to a unit offer in order for the request to be valid. Denial of a unit offer for accommodation requests that have not been approved prior to the unit offer will not be grounds for a good cause denial of the transfer offer.

If there is no current resident in the same AMP who requires the accessibility features of the of the vacant, accessible unit, then the unit will first be offered to a current resident with disabilities residing in another AMP who requires the accessibility features of the vacant, accessible unit and occupying a unit not having those features.

If there is no current resident who requires the accessibility features of the of the vacant, accessible unit, then the vacant accessible unit will be offered to an eligible, qualified applicant with disabilities on the waiting list who can benefit from the accessible features of the vacant, accessible unit.

If there is not an eligible, qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible unit, then it will be offered to an applicant on the waiting list who does not need the accessible features of the unit. See 24 CFR 8.27. However, SMHA will require the applicant to execute a dwelling lease that requires the resident to relocate, at SMHA's expense, to a non-accessible unit within thirty (30) days notice by SMHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. See 24 CFR 8.27.

## **Chapter 9**

### **LEASING** **[24 CFR 966.4]**

#### **INTRODUCTION**

It is SMHA's policy that all units must be occupied pursuant to a dwelling lease agreement that complies with HUD's regulations [24 CFR Part 966]. This Chapter describes pre-leasing activities and the SMHA's policies pertaining to lease execution, security deposits, other charges, and additions to the lease.

#### **A. GENERAL LEASING POLICY**

##### **General Terms**

1. All units must be occupied pursuant to a lease that complies with HUD's regulations.
2. No lease will have an effective date before the unit is ready for occupancy.
3. The lease shall be signed by the head, spouse, and all other adult members of the household and by the authorized representative of SMHA, prior to actual admission.
4. If a resident transfers from one SMHA unit to another, a new lease will be executed for the dwelling into which the family moves.
5. If at any time during the life of the lease agreement, a change in the resident's status results in the need for changing or amending any provision of the lease, either:
  - (a) A new lease agreement will be executed, or
  - (b) A Notice of Rent Adjustment will be executed, or
  - (c) An appropriate rider will be prepared and made a part of the existing lease. All copies of such riders or insertions are to be dated and signed by the Resident and by the authorized representative of SMHA.

#### **B. LEASE ORIENTATION**

All adult household members are required to attend a Leasing session prior to residency. Failure to attend the will be grounds for no occupancy and removal from the waiting list.

The purpose of the Leasing session will be to familiarize all new residents with rules, regulations, policies and procedures pertinent to successful occupancy in SMHA's public housing program. The Lease House Rules, maintenance policies, housekeeping, and Community Service requirement will be among the topics at Orientation.



At the time of lease signing, the family will be provided with copies of the:

- Lease
- House Rules
- Community Service Requirement
- Pet Policy

Topics to be discussed will include, but are not limited to:

- Applicable deposits and other charges
- Provisions of the Lease
- Unit maintenance and work orders
- Terms of occupancy
- Community Service Requirements
- Pet Policy
- Lead-based paint provisions
- Smoke Free Housing
- Grievance Policy
- HUD Form HUD-92006
- Etc.

### **Form HUD-92006, Supplement to Application for Federally Assisted Housing**

Form HUD-92006 must be included as an attachment to the SMHA's application.  
Prior to execution of the lease, the following must be discussed:

- a. Applicants must be provided the opportunity to complete the information on form HUD-92006, Supplement to Application for Federally Assisted Housing. The form gives applicants the option to identify an individual or organization that the SMHA may contact and the reason(s) the individual or organization may be contacted. The applicants, if they choose to provide the additional contact information, must sign and date the form.

b. Applicants who are currently on the SMHA's waiting list and who have not been provided the opportunity to complete form HUD-92006, Supplement to Application for Federally Assisted Housing, must be provided the opportunity at the time of admission.

c. SMHA **cannot** require any individual or family applying for occupancy to provide the contact information as providing contact information is optional on the part of the individual or family. Those applicants who choose not to provide the contact information should check the box indicating that they "choose not to provide the contact information" and sign and date the form.

d. SMHA should provide applicants the opportunity at time of admission to update, the applicant must make clear to SMHA the reason each person or organization may be contacted. The SMHA should accommodate the applicant by allowing the applicant to complete a form HUD-92006 for each contact and indicate the reason the SMHA may contact the individual or organization. For example, the applicant may choose to have a relative as a contact for emergency purposes and an advocate organization for assistance for tenancy purposes.

### **C. LEASE REQUIREMENTS**

The initial term of the lease will be for 12 months. The lease will renew automatically for 12-month terms with the following exception:

- SMHA will not renew the lease if the family has violated the community service requirement (24 CFR 966.4).
- Because the community service requirements and other provisions that change in the regulations, the lease does not automatically renew for terms of 12 months, and an annual signing process is required.
- The lease further provides for termination and eviction at the end of any 12-month lease term for non-compliance with the community service requirements at 24 CFR Part 960, Subpart F and Chapter 15 of this Admissions and Continued Occupancy Policy.
- Failure to comply with SMHA or HUD requirements for continued eligibility.

### **D. EXECUTION OF LEASE**

The lease shall be executed by the head of household, spouse, co-head and all other adult members, and by an authorized representative of SMHA, prior to admission.

The head of household is the person who assumes legal and financial responsibility for the household and is listed on the application as head.

An appointment will be scheduled for the parties to execute the lease. One executed copy of the lease will be given to the tenant, and SMHA will retain the original in the tenant's file. The lease is incorporated into this policy by reference. The lease document will reflect current SMHA policies as well as applicable Federal, State and Local law.

The following provisions govern lease execution and amendments:

- A lease is executed at the time of admission for all new tenants.
- A new lease is executed at the time of the transfer of a tenant from one SMHA unit to another (with no change in reexamination date).
- If, for any reason, any signer of the lease ceases to be a member of the household, the lease will be terminated and a new lease may be executed with the remaining members, so long as they meet the program requirements.
- Lease signers must be persons legally eligible to execute contracts.
- The names of all household members are listed on the lease at initial occupancy and on the Personal Declaration each subsequent year. Only those persons listed on the most recent certification shall be permitted to occupy a dwelling unit.
- Changes to tenant rents are made upon the preparation and execution of a "Notice of Rent Adjustment" by SMHA, which becomes an attachment to the lease. Documentation will be included in the tenant file to support proper notice.
- Households that include a Live-In Attendant will contain file documentation that the Live-In Attendant is not a party to the lease and is not entitled to SMHA assistance, with the exception of occupancy while serving as the attendant for the disabled or qualified family member.

SMHA may modify its form of lease from time to time, giving tenants an opportunity to comment on proposed changes and advance notice of the implementation of any changes. A tenant's refusal to accept permissible and reasonable lease modifications, or those modifications required by HUD, is grounds for termination of tenancy.

#### **E. ADDITIONS TO THE LEASE**

Only those persons listed on the most recent certification form and lease shall be permitted to occupy a dwelling unit. This includes situations in which a tenant is granted custody of a child or children not previously listed on the application or lease and situations in which a person (often a relative) came to the unit as a visitor but stayed because the tenant needed support, for example, after a medical procedure. All persons listed on the most recent certification form and the lease must use the unit as their sole residence.

Except for natural births to or adoptions by family members, or court awarded custody, any family seeking to add a new member must request approval in writing before the new member moves in.

When a resident requests approval to add a new person to the lease, SMHA will conduct pre-admission screening of any proposed new adult member to determine whether the SMHA will grant such approval. New household members must be approved by SMHA, prior to the actual move-in by the proposed new member.

Also included in the requested approval would be situations in which a person (often a relative) comes to the unit as a visitor but stayed on in the unit because the tenant needed support, for

example, after a medical procedure.

Following receipt of a family's request for approval, SMHA will conduct a pre-admission screening, including the Criminal History Report, of the proposed new member. Only new members approved by SMHA will be added to the household.

Children under the age at which juvenile justice records are available, or added through a formal custody award are still required to be added through a pre-admission screening process and the tenant still needs prior permission from SMHA to add children other than those born to or adopted by family members. The exemption age specified in this paragraph is subject to change should the state modify its laws concerning the availability of police or court records for juvenile offenders.

Requests for the addition of a new member of the household must be approved by SMHA, prior to the actual move-in by the proposed new member.

Following receipt of a family's request for approval, SMHA will conduct a pre-admission screening, including but not limited to the Criminal History Report, of the proposed new member. Only new members approved by SMHA will be added to the household.

Factors determining household additions:

1. Household additions subject to screening:
  - a. Resident plans to marry and requests to add the new spouse to the lease;
  - b. Resident is awarded custody of a child over the age for which juvenile justice records are available;
  - c. Resident desires to add a new family member to the lease, employ a live-in aide, or take in a foster child(ren)/adults.
  - d. A unit is occupied by a remaining family member(s) under age 18 (not an emancipated minor) and an adult who was not a member of the original household requests permission to take over as the head of household.
2. Factors determining household additions which are not subject to screening:
  - a. Children born to a family member or whom a family member legally adopts are exempt from the pre-screening process.
  - b. Children under the age below which Juvenile Justice records are made available, or added through a formal custody award or kinship care arrangement are still required to comply with the pre-admission screening process.
  - c. The SMHA will request that the public housing tenant provide the SMHA with a signed consent form from the parent(s) or legal guardian allowing the SMHA to check the juvenile records of the child. Sources to be checked may include any of the following:
    - i. School Records (attendance/behavior)

- ii. Juvenile Probation/Court Records
- iii. Police Records
- 3. Residents who fail to notify SMHA of additions to the household or who permit persons to join the household without undergoing screening are violating the lease. Persons added without SMHA approval will be considered unauthorized occupants and the entire household will be subject to eviction [24 CFR 966.4(f)(3)].
- 4. Family members who move from the dwelling unit to establish new households shall be removed from the lease. The tenant must notify SMHA of the move-out within 10 days of its occurrence.
- 5. These individuals may not be readmitted to the unit and must apply as a new applicant for placement on the waiting list.

### **Visitors**

- 1. Visitors may be permitted in a dwelling unit so long as they have no previous history of behavior on SMHA premises that would be a lease violation. Refer to **Chapter 11** for details. Visitors remaining beyond the periods in this policy shall be considered unauthorized occupants and the head of the household shall be guilty of a breach of the lease.
- 2. Roomers and lodgers shall not be permitted to move in with any family. Violation of this provision is ground for termination of the lease <sup>1</sup>.
- 3. Residents **will not** be given permission to allow a former resident of SMHA who has been evicted to occupy the unit for any period of time. Violation of this requirement is ground for termination of the lease.
- 4. Medical hardship, or other extenuating circumstances shall be considered by SMHA in making determinations under this area. Temporary caretaker requests must be provided by the resident and verified by a medical provider. The status must be updated every thirty (30) days. The SMHA will review the request and verified reason for the caretaker during an extended medical hardship. Approval of the caretaker to occupy the unit for a period beyond 30 cumulative days within a twelve month period will require prior approval by the Property Manager. Caretakers must provide SMHA with verification of residency prior to being approved to stay in an SMHA unit for more than a 2-week period. (Verification of residency will consist of any two the following: a current lease, a utility bill in the name of the caretaker, mail from a government agency in the caretaker's name, recent pay stubs showing the caretakers name and current address).
- 5. Residents must advise SMHA if they will be absent from the unit for more than 7 days. Residents shall notify the manager, secure the unit and provide a means for SMHA to contact the resident in an emergency. Failure to advise SMHA of an extended absence is grounds for termination of the lease.
- 6. Visitors permitted by residents must be reported to the SMHA within 72 hours of their

arrival or prior thereto. Visits not exceeding 14 days must be authorized by the SMHA.

7. Written approval at the discretion of the manager, based on the circumstances, must be obtained for guest visits of more than 14 days. Visitors requesting to stay beyond 14 days must meet the SMHA residency verification standards. Verification of residency will consist of any two of the following: a current lease, a utility bill in the name of the visitor, mail from a government agency in the visitor's name, recent pay stubs showing the visitors name and current address.
8. Residents are responsible for the actions and conduct of their guests in accordance with the lease.

## **Absence from the Unit**

### **SMHA Policy**

Absence means that no family member is residing in the unit. The family is required to report to the SMHA if they will be absent for more than 30 days. Any family member absent for more than 60 days will be considered permanently absent, unless approved by the SMHA.

The family may be absent for short periods of time, but if the period is more than 180 calendar days, the unit will be considered vacated and the assistance will be terminated.

The family must supply any information or certification requested by the SMHA to verify that the family is living in the unit, or relating to the family absence from the unit, including any SMHA-requested information or certification on the purpose of the family absence. The family must promptly notify the SMHA of any absence from the unit in accordance with this policy.

Absence due to hospitalization or sickness of a family member will be verified and if it is determined that the family member will return home within 60 days, the family will not be considered permanently absent, provided the rent and utilities payable by the family continued to be paid. However if there is no chance of the family member returning to the home within 60 days, they will be considered permanently absent and assistance will be terminated.

Absences longer than 30 days must be approved by the SMHA in writing.

Absences longer than 60 days due to drug treatment or imprisonment will be permanently absent unless approved by the SMHA.

The SMHA will make a determination as to whether imprisonment was due to drug-related or violent criminal activity and will be handled on a case by case basis. A determination will be made after a review by the SMHA.

If both parents are absent from the unit and a caretaker has been placed in the home by the courts or an approved placement agency such as Social Services, the caretaker will be considered a visitor for the first 30 days. The lease will be transferred to the caretaker if the court has awarded custody or legal guardianship to the caretaker by the end of the 30-day period. The caretaker will be allowed to remain in the unit as a visitor until a

determination of custody is made by the court. The income of the caretaker will be counted pending the final disposition of the custody award.

If a resident includes a child or children that are temporarily absent due to placement in foster care, the SMHA will determine from the appropriate agency when the children will be returned home. If the period is more than 180 days the children will be permanently removed from the lease and rent re-determined.

An adult child enlisted in military service that leaves the household will be considered permanently absent.

A household member subject to court order restricting the member from the home for more than 180 days will be considered permanently absent.

A person with a disability requesting an extension of time as an accommodation will be granted the extension as long as it is within the 180 calendar day limit.

Any verification to residency by the SMHA or resident will be documented in the file.

**F. LEASING UNITS WITH ACCESSIBLE OR ADAPTABLE FEATURES**  
[24 CFR 8.27(a)(1)(2) and (b)]

Qualified families will be offered an accessible unit, upon request by the family, when an accessible unit is available. Due to the limited number of accessible units, SMHA will offer vacant accessible units with features for person with disabilities as follows:

- First, to a current occupant of another unit of the same development who requires the accessible features of the vacant, accessible unit and is occupying a unit not having the features;
- If there is no current resident in the same development that requires the accessible features of the vacant unit, then it will be offered to a resident with disabilities residing in another development under SMHA's control, who has a disability that requires the special features of the vacant accessible unit;
- If there are no current residents who require the accessible features of the vacant, accessible unit, then the vacant accessible unit will be offered to an eligible qualified applicant with disabilities on the waiting list who can benefit from the accessible features of the available, vacant, accessible unit;
- If there is not an eligible qualified resident or applicant with disabilities, needing the features of the vacant accessible unit then the unit will be offered to an applicant on the waiting list who does not need the accessible features of the unit [24 CFR 8.27]. However, the SMHA will require the applicant to execute the SMHA public housing lease that requires the resident to relocate to a vacant non-accessible unit within 30 days of notice by the SMHA that there is an eligible applicant or existing resident with disabilities who requires the accessible features of the unit.

## **G. UTILITY SERVICES AND RESIDENT OWNED APPLIANCES**

Tenants responsible for direct payment of utilities must abide by any and all regulations of the specific utility company, including regulations pertaining to advance payments of deposits. Failure to maintain utility services during tenancy is a lease violation and grounds for eviction.

If it is determined that any utility service is not on in a unit, the tenant will receive a 24-hour Notice to Correct posted at their unit. If the utilities are not restored in the 24-hour period, then a 5-Day Expedited Notice due to the Health and Safety lease violation will be issued. The tenant must provide documentation of proof of service within 24-hours and the unit will be inspected on the fifth day to assure utilities have been restored. If the utility service has not been restored at the time of inspection, the Property Manager will proceed with the eviction process. If utilities are restored after the first occurrence of a notice of no utilities, this will result in a conference agreement explaining consequences of subsequent violations. If the tenant violates the conditions again while in assisted housing, the second violation will result in an immediate 5-Day Expedited Notice due to Health and Safety.

The lease will designate the appliances provided by SMHA (i.e.: stove and refrigerator). The tenant is responsible for proper hook-up, safety and maintenance of any appliances they may provide (i.e., washers and dryers).

## **H. SECURITY DEPOSITS (Refer to Chapter on Security Deposits)**

### **Security Deposit**

New tenants must pay a security deposit to SMHA at the time of admission. The amount of the security and/or pet deposit required is specified in the lease and the corresponding chapters of this policy.

SMHA will hold the security deposit for the period the tenant occupies the unit.

SMHA will refund to the Tenant the amount of the security deposit, less any amount needed to pay the cost of:

- Unpaid Rent;
- Damages listed on the Move-Out Inspection Report that exceeds normal wear and tear;
- Other charges under the Lease.

SMHA will refund the Security Deposit less any amounts owed, within 30 days after move out and tenant's notification of new address.

SMHA will provide the tenant or designee identified above with a written list of any charges against the security or pet deposits. If the tenant disagrees with the amount charged to the security or pet deposits, SMHA will provide a meeting to discuss the charges.



The resident must leave the dwelling unit in a clean and undamaged (beyond normal wear and tear) condition and must furnish a forwarding address to SMHA. All keys to the unit must be returned to the Management upon vacating the unit.

SMHA will not use the security deposit for payment of rent or other charges while the tenant is living in the unit.

If the tenant transfers to another unit, the SMHA will transfer the security deposit to the new unit. The tenant will be billed for any maintenance or other charges.

**Pet Deposit** (Refer to chapter on Pet Policy)

SMHA will refund the Pet Deposit to the tenant, less any damage caused by the pet to the dwelling unit, upon removal of the pet or the owner from the unit. SMHA will return the Pet Deposit to the former tenant or to the person designated by the former tenant in the event of the former tenant's incapacitation or death.

**I. RENT PAYMENTS**

The tenant rent is due and payable at the SMHA-designated location on the 1st of every month.

If SMHA does not receive payment by close of business on the 7<sup>th</sup> day of the month, a 14-day notice will be served to the tenant. The notice will be attached to the unit door and a copy of the 14-day notice will be mailed to the tenant. The notice will indicate the amount that is late.

Tenants who have not paid any unpaid charges prior to the close of business on the 7<sup>th</sup> day of the month will be assessed a late charge.

If the 7<sup>th</sup> day of the month is a weekend or holiday, the tenant will have until the close of business on the next business day to make payment before the payment will be considered late (i.e., if the 7<sup>th</sup> day of the month is a Saturday, the tenant will have until the close of business on the following Monday to make a payment before it is considered late).

Any tenant who is delinquent in rent payments 4 or more times in a 12-month period will be considered to be a chronic late payer. Four or more late payments in a 12-month period will be considered to be a serious lease violation which may result in termination of the tenant's lease.

If a resident is experiencing a hardship in the payment of the rent, the resident will be required to provide written notification before the 7<sup>th</sup> day of the month. The notification must include an explanation of the circumstances that will delay the tenant's payment, and the tenant must indicate the date on which full payment will be made. Only the Executive Director, or his/her designee, may provide an extension.

**J. FEES AND NONPAYMENT PENALTIES**

If the tenant fails to make payment by the close of business on the 7<sup>th</sup> day of the month, and the SMHA has not agreed to accept payment at a later date, a Notice to Vacate will be issued to the tenant with a 14-day notice period for failure to pay rent, demanding payment in full or the surrender of the premises.

If the tenant fails to make payment by the close of business on the 7<sup>th</sup> day of the month, they will be assessed a \$15 late fee.

A charge of \$20 will be assessed against the tenant for checks or ACH payments that are returned for non-sufficient funds (NSF), or checks written on a closed account. If the check is not redeemed and the rent satisfied by the close of business on the 7<sup>th</sup> of the month, the rent will be considered unpaid.

The SMHA will always consider the rent unpaid when a check is returned as NSF or a check is written on a closed account. SMHA may refuse to accept any future payments made by check after one (1) NSF or other check cashing problems occur with a resident.

If the SMHA has not agreed to accept payment at a later date, a Notice to Vacate will be issued for failure to pay rent.

#### **K. SCHEDULES OF SPECIAL CHARGES**

Schedules of special charges for services, repairs, utilities and rules and regulations which are required to be incorporated into the lease by reference shall be publicly posted in a conspicuous manner in the project office, and they will be provided to applicants and tenants upon request.

#### **L. MODIFICATIONS TO THE LEASE**

Schedules of special charges and rules and regulations are subject to modification or revision. Tenants will be provided at least 30-days written notice of the reason(s) for any proposed modifications or revisions, and they will be given an opportunity to present written comments. Comments will be taken into consideration before any proposed modifications or revisions become effective.

A copy of such notice shall be posted in the central office, and:

Posted in at least two (2) conspicuous places within each structure or building in which tenants affected by the modifications or revisions are located.

Any modifications of the lease must be accomplished by a written addendum to the lease and signed by both parties.

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are

made in accordance with HUD requirements, or are by HUD, is grounds for termination of tenancy [24 CFR 966.4(1)(2)(iii)(E)].

**PHA Policy**

When the PHA Proposes to modify or revise schedules of special charges or rules and regulations, the PHA will post a copy of the notice in the central office and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

**M. CANCELLATION OF THE LEASE**

Cancellation of the tenant's lease is to be in accordance with the provisions contained in the lease agreement, HUD regulations, state law, and as stated in this policy.

**N. INSPECTIONS OF PUBLIC HOUSING UNITS**

**Initial Inspections**

SMHA and the family will inspect the premises prior to occupancy of the unit in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by SMHA staff and the tenant, will be maintained in the tenant file. (Any adult member of the household may sign the inspection form for the head of household).

**90 Day Inspections**

The SMHA will schedule and conduct an inspection within 90 days of move-in date. SMHA will intercede if necessary if problems in the care and upkeep of the unit and/or household composition are identified during the 90-day inspection.

**Vacate Inspections**

SMHA staff will perform a move-out inspection when the family vacates the unit and will encourage the family to participate in the move out inspection.

The purpose of this inspection is to determine necessary maintenance and whether there are damages that exceed normal wear and tear. SMHA will determine if there are tenant caused damages to the unit. Tenant caused damages may affect part or all of the family's security deposit.

The move-out inspection also assists SMHA in determining the time and extent of the preparation and repairs necessary to make the unit ready for the next tenant.

**Annual Inspections**

SMHA will inspect all units annually using HUD's Uniform Physical Conditions Standards (UPCS) as a guideline.

The unit will be considered to have failed HUD's Uniform Physical Condition Standards if there are any *life-threatening* Health and Safety deficiencies.

Residents who "fail" the inspection due to housekeeping or tenant-caused damages will be given 30 days to bring the unit into compliance with SMHA's housekeeping standards. Residents who fail to bring the unit into compliance within the 30-Day Notice to Vacate period, may be subject to further eviction proceedings.

Residents who have been able to bring their unit into compliance with SMHA's housekeeping standards and have passed the follow-up inspection, will be placed on housekeeping probation. Residents on housekeeping probation will be required to pass monthly housekeeping inspections for two (2) additional months after they have passed the follow-up inspection. Failing a probationary housekeeping inspection may result in further eviction proceedings.

SMHA may require residents who fail a housekeeping inspection to participate in a Housekeeping Standards Course sponsored by SMHA.

If repairs are required to bring the unit into UPCS compliance, needed repairs will be completed by SMHA. If the damages are beyond normal wear and tear and are determined to be the fault of the tenant, appropriate maintenance charges may be assessed to the tenant to cover the cost of the repairs. Inspection reports will indicate whether required repairs are to be charged to the resident.

Required corrections will be repaired by SMHA within 25 days of the inspection date.

All inspections will include a check of the smoke alarms to ensure that they are in proper working order.

Residents who repeatedly "fail" the inspection or cause excessive damage to the unit may be in violation of their lease.

### **Quality Control Inspections**

The Management staff will conduct periodic quality control inspections to determine the condition of the unit and to identify problems or issues in which SMHA can be of service to the family.

SMHA staff will conduct quality control inspections on at least 5% of units or the mandatory minimum per the HUD protocol.

The purpose of these quality control inspections is to assure that the inspections were performed properly and repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame.

### **Special Inspections**

Housing management staff may conduct a special inspection for emergency conditions, housekeeping, unit condition, or suspected lease violation.

HUD representatives or local government officials may review SMHA operations periodically and as a part of their monitoring may inspect a sampling of the SMHA's inventory.

### **Other Inspections**

SMHA staff will conduct periodic walk-through inspections to determine whether there may be lease violations, adverse conditions or local code violations.

Building exterior and grounds inspections are conducted at all PHA properties to determine hazardous conditions as well as to assist in budget preparation.

Management Staff shall conduct inspections (with a 48-hour notice) for all new residents 30 days after the lease date. Inspections should also be conducted by the Management Staff after receiving poor housekeeping reports from Maintenance staff or PHA staff.

### **Emergency Inspections**

Housing management staff may initiate an emergency inspection if they believe that an emergency exists in the unit or on a Public Housing site. (See Entry of Premises Notice in this chapter.) Repairs are to be completed within 24 hours from the time the work order is issued.

### **Emergency Repairs to be Completed in Less than 24 Hours**

The following items are to be considered emergency in nature and require immediate (less than 24 hour) response:

1. Fires-Call the Fire Department at 911 before contacting Maintenance
2. Air conditioning and cooling problems in the summer based on the current temperature
3. Heating problems in winter, based on current temperatures
4. Electrical failures (affecting more than just a light fixture or outlet circuit)
5. Gas leaks
6. Plumbing stoppages affecting ALL toilets
7. Breaks in main water lines and major water leaks
8. Lock-outs – Subject to the resident paying the cost for responding.

**NOTE:** REQUESTS FOR DUPLICATE KEYS AFTER WORKING HOURS MUST BE APPROVED BY THE ON CALL DIRECTOR OF OPERATIONS.

Residents who disengage smoke detectors for convenience purposes will be cited. (See "Housekeeping Citations" in this chapter.)

### **Entry of Premises Notices**

The SMHA will give prior written notice for non-emergency inspections. Non-emergency entries to the unit will be made during reasonable hours of the day.

The SMHA will provide the family with 48-hour notice prior to entering the unit for non-emergency reasons other than the annual inspection.

If SMHA enters a unit, they will leave notice that they were in the unit and the reason.

Reasons the SMHA will enter the unit are:

- Inspections and maintenance
- To make improvements and repairs
- To show the premises for leasing
- In cases of emergency

It is encouraged that an adult family member be present during the Annual Inspection, but it is not required.

Repairs requested by the family will not require prior notice to the family. Residents are notified in the lease that resident-requested repairs presume permission for the PHA to enter.

### **Non-Inspection Emergency Entry**

SMHA staff will allow access to the unit to proper authorities when issues of health or safety of the tenant are concerned.

### **Family Responsibility to Allow Inspection**

SMHA must be allowed to inspect the unit at reasonable times with reasonable notice. Forty-eight hour written notice will be considered reasonable in all cases, except emergencies.

SMHA will reschedule the inspection no more than once unless the resident has a verifiable medical reason which has hindered the inspection. SMHA may request verification.

If the resident refuses to allow the inspection, the resident will be in violation of the lease and SMHA will notify the family of its intended action, which may include eviction.

If the resident refuses to allow the inspection, the resident will be in violation of the lease.

### **Housekeeping Citations**

Residents who "fail" an inspection due to housekeeping will be issued a 30-day Notice to Termination of Lease. The resident will have 30 days to prepare the unit for a re-inspection to determine if the unit has been brought into compliance with SMHA housekeeping standards.

If the family fails to comply with the re-inspection, it can result in lease termination.

Citations will be issued to residents who purposely and for convenience disengage the unit's smoke detector.

Repeated citations will be considered a violation of the lease.

Listed below are some of the circumstances considered to be a violation of SMHA's housekeeping standards: Citations will be issued to residents who purposely disengage the unit's smoke detector.

- Damage - Holes in walls, doors, damage to screens and SMHA furnished appliances are

considered negligence and destruction. Malicious and negligent damage to doors, woodwork, and kitchen cabinets are in the same category.

- Health and Sanitation - Sinks and toilets left in a condition where color and filth are evident to the senses, are considered health problems. Garbage left inside and around the apartment, unwrapped and not in proper refuse containers is also considered a health problem.
- Floors – Floors containing food particles, discolored by dirt and absence of floor is considered unsatisfactory. Carpets containing food particles and that are badly torn and damaged are also unsatisfactory.
- Windows – Broken or cracked windows, screens and shades torn and hanging or totally out or missing are not satisfactory.
- Safety-Combustible materials stored around areas such as water heaters, stoves and furnaces is unsatisfactory. Exits blocked by furniture and other large items is considered unsafe.
- Exterior – Litter, garbage and rubbish in yards and around the garbage container is unsatisfactory. Inoperable vehicles in the yard or parking lots are not permitted; parking and driving on lawns is not permitted.
- Walls – Crayon or other markings on walls, floors, refrigerators, stoves and woodwork is unsatisfactory.
- Stoves – Burners and oven containing grease and cooking residue are unsafe and unsatisfactory.
- Refrigerators – Defrosted, damaged and dirty refrigerators are unsatisfactory.

### **Tenant Damages**

Repeated failed inspections or damages to the unit beyond normal wear and tear may constitute serious or repeated lease violations.

"Beyond normal wear and tear" is defined as items which could be charged against the tenant's security deposit under state law or court practice.

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## Chapter 10

### PET POLICY

#### [24 CFR 5.309 and 24 CFR Part 960, Subpart G]

#### **INTRODUCTION**

PHA's have discretion in the development of policies pertaining to the keeping of pets in public housing units. This Chapter explains SMHA's policies on the keeping of pets and any criteria or standards pertaining to the policy. The rules adopted are reasonably related to the legitimate interest of SMHA to provide a decent, safe and sanitary living environment for all tenants, to protecting and preserving the physical condition of the property, and to preserve the financial interest of SMHA.

The purpose of this policy is to establish SMHA's policy and procedures for ownership of pets in elderly and disabled units as well as in family units, and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. SMHA also establishes reasonable rules governing the keeping of common household pets.

**Nothing in this policy or the dwelling lease limits or impairs the right of persons with disabilities to own animals that are considered a disability service animal.**

In accordance with Section 526 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA), Stark Housing Authority (SMHA) hereby sets forth rules and regulations concerning pet ownership in its public housing units. Only "common household pets" as defined herein will be permitted in SMHA owned properties.

A common household pet, for the purposes of SMHA's conventional housing program: A domesticated animal, such as a dog, cat, bird, or fish that is traditionally kept in the home for pleasure rather than for commercial or breeding purposes. Common household pet does not include reptiles. This definition shall not include animals that are used to assist persons with disabilities.

Residents may own up to two pets as defined in this policy. If one of the pets is a dog or cat, the second pet must be contained in a cage or an aquarium for fish. Each bird or other animal, other than fish, shall be counted as one pet.

#### **A. EXCLUSION FROM the PET POLICY FOR ANIMALS THAT ASSIST PERSONS WITH DISABILITIES (FHEO 2020-01)**

FHEO Notice 2020-01 explains certain obligations of housing providers under the Fair Housing Act (Act), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations' for Titles H and III of the ADA limit the definition of "service animal" under the ADA to include only dogs (and small horses), and further define "service animal" to exclude emotional support animals.



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This definition, however, does not limit SMHA's obligation to make reasonable accommodations for assistance animals under the Act or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the Act and Section 504. In situations where the ADA and the Act/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the Act/Section 504 and the service animal provisions of the ADA.

SMHA's Pet Policy shall neither apply to animals that are used to assist persons with disabilities and their assistance animals, who visit MHA's developments and dwelling units. Pet policies do not apply to either service animals or companion animals. 24 CFR 5; 24 CFR 960.705. Residents with an animal that assists persons with disabilities must still comply with all other conditions of the lease, including but not limited to; maintaining property, fulfilling housekeeping and not disturbing other resident's peaceful enjoyment of the property.

SMHA must grant this exclusion if the following is provided:

- The resident or prospective resident verifies that they are persons with disabilities by completing MHA's reasonable accommodation process.
- The animal has been trained to assist persons with the specific disability (example, guide dog), written verification is not required; and
- The animal actually assists the person with a disability.

Note: Written certification of training for the animal is not required, nor should it be requested.

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the Act and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. MHA will ensure compliance with all relevant civil rights laws. As noted above, compliance with the Act and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the Act or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their Act obligations. MHA will apply this standard.

### **Support Service Animal**

Distinction is hereby given to "support animals" and "service animals." If the animal does not have specific disability related training but is necessary in coping with the disability (for instance, if the animal provides emotional support to a person with a panic disorder), the animal is a "support animal" not a "service animal."

A "service animal" means any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. Service animals are equivalent to other

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"auxiliary aids" such as wheelchairs and eyeglasses, and as such must be permitted. 24 CFR 5.303; 28 CFR 36.104.

When an applicant or resident with a disability asserts and can verify that an animal is a support or service animal for his/her disability, the applicant should make a request for a reasonable accommodation; specifically, to be allowed to keep the animal by completing SMHA's reasonable accommodation process.

SMHA will require verification that the applicant is a "qualified individual with handicaps" as defined by 24 CFR 8.3, and that the animal is necessary in coping or assisting with the disability.

Upon receipt of verifications, SMHA will approve the animal.

Residents requiring more than one pet as either a "support animal" or "service animal" must request the animal by completing SMHA's reasonable accommodation process.

## **B. MANDATORY RULES FOR RESIDENTS WITH PETS**

In accordance with 24 CFR 960.707, SMHA hereby sets forth the following rules for pet ownership in its conventional housing units:

### **Registration**

1. The Resident must request and receive written formal approval from the SMHA prior to bringing the common household pet, (hereinafter referred to as "pet") on the premises. The pet request shall be made on the standard form "Pet Occupancy Request/Registration Form." **All** pets must be registered, even if a pet deposit is not required.
2. Registration of the pet shall include a photograph being taken by the SMHA and retained on file. The photograph will be utilized to confirm identity of the pet in case of emergency and to ensure that the same pet registered is the pet occupying the resident's dwelling unit.
3. Residents registering pets that are not fully-grown at the execution of the initial Pet Addendum will be required to report back to the development office at the first year anniversary of the agreement in order that the pet may be re-photographed for identification purposes.
4. At the time of registration, Resident must provide information sufficient to identify the pet and to demonstrate that it is a common household pet.
5. The name, address, and phone number of one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet must be provided at the time of registration.
6. A Pet Policy Addendum must be completed and signed prior to the pet being allowed in the unit.

7. A Pet Fee per animal of \$250 must be paid at the time of the pet move-in, unless it is an assistive/companion animal. The deposit may be paid in increments of no less than \$50 per month for each succeeding month, until \$250 has been paid. The Pet Fee may not be used or any part thereof for any damages..
8. **There is a limit of one dog or cat per household.**
9. No visiting pets are allowed on SMHA property.

### **Dogs**

1. If the pet is a dog, it shall not weigh more than 25 pounds (fully grown) and stand no more than 20 inches in height from the front shoulder of the animal.
2. Must adhere to the breed restrictions in this policy.
3. Must be spayed or neutered, must be housebroken, must have all inoculations and must be licensed as specified now or in the future by State law or local ordinance.
4. Doghouses located outside any dwelling unit are prohibited.

### **Cats**

1. The weight of a cat cannot exceed fifteen (15) pounds (fully-grown).
2. The resident must provide waterproof and leak proof litter boxes for cat waste, which must be kept inside the dwelling unit. Litter boxes must be changed at least twice per week at a minimum. Cardboard boxes are not acceptable and will not be approved. The resident shall not permit refuse from litter boxes to accumulate, become odorous, to become unsightly, or unsanitary.
3. Must be spayed or neutered, must be housebroken, must have all inoculations and must be licensed as specified now or in the future by State law or local ordinance.

### **Dog/Cat—Spaying and Neutering**

If the pet is a dog or cat, it must be spayed/neutered by six months of age. Evidence of spaying/neutering can be proved by a statement/bill from a licensed veterinarian and/or staff of the Humane Society or by means of the veterinarian certification provided for on the Pet Registration Form.

### **Birds**

1. Maximum number: 2

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2. Must be enclosed in a cage at all times.

### **Fish**

If the pet is a fish, the aquarium must be twenty gallons or less, and the container must be placed in a safe location in the unit. The resident is limited to one container for fish; however, there is no limit on the number of fish that can be maintained in the container as long as the container is maintained in a safe and non-hazardous manner.

Residents shall be responsible for any damage caused by leakage or spillage from the aquarium or fishbowl. The aquariums must be on a provable stand that is stable and cannot be easily pushed over.

### **Rodents (Guinea pig, hamster, or gerbil ONLY; mice or rats are not allowed.)**

1. Maximum number 1
2. Must be enclosed in an acceptable cage at all times. Must have any or all inoculations as specified now or in the future by State law or local ordinance.

### **Turtles**

1. Maximum number 1
2. Must be enclosed in an acceptable aquarium/cage/bowl at all times.

### **Inoculations/Vaccinations**

The pet(s) must have received rabies and distemper inoculations or boosters, as applicable. The resident shall provide the SMHA with evidence of inoculations certified by a licensed veterinarian or a State or local authority empowered to inoculate animals (or designated agent of such an authority) stating that the pet has received all inoculations required by applicable State and local law. Said certification may be provided on the veterinarian's statement/bill or on the Pet Registration form.

### **Licensing**

1. Licensing of all dogs shall be required in accordance with applicable State and local law on an annual basis. The dog must always wear a license with owner's name, address and telephone number.
2. In the event that applicable State or local law changes with reference to licensing of any and all pets, SMHA will require its residents to comply upon appropriate notice.

### **Sanitary Conditions**

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The pet rules shall prescribe sanitary standards to govern the disposal of pet waste.  
These rules are as follows:

1. Resident shall be responsible for immediately disposing of all animal waste excreted inside the development building or on the development grounds.
2. Pet waste may be disposed in designated areas for the development (pet waste stations or dumpsters).
3. Waste must be placed in a plastic bag, tightly secured and deposited in a dumpster.
4. Pet waste is not to be put in trash chutes; this includes cat litter.
5. Poorly disposed waste will not be tolerated and will be subject to a \$50 charge per incident.
6. Each time a pet owner fails to remove pet waste in accordance with this rule, a \$50 charge will be levied to the resident's account.
7. Conditions outlined in Cats #2, above, pertaining to cat waste shall also prevail.

### **General Provisions**

1. All pets must be housed within the unit and no facilities can be constructed outside of the unit for any pet.
2. Costs incurred by SMHA for **extermination of fleas, ticks, and other animal related pests will be a resident charge** Residents are encouraged to use flea bombs to get rid of fleas and other animal-related pests on an "as needed" basis.
3. Pet(s) shall not disturb, interfere or diminish the peaceful enjoyment of other residents. The terms, "disturb, interfere or diminish" shall include but is not limited to: barking, meowing, crying, howling, chirping, biting, scratching and other like activities. This includes any pets that make noise continuously and/or incessantly for a period of 10 minutes or intermittently for one-half hour or more and therefore disturbs any person at any time of the day or night. The SMHA will terminate this authorization if a pet disturbs other residents under this section of the lease addendum. The resident will be given one week to make other arrangements for the care of the pet or the dwelling lease will be terminated.
4. Each pet must be maintained responsibly and in accordance with this pet ownership lease addendum and in accordance with all applicable ordinances, state and local public health, animal control, and animal anti-cruelty laws and regulations governing pet ownership.

5. Pets may not be bred or used for any commercial purposes on SMHA property.

**C. CONTROL OF THE ANIMAL**

1. No animal shall be permitted to be loose and if the pet is taken outside it must be taken outside on a chain leash **no longer than five (5') feet** and kept off lawns designated to other residents. Retractable leashes are prohibited.
2. All authorized pet(s) must be under the control of an adult leaseholder. An unleashed pet, or one tied to a fixed object, is not under the control of an adult. SMHA staff will contact the local Humane Society or dog warden in the event pets are found to be unleashed, or leashed and unattended, on SMHA property. It shall be the responsibility of the resident to reclaim the pet and at the expense of the resident.
3. The resident pet owner shall have canine pets restrained so that maintenance can be performed in the dwelling unit. The resident **shall** whenever an inspection or maintenance is scheduled, either be at home or shall have all animals restrained or caged. If a maintenance person enters an apartment where an animal is not restrained, maintenance shall not be performed, and the resident pet owner shall be charged a fee of \$25.00. If the situation again occurs, the pet shall be removed from the premises. Pets that are not caged or properly restrained will be impounded and reported to the local Humane Society for removal. It shall be the responsibility of the resident pet owner to reclaim the pet at the expense of the resident. The Housing Authority shall not be responsible if any animal escapes from the residence due to its maintenance, inspections, or other activities.

**D. UNATTENDED ANIMALS**

Pet(s) may not be left unattended for more than ten (10) consecutive hours. If it is reported to SMHA staff that a pet has been left unattended for more than a twelve- (12) hour period, SMHA staff may enter the unit and remove the pet and transfer the pet to the humane society. Any expense to remove and reclaim the pet from any facility will be the responsibility of the resident.

**E. PROHIBITED PETS**

1. SMHA will forbid the following kinds of animals from being kept as pets on any of its properties: Pit bull, Rottweiler, German Shepherd, Chow, Doberman Pinscher or any species considered vicious, intimidating, or kept for the purpose of training for fighting or wagering of bets (i.e. roosters for "cockfighting", etc.). SMHA forbids the keeping of animals that have had their vocal cords cut, by a process commonly known as "debarking."

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2. Exotic pets or barnyard animals are prohibited. Exception may be certain species of pigs utilized as bonafide “service animals”. (Snakes and reptiles are considered exotic pets and are not permitted.)
  3. Animals who would be allowed to produce offspring for sale.
  4. Wild animals, feral animals, and any other animals that are unamenable to routine human handling.
  5. Animals of species commonly used on farms.
  6. Non-human primates.
  7. Animals whose climatologically needs cannot be met in the unaltered environment of the individual dwelling unit.
  8. Pot-bellied pigs.
  9. Snakes, lizards, spiders, chickens.
  10. The following restrictions apply to pets, based on weight, size and inherent dangerousness, including prohibitions against the keeping of:
    - Any animals whose weight could exceed the weight limitations by adulthood.
    - Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites and lacerations.
    - Hedgehogs or other animals whose protective instincts and natural body armor produce a risk to children of serious puncture injuries.
    - Chicks or other animals that pose a significant risk of salmonella infection to those who handle them.
    - Pigeons, doves, mynah birds, psittacoses birds, and birds of other species that are hosts to the organisms causing psittacosis in humans.

**Tenants must adhere to the restrictions on numbers and types of pets.**

**F. PET POLICY VIOLATION PROCEDURES**

SMHA reserves the right to require residents to remove any pet from the premises whose conduct (noise, biting, breeding, etc.) or condition is duly determined to constitute a nuisance or a threat to the health or safety of the other occupants or pets of the development, neighbors, staff, or visitors. SMHA reserves the right to remove such a pet in the event that the pet owner does not or cannot remove the pet.

**Notice of Pet Policy Violation**

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If SMHA determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the owning or keeping of pets: SMHA may serve a written notice of Pet Policy violation on the pet owner in accordance with the dwelling lease. The notice of pet rule violation must:

1. Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;
2. State that the pet owner has five (5) calendar days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation;
3. State that the pet owner is entitled to be accompanied by another person of his or her choice at the meeting; and
4. State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

**Pet Policy Violation Private Conference**

If the pet owner makes a timely request for a private conference to discuss an alleged Pet Policy violation, SMHA shall establish a mutually agreeable time and place for the private conference but no later than three (3) business days from the effective date of service of the notice of Pet Policy violation.

At the pet rule violation private conference, the pet owner and SMHA representative shall discuss any alleged Pet Policy violation and attempt to correct it. SMHA may, as a result of the meeting, give the pet owner additional time to correct the violation.

**Notice for Pet Removal**

If the pet owner and SMHA are unable to resolve the Pet Policy violation at the pet rule violation private conference, or if a representative of SMHA staff determines that the pet owner has failed to correct the Pet Policy violation within any additional time provided herein, the SMHA may serve a written notice on the pet owner in accordance with Section of the Dwelling Lease or at the private conference, if appropriate, requiring the pet owner to remove the pet. The notice must:

1. Contain a brief statement of the factual basis for the determination and the Pet Policy or rules that have been violated;
2. State that the pet owner must remove the pet within five (5) calendar days of the effective date of service of the notice of pet removal (or the private conference, if notice is served at the private conference); and



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3. State that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

**Initiation of Procedures to Remove a Pet or Terminate the Pet Owner's Tenancy**

SMHA may not initiate procedures to terminate a pet owner's tenancy based on a Pet Policy violation, unless:

1. The pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner); and
2. The Pet Policy violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease and applicable regulations.

If a pet is removed due to death or incapacity of the pet owner and to responsible parties are contacted and are unwilling or unable to remove the pet or cannot be contacted; the pet will be removed and placed in a pet facility for a period not exceeding 30 days. SMHA will not be held responsible for the pet or cost incurred due to the necessity of removing a pet because the pet owner and/or their designee have failed to do so. The pet and the expenses incurred are the sole responsibility of the pet owner, or in the case of their death, the pet owner's estate.

SMHA may initiate procedures to remove a pet under 24 CFR 5.327 (threat to health and safety) at any time, in accordance with the provisions of applicable State or local law.

**G. PET DISPOSAL**

In the event of the death of the pet, it is agreed by the owner that management shall have discretion to dispose of the pet consistent with Federal guidelines if the main caretakers are unwilling to take responsibility, or if written instructions with respect to such disposal are not provided to the development office in advance by the resident.

Cost of pet removal and subsequent fees will be charged to the resident.

Under no circumstances are pets to be buried or disposed of on the premises or in trash containers or dumpsters.

**H. SCHEDULE OF PET DEPOSITS**

**FEE AND DEPOSIT SCHEDULE**

(A Pet Fee is required for each pet)

| Type of Pet | Fee   |
|-------------|-------|
| Dog         | \$250 |
| Cat         | \$250 |

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|  |     |
|--|-----|
| Fish Aquarium  | \$0 |
| Fish Bowl (Requires no power and no larger than two gallons) | \$0 |
| Birds  | \$0 |
| Caged Pets   | \$0 |

**Note:** The above schedule is applicable for each pet; therefore, if a resident has more than one pet he or she must pay the applicable deposit for each pet.

The deposit made shall be utilized to offset damages caused by the pet and/or tenant. Any balance, if any, from the deposit will be refunded to the tenant.

It shall be a serious violation of the lease for any resident to have a pet without proper approval and without having complied with the terms of this policy. Such violation shall be considered to be a serious violation of the lease and this Addendum and the Housing Authority will issue a termination notice. The resident will be entitled to a grievance hearing in accordance with the provisions of the dwelling lease.

It is understood and agreed that SMHA is not responsible for any damages caused by the pet including but not limited to: bites and scratches to residents, neighbors, visitors, staff, SMHA contractors, and others who are lawfully on the SMHA's premises or other pets or service animals.

**Pet Fee**

SMHA will allow gradual payment of the fee in accordance with the following:

- An initial payment of \$50 on or prior to the date the pet is properly registered and brought into the apartment, and;
- Monthly payments in an amount no less than \$50 until the specified fee has been paid.
- SMHA reserves the right to change or increase the required fee by amendment to these rules.
- SMHA will not refund the Pet Fee.

All reasonable expenses incurred by SMHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

- The cost of repairs and replacements to the resident's dwelling unit;
- Fumigation of the dwelling unit;
- Common areas of the project.

Pet Fees are not a part of the rent payable by the resident.

Any damage to the apartment, building, grounds, flooring, walls, trim, finishes, tiles, carpeting, or stains thereon, will be the full responsibility of the resident and the resident agrees to pay any costs involved in restoring the apartment to its original condition.

If SMHA finds a residual odor problem left in the apartment, the resident agrees to pay for the cost of any and all materials or chemicals needed to repair to remove the odor. If odor removal fails, the resident agrees to pay for replacement of carpeting, padding, wallboard, baseboard, etc., as is deemed necessary. The resident also agrees to abide by the management's decision as to what is necessary.

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**I. FORMS**

**PET POLICY ADDENDUM**

**SMHA**

This Addendum is being executed in Accordance with the terms of the Dwelling Lease.

**Section I. Pet Ownership**

A resident may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the following conditions:

1. Each head of household may own up to the limit of pets under the SMHA policy. SMHA shall only allow one 4 legged pet per household.
2. If the pet is a dog or cat, it must be neutered/spayed by the age of six (6) months. The evidence can be provided by a statement/bill from a veterinarian, certified on SMHA Form #78, and/or staff of the local humane society. Evidence must be provided prior to the execution of this agreement and/or within 10 days of the pet becoming of the age to be neutered/spayed or declawed. Resident must provide waterproof and leak proof litter boxes for cat waste, which must be kept inside the dwelling unit. Cardboard boxes are not acceptable and will not be approved. The Resident shall not permit refuse from litter boxes to accumulate nor to become unsightly or unsanitary. Also, the weight of a cat cannot exceed ten (10) pounds (fully grown) and a dog may not exceed the limit of the policy in weight (fully-grown).
3. If the pet is a bird, it shall be housed in a birdcage and cannot be let out of the cage at any time.
4. If the pet is a fish, the aquarium must be twenty (20) gallons or less, and the container must be placed in a safe location in the unit. The Resident is limited to one container for the fish; however, there is no limit on the number of fish that can be maintained in the container as long as the container is maintained in a safe and non-hazardous manner.
5. If the pet is a cat or dog, it must have received rabies and distemper inoculations or boosters, as applicable. Evidence of inoculations can be provided by a statement/bill from veterinarian, certified on SMHA Form #78, or by staff of the Humane Society and must be provided before the execution of the Pet Policy Addendum.

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6. All pets must be housed within the unit and no facilities can be constructed outside of the unit for any pet. No animal shall be permitted to be loose and if the pet is taken outside it must be taken outside on a leash and kept off other Resident's lawns. Also, all pets must wear collars with identification and license at all times. Pets without a collar will be picked-up immediately by the Humane Society, county dog warden, or other appropriate agency.
  7. All pet(s) must be under the control of an adult leaseholder. An unleashed pet, or one tied to a fixed object, is not considered to be under the control of an adult leaseholder. Pets, which are unleashed, or leashed and unattended, on housing authority property, may be impounded and reported to the local Humane Society, dog warden or other appropriate agency for pick-up. It shall be the responsibility of the Resident to reclaim the pet at the expense of the Resident.
  8. Pet(s) may not be left unattended for more than ten (10) consecutive hours. If it is reported to SMHA staff that a pet(s) has been left unattended for more than an eight (10) consecutive hour period, SMHA staff may enter the unit with the humane society, dog warden or other appropriate agency to pick-up the animal. Any expense to remove and reclaim the pet from any facility will be the responsibility of the Resident. In the case of an emergency, SMHA will work with the resident to allow no more than 24 hours for the resident to make accommodations for the pet.
  9. Pet(s), as applicable, must be weighed by a veterinarian or staff of the Humane Society. A statement containing the weight of the pet must be provided to SMHA prior to the execution of this agreement and upon request by the SMHA at any time following the inception of the Pet Policy Addendum.
  10. Responsible Pet Ownership: Each pet must be maintained responsibly and in accordance with this pet ownership lease addendum and in accordance with all applicable ordinances, state and local public health, animal control, and animal anti-cruelty laws and regulations governing pet ownership. Any waste generated by a pet must be properly and promptly disposed of by the tenant to avoid any unpleasant and unsanitary odor from being in the unit in accordance with the provisions of SMHA's Pet Policy.
  11. Prohibited Animals: Animals or breeds of animals that are considered by SMHA to be vicious and/or intimidating will not be allowed. Some examples of animals that have a reputation of a vicious nature are: reptiles, Rottweiler, Doberman Pinscher, Pit Bulldog, German Shepherd, Chow, and/or any animal that displays vicious behavior. This determination will be made by a SMHA representative prior to the execution of this lease addendum.

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12. Pet(s) shall not disturb, interfere or diminish the peaceful enjoyment of other residents. The terms, “disturb, interfere or diminish” shall include but not be limited to barking, meowing, crying, howling, chirping, biting, scratching and other like activities. This includes any pets that make noise continuously and/or incessantly for a period of 10 minutes or intermittently for one-half hour or more and therefore disturbs any person at any time of the day or night. The SMHA will terminate this authorization if a pet disturbs other residents under this section of the lease addendum. The resident will be given one week to make other arrangements for the care of the pet or the dwelling lease will be terminated.
  13. If the animal should become destructive, create a nuisance, represent a threat to the safety and security of other persons, or create a problem in the area of cleanliness and sanitation, the SMHA will notify the tenant, in writing, that the animal must be removed from the development, within five (5) days of the date of the notice from SMHA. The Resident may request a hearing, which will be handled according to SMHA’s established grievance procedure. The pet may remain with the resident during the hearing process unless SMHA has determined that the pet may be a danger or threat to the safety and security of other persons. If this determination has been made by SMHA, the pet must be immediately removed from the unit upon receipt of the notice from SMHA.
  14. The Resident is solely responsible for cleaning up the waste of the pet within the dwelling and on the premises of the public housing development. If the pet is taken outside, it must be on a leash at all times. If there is any visible waste by the pet, it must be disposed of in a plastic bag, securely tied and placed in the garbage receptacle for their unit. If the Housing Authority staff is required to clean any waste left by a pet, the Resident will be charged \$25 for the removal of the waste.
  15. The Resident shall have pets restrained so that maintenance can be performed in the apartment. The Resident shall, whenever an inspection or maintenance is scheduled, either be at home or shall have all animals restrained or caged. If a maintenance person enters an apartment where an animal is not restrained, maintenance shall not be performed, and the Resident shall be charged a fee of \$25.00. If this same situation again occurs, the pet shall be removed from the premises. Pets that are not caged or properly restrained may be impounded by animal control officers and taken to the local Humane Society or dog warden. It shall be the responsibility of the Resident to reclaim the pet at the expense of the Resident. The Housing Authority shall not be responsible if any animal escapes from the residence due to maintenance, inspections, or other activities of the landlord.
  16. Pets may not be bred or used for any commercial purposes on SMHA property.

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**RESIDENT ACKNOWLEDGMENT**

After reading and/or having read to me this lease addendum I/we the undersigned, hereinafter "I," agree to the following:

I agree to abide by the requirements outlined in this lease addendum for pet ownership and to keep the pet(s) in accordance with this lease addendum.

I agree and understand that I am liable for any damage or injury whatsoever caused by pet(s) and shall pay SMHA for any damages or injury caused by the pet(s). I also realize that I should obtain liability insurance for pet ownership and that paying for the insurance is my responsibility.

I agree to accept full responsibility and will indemnify and hold harmless SMHA for any claims by or injuries to third parties or their property caused by my pet(s).

I agree to pay a non-refundable fee of \$\_\_\_\_\_ to cover some of the additional operating cost incurred by the SMHA. I also understand that this fee is due and payable prior to the execution of this lease addendum.

I AGREE AND UNDERSTAND THAT ALL INFORMATION CONCERNING MY PET (S) MUST BE UPDATED ANNUALLY AND PROVIDED TO THE SMHA AT THE ANNUAL REEXAMINATION.

I AGREE AND UNDERSTAND THAT VIOLATING THIS LEASE ADDENDUM MAY RESULT IN THE REMOVAL OF THE PET (S) FROM THE PROPERTY OF THE SMHA AND/OR EVICTION. I, ALSO UNDERSTAND THAT I MAY NOT BE ALLOWED TO OWN ANY TYPE OF PET IN THE FUTURE WHILE BEING AN OCCUPANT OF THE SMHA.

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I ALSO UNDERSTAND THAT I MUST OBTAIN PRIOR APPROVAL FROM SMHA BEFORE MAKING A CHANGE OF A PET FOR WHICH THIS POLICY WAS APPROVED OR ADDING A SECOND PET. ALSO, A PICTURE MAY BE TAKEN BY SMHA STAFF OF THE PET (S) FOR DOCUMENTATION. THE PICTURE WILL BE MAINTAINED IN THE RESIDENT'S FILE WITH THE APPROPRIATE SMHA MANAGEMENT OFFICE.

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Head of Household (Undersigned)

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Date

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Housing Authority Representative

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Date



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Exhibit “1”

Preliminary Request for a Reasonable Accommodation

Leaseholder/Resident/Advocate Name: \_\_\_\_\_ S.S. #: \_\_\_\_\_

Current Address: \_\_\_\_\_ Move-In Date: \_\_\_\_\_

# of Bedrooms: \_\_ Member of Household Accommodation is requested for: \_\_\_\_\_

A reasonable accommodation is needed because:

The accommodation will:

\_\_\_\_\_ Help you live in the housing or take part in SMHA’s program;

\_\_\_\_\_ Help you meet the lease requirements of SMHA’s program;

\_\_\_\_\_ Help you meet other requirements of SMHA’s program.

**Do not tell the SMHA the name of your disability or the nature or extent of your disability.**

Physician/Health Care Provider name, address and telephone number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other comments you would like to make regarding this request: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By signing below you confirm the accuracy of the information submitted above. You will be mailed by the SMHA an “Authorization for Release of Medical Information” which will be forwarded to your physician. Your physician will then be required to confirm your eligibility and justify your request for SMHA.

Once this process has been completed, SMHA will be in contact with you regarding the status of your request, which is based on medical reasons.

\_\_\_\_\_  
Leaseholder/Resident Signature

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Date of Request

Do not write below line

\_\_\_\_\_  
\_\_\_\_\_

---

For Office Use Only

SMHA's Signature: \_\_\_\_\_

Date Received by SMHA: \_\_\_\_\_

Date Authorization for Release of Medical Information sent to Leaseholder/Resident: \_\_\_\_\_

Date Medical Justification Letter sent to physician/health care provider: \_\_\_\_\_

SMHA Form

01/23

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Exhibit "2"

**AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION**

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Name & Address of Medical Provider)

RE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The undersigned hereby authorizes you to verify, to the SMHA, whether the undersigned is an individual with handicaps as defined by 24 CFR 8.3. The undersigned also authorizes you to disclose to the SMHA, the undersigned's need, if any, for an accessible feature (reasonable modification) to the undersigned's unit and/or a change in SMHA's policies and/or procedures (reasonable accommodation) so that the undersigned may have an equal opportunity to use and enjoy his/her dwelling unit. The undersigned further authorizes you to disclose, to the SMHA, exactly what is requested to accommodate the limitations imposed by the undersigned's handicaps, if any. However, you are not authorized to provide access to confidential medical records or disclose the specific handicaps to the SMHA.

I hereby waive and release you from any restrictions imposed by law in disclosing any professional observation or communication to the SMHA that is within the scope of this authorization.

This authorization is valid for ninety (90) days. A photocopy of this authorization shall be as effective as the original.

**YOU MUST HAVE YOUR SIGNATURE NOTARIZED WHEN SENDING THE FORM BACK.**

\_\_\_\_\_/\_\_\_\_\_

Date

Signature

\_\_\_\_\_

Date of Birth

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_  
Notary Public

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Exhibit “3”

**DEFINITIONSPRIVATE**

**To: Doctor/Other Qualified Person**

**Pursuant to 24 CFR 8.3, the definition of an individual with handicaps is provided below:**

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(a) Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

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

(d) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or (3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

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Exhibit "4"

SMHA PM Form #78

Revised January 2006

**PET OCCUPANCY REQUEST/REGISTRATION FORM**

Resident Name: \_\_\_\_\_

Resident Address: \_\_\_\_\_

Resident Home Phone Number: \_\_\_\_\_

Resident Work Phone Number: \_\_\_\_\_

Alternate Pet Contact: \_\_\_\_\_

Address of alternate pet contact/care giver: \_\_\_\_\_

Home Phone Number: \_\_\_\_\_ Work Phone Number: \_\_\_\_\_

(List more than one, if applicable)

---

(To be completed by Veterinarian)

**Description of Pet:**

Name: \_\_\_\_\_ Breed: \_\_\_\_\_

Age: \_\_\_\_\_ Color: \_\_\_\_\_

Additional Markings/Information: \_\_\_\_\_

\_\_\_\_\_

Height: \_\_\_\_\_ Weight: \_\_\_\_\_

Projected Weight at full growth: \_\_\_\_\_

\_\_\_\_\_  
Veterinarian's Signature

\_\_\_\_\_  
Date

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“Exhibit “5”

**PET OCCUPANCY REGISTRATION FORM**

Resident Name: \_\_\_\_\_

Resident Address: \_\_\_\_\_

Resident Home Phone Number: \_\_\_\_\_

Resident Work Phone Number: \_\_\_\_\_

Alternate Pet Contact: \_\_\_\_\_

Address of alternate pet contact/care giver: \_\_\_\_\_

Home Phone Number: \_\_\_\_\_ Work Phone Number: \_\_\_\_\_

(List more than one, if applicable)

**Description of Pet:**

Name: \_\_\_\_\_ Breed: \_\_\_\_\_

Age: \_\_\_\_\_ Color: \_\_\_\_\_

Additional Markings/Information: \_\_\_\_\_

\_\_\_\_\_

Height: \_\_\_\_\_ Weight: \_\_\_\_\_

Projected Weight at full growth: \_\_\_\_\_

License No.: \_\_\_\_\_

Copy of License/Tag obtained: \_\_\_\_ Yes \_\_\_\_ No

Picture of Pet is to be attached to this form.

**Veterinarian Information/Certifications:**

Name of Veterinarian: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Certification of Inoculations: \_\_\_\_\_

Dated: \_\_\_\_\_

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Date spayed or neutered: \_\_\_\_\_

How long has resident owned this pet? \_\_\_\_\_

Has your pet lived in rental housing before? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, fill in the following:

Name of apartment complex: \_\_\_\_\_

Manager's Name: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Registration of all pets must be submitted to the Management Office before the pet is permitted on the premises.

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Signature

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Date

---

(For SMHA use only)

Pet Photographed by: \_\_\_\_\_

SMHA Staff

Date

Resident has paid the appropriate Pet Deposit and Annual fee for the pet(s) being registered.

\_\_\_\_\_ Yes \_\_\_\_\_ No

Pet identification sticker affixed to unit door/window:

By: \_\_\_\_\_

SMHA Staff

Date

Photo to be affixed here & filed with the agreement



## **Chapter 11**

### **REEXAMINATIONS**

#### **[24 CFR 5.613, 24 CFR 5.61524 CFR Part 960 Subpart C]**

#### **INTRODUCTION**

HUD requires that Stark Metropolitan Housing Authority (SMHA) offer all families the choice of paying income-based rent or flat rent at least annually. Families who choose to pay flat rent are required to complete a reexamination of income, deductions and allowances at least once every three years. Flat rent families must still report family composition and community service requirements on an annual basis. To determine the amount of income-based rent, it is necessary for SMHA to perform a reexamination of the family's income annually. At the annual reexamination, families who choose to pay income-based rent must report their current household composition, income, deductions and allowances. Between regular annual reexaminations, HUD requires that families report all changes in household composition, but SMHA decides what other changes must be reported and the procedures for reporting them. This chapter defines SMHA's policy for conducting annual reexaminations. It also explains the interim reporting requirements for families, and the standards for timely reporting.

#### **A. ELIGIBILITY FOR CONTINUED OCCUPANCY**

Residents who meet the following criteria will be eligible for continued occupancy:

1. Qualify as a family as defined in this policy.
2. Are in full compliance with the resident obligations and responsibilities as described in the dwelling lease.
3. Have provided Social Security numbers on all eligible family members or have certifications on file indicating they have no Social Security number for ineligible members.
4. Who meet HUD standards on citizenship or immigration status or are paying a pro-rated rent <sup>1</sup>.
5. Who are in compliance with the SMHA's community service requirements.
6. Who remains eligible for non-criminal status or sex offender ineligibility.
7. Who are not considered over-income for 2 consecutive years.

#### **Over-income Families Ineligible for Continued Occupancy**

The new language in section 16(a)(5) of the 1937 Act sets the over-income limit at 120 percent of the AMI for Public Housing. However, HUD can adjust the over-income limit if the Secretary determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs.

The VLI limit was selected because it is calculated for every FMR area and, in certain areas, factors in several adjustments to better align income limits with program requirements. Since VLI is preliminarily calculated as 50 percent of the estimated AMI for the family, in most cases, multiplying it by 2.4, would result in a figure matching 120 percent.

The final over-income limit should then be compared to the family's annual income and as with the existing ranges of income eligibility, the new over-income limits will also be tiered by family size. HUD's income limits were developed by HUD's Office of Policy Development and Research and are updated annually. Information about HUD's income limits and HUD's methodology for adjusting income limits as part of the income limit calculation can be found at <https://www.huduser.gov/portal/datasets/il.html>.

### **Effective Date of Over-Income Limits and Integration into the Admissions and Continued Occupancy Policies (ACOP)**

*ACOP.* SMHA must update their Admissions and Continued Occupancy Policies (ACOP) to implement these changes. Such policies must include the imposition of an over-income limit in the program, clear descriptions of all instances of when the two-year timeframe begins, and the notification requirements put forth by section 103 of HOTMA.

*Updates.* Going forward, SMHA must also update the over-income limits in their ACOPs no later than 60 days after HUD publishes new income limits each year.

*Timing.* It should be noted that SMHA has completed the process for amending their ACOP before implementing the over-income policy. Interim and annual reexaminations that take place after completion of the policy amendment must apply the over-income limit. Therefore, any family that is deemed over-income because of an interim and/or annual reexamination that takes place on the earlier of the date the ACOP and/or PHA Plan is amended or March 24, 2019 will be subject to the appropriate over-income limit.

### **Documentation, Notification, and Tracking for Over-Income Family**

*Documentation.* Once SMHA has completed updates to its ACOP and, if necessary, the SMHA Plan, and the SMHA discovers through an annual reexamination or an interim reexamination that a family's income exceeds the applicable over-income limit, the SMHA must document that the family exceeds the threshold and make a note in the tenant file to compare it with the family's income a year later. The form HUD-50058 actions that would trigger the two-year grace period are: '2 = Annual Reexamination' and '3 = Interim Reexamination.' PHAs are required to begin tracking these actions once a family's income exceeds the applicable over-income limit.

*Written Notifications/Tracking 2-Year Grace Periods.* If one year after the initial over-income finding by the SMHA, the family's income continues to exceed the over-income limit, the SMHA must provide written notification to the family. This notification must inform the family that their income has exceeded the over-income limit for one year, and if the family's income continues to exceed the over-income limit for the next 12 consecutive months, the family will be

subject to either a higher rent or termination based on the SMHA's policies. If the initial over-income determination was made during an interim reexamination, the SMHA must conduct a second interim income reexamination on that date one year later. However, if the SMHA discovers through an annual or interim reexamination that a previously over-income family has income that is now below the over-income limit, the family is no longer subject to these provisions. A previously over-income family would be entitled to a new two-year grace period if the family's income once again exceeds the over-income limit.

SMHA must ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other disabilities. The SMHA must ensure effective communication using appropriate auxiliary aids and services, such as interpreters, transcription services, brailled materials, large print, and accessible electronic communications, in accordance with Section 504 and ADA requirements. 24 C.F.R. § 8.6 and § 8.28; 28 CFR part 35, Subpart E. This includes the availability, free of charge, of sign language or other types of interpretation. For persons with vision impairments, upon request, this may include materials in braille or on tape.

*Terminations and Higher Rent Payments.* Twelve months after the second consecutive over-income finding, if the family is still over-income, the family is subject to termination or higher rental payments. HUD has provided additional information and guidelines for SMHA to set alternative rents for over-income families that the SMHA will not be allowing them to remain in public housing, and as provided in other guidance regarding this provision in a forthcoming notice. Families not permitted to stay by the SMHA must have their tenancy terminated no later than six months after the second over-income finding by the SMHA.

#### **SMHA Policy**

SMHA will terminate the tenancy after the 2-year period for over-income families; however, the SMHA may waive the termination and allow the family to remain and pay the higher rent established by HUD as a reasonable accommodation for a disabled family or for a family with a disabled member, or if the family presents documentation of a hardship condition that would allow them to remain.

### **Process and Notification of Over-income Limit:**

#### **DETERMINATION:**

Determine if the family's income exceeds the Over-Income Limit.

Step 1: Go to <https://www.huduser.gov/portal/datasets/il.html> and follow the instructions in Appendix II to find the Very Low Income amount for families in your jurisdiction.

Step 2: Use the following calculation to determine the Over-Income Limit: Very Low Income limit x 2.4 = Over-Income Limit

Step 3: If the family's annual income is greater than the Over-Income Limit, then they exceed the Over-Income Limit, and must be notified up to a total of three times.

NOTIFICATION: Notify the family up to a total of 3 times that they have exceeded the Over-Income Limit.

Notice 1: Provide written notice to the OI family no later than 30 days after the PHA's determination, stating that the family has exceeded the over-income limit.

Notice 2: If the SMHA determined that the family's income has exceeded the over-income limit for 12 consecutive months, the OI family must be provided written notice of this fact no later than 30 days after said determination. This notice must inform the OI family that continuing to exceed the over-income limit for the next 12 consecutive months will result in the family:

- a. Paying the higher alternative rent as a non-public housing over-income family; OR
- b. Having their tenancy terminated.

Notice 3: If the SMHA determined that the family's income has exceeded the over-income limit for 24 consecutive months, the OI family must be provided written notice of this fact no later than 30 days after said determination. This notice must inform the OI family that, at next lease renewal or in no more than 60 days after the date the final notice per 24 CFR 960.507(c)(3), whichever is sooner, the family must:

- a. Pay the higher alternative rent as a non-public housing over-income family; OR
- b. Be terminated from their unit in no more than 6 months.

LIMITATION: After the 24 consecutive month grace period take the following actions:

1. Charge as the alternative rent for the unit occupied by the NPHOI family, the greater of
  - a. The applicable FMR for a dwelling unit in the same market area of the same size; or
  - b. The amount of the monthly subsidy which shall include any amounts from the Operating Fund and Capital Fund under section 9 used for the unit.

OR

2. Terminate the tenancy of OI family in public housing not later than 6 months after the final notice per 24 CFR 960.507(c)(3) confirming that the family has been over-income for 24 consecutive months.

The lease to convert to month-to-month term and SMHA must charge OI families, who continue to be public housing program participants, the family's choice of income-based, flat rent, or prorated rent for mixed families during the period before termination.

**Remaining Family Members and Prior Debt**

1. Remaining family members age 18 years or older will be held responsible for arrearages incurred by the former head or spouse. SMHA will not hold remaining family members (other than the head or spouse) responsible for any portion of the arrearage incurred before the remaining member attained age 18.
2. Remaining family members under age 18 shall not be held responsible for the rent arrearages incurred by the former head of household.

**B. ANNUAL REEXAMINATION**

**Annual Reexaminations**

**Regulations:** 24 CFR §§ 5.609(c)(2); 882.808; 891.410(g)(1); and 891.610(g)(1) 960.257; and 982.516

The final rule on HOTMA revises the standards for income calculation during annual reexamination. SMHA has the option of using a “safe harbor” income verification from another federal means-tested program to verify gross annual income.

During annual reexaminations, except where the SMHA uses a streamlined income determination under 24 CFR §§ 5.657(d), 960.257(c), or 982.516(b), SMHA must first determine the family’s income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family’s last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with the SMHA policies and 24 CFR §§ 5.657(c), 960.257(b), or 982.516(c), must be considered.

Income from assets is always anticipated, irrespective of the income examination type. A change in income, for example, may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. SMHA will look at the entirety of the family’s unearned income and earned income from the prior year, in which earned income may have been one constant job or many different jobs that start and stop. Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law.

The three steps outlined below apply for both earned and unearned income.

**Overview of Calculating Annual Income at Annual Reexamination**

**Step 1:** Determine the annual income for the previous 12-month period as defined at 24 CFR § 5.609(a) and (b). If there have been no changes to income beyond this calculation, then this is the amount that will be used to determine the family’s rental assistance.

The SMHA reviews the following information to determine prior-year income:

- The EIV Income Report (must be pulled within 120 days of the effective date of the annual reexamination to be considered current);
- The income reported on the most recent reexamination HUD-50058; and
- What the family certified to on the SMHA's annual reexamination paperwork for prior-year income.

**Step 2:** Take into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed, the SMHA must use the annual income from the interim to determine the family's rental assistance, if there are no additional changes.
- If the SMHA did not perform an interim or there have been changes since the last reexamination, move to Step 3.

**Step 3:** If there were changes in annual income not processed by the SMHA since the last reexamination, use current income.

- Family reports their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the SMHA may use documentation of prior-year income to calculate the annual income used for the current annual reexamination HUD-50058. For example, the SMHA could use the following documentation and certification from the family:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current level 4 verification documents verifying prior-year income that are dated within the required timeframe (120 days of receipt by the SMHA, for example:
  - Year-end statement
  - Last 2 consecutive paychecks with year-to-date amount
  - Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the SMHA notes discrepancies between EIV and what the family reports, follow the verification hierarchy to document and verify income.

### **Applying the Current SSA COLA at Next Annual and Interim Reexamination**

**Regulations:** 24 CFR §§ 5.609(c)(2); 960.257; 982.516; and 891.105

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal SS and SSI benefits are adjusted to reflect the increase, if any, in the cost of living as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers prepared by the Bureau of Labor Statistics. The purpose of the COLA is to ensure that the purchasing power of SS and SSI benefits are not eroded by inflation. The federal COLA does not apply to state-paid disability benefits. Additional information regarding the SSA COLA is available online at [www.socialsecurity.gov](http://www.socialsecurity.gov).

Effective the day after SSA has announced the COLA, SMHA is required to factor in the COLA when determining SS and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year.

1. Regular reexaminations: SMHA shall, at least once a year, re-examine the family composition, incomes, and community service requirements of all resident families, except for families that are paying flat rent and elect to pay flat rent. Flat rent families shall have their incomes reexamined every three (3) years <sup>2</sup>. Flat rent families will have the family composition and community service requirements reexamined annually. **All SMHA annual recertifications are processed to be in compliance with a twelve- month effective period.**
2. Special Reexaminations: When it is not possible to estimate family income accurately, a temporary determination will be made with respect to income and a special reexamination will be scheduled every 30, 60 or 90 days depending on the circumstances, until a reasonably accurate estimate of income can be made. The resident will be notified in writing of the effective date of the special reexamination.
3. Special reexaminations shall be conducted when there is a change in the head of household that requires a remaining family member to take on the responsibilities of a leaseholder. A new lease will also be executed as part of this special reexamination.
4. Special Reexamination Following Income Disallowance: When a family qualifies for an earned income disallowance, a special reexamination will occur at the end of the initial 12-month disallowance period and at the end of the phase-in period.
5. Zero/Extremely Low Income Families: Unless the family has income that is excluded from rent computation or exempt under HOTMA, families who report zero income or extremely low income will have the income **re-verified through EIV every 90 days for income changes and are further required to complete a written no/low income checklist and worksheet/certification every 90 days and undergo an interim recertification every 90 day, i.e., expenses for food, cleaning, grooming, and paper products, transportation, entertainment,**

**clothing, smoking, communications, shelter, medical and miscellaneous s, except as provided as an exclusion under HOTMA. (See Other Interim Reporting Issues below).**

**6. Reexamination Procedures**

- (a) At the time of reexamination, all adult members of the household will be required to sign a personal declaration and other forms required by HUD.
- (b) Income, allowances, Social Security numbers, and such other data as is deemed necessary will be verified, and all documentation will be filed in the resident's folder.
- (c) An EIV report will be requested on each family at recertification to help detect unreported income, provide third-party verification, and identify family members not reported on the lease, etc. <sup>3</sup>.
- (d) Verified information will be analyzed and a determination made with respect to:
  - (i) Eligibility of the resident as a family or as the remaining member of a family;
  - (ii) Unit size required for the family (using the Occupancy Guidelines);
  - (iii) Rent the family should pay; and
  - (iv) Community Service requirements.
- (e) SMHA will anticipate, based on tenants' past and anticipated future employment, the income of tenants with a history of regular employment whose regular reexamination takes place when they are not employed (e.g., school bus drivers). Residents with a history of employment whose reexamination occurs when they are not employed will have income anticipated based on past and anticipated employment. Residents with seasonal or part-time employment of a cyclical nature will be asked for third party documentation of their employment including start and ending dates.
- (f) Income shall be computed in accordance with the definitions and procedures set forth in Federal regulations and this policy <sup>4</sup>.
- (g) Families failing to respond to the initial reexamination notice will be issued a final notice within the same month. Failure to respond to the final request will result in the family being sent a notice of lease violation for termination of the lease <sup>5</sup>.



7. Action Following Reexamination
  - (a) If there is any change in rent, the lease will be amended, a new lease will be executed, or a Notice of Rent Adjustment will be issued <sup>6</sup>.
  - (b) If any change in the unit size is required, the resident will be placed on a transfer list in accordance with the transfer criteria described within the policy and moved to an appropriate unit when one becomes available <sup>7</sup>.
  - (c) A tenant who has a criminal conviction that violates SMHA or federal provisions, or any provisions of this policy, above, will be served with a lease termination notice.

The terms annual recertification and annual reexamination are synonymous.

For families who move in on the first of the month, the annual recertifications will be completed within 12 months of the anniversary of the move-in date. (Example: If family moves in August 1, the annual recertification will be conducted to be effective on August 1, the following year.)

For families who move in during the month, the annual recertifications will be completed no later than the first of the month in which the family moved in, the following year. (Example: If family moves in August 15, the effective date of the next annual recertification is August 1.)

When families move to another dwelling unit:

The annual recertification date will not change.

### **Reexamination Notice to the Family**

All families will be notified of their obligation to recertify by first class mail. Annual recertifications will be conducted by mailing a recertification packet, along with the notice, to the family by first class mail. The written notification shall be sent at least 120 days in advance of the anniversary date **specifying** the required documents that the tenant will need to supply and the deadline the documents must be received by SMHA. If requested as an accommodation by a person with a disability, SMHA will provide the notice in an accessible format. SMHA will also mail the notice to a third party, if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they met the need presented by the disability.

The notification shall explain family choice of income-based or flat rent.

During this reexamination period, the family will be given the option to choose flat rent or income-based rent. SMHA will provide a form that states what the flat rent would be and what the family's income-based rent would be. The family will be required to make a choice and sign the form prior to the effective date of their reexamination. The form will be retained in the tenant's file.

If the family chooses flat rent, an annual recertification is required to verify community service requirements and family composition. Recertification of income is only required every three years.

### **Methodology**

If the family chooses income-based rent, or if the family has paid the flat rent for three (3) years, SMHA will use the following methodology for conducting annual recertifications:

A recertification packet with required forms will be sent with the written notification to the family. Include information on the required documents that the tenant will need to supply.

### **Persons with Disabilities**

If requested as an accommodation by a person with a disability, SMHA will provide the notice in an accessible format. SMHA will also mail the notice to a third party, if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they met the need presented by the disability.

Persons with disabilities, who are unable to come to the Property Management site office will be granted an accommodation of conducting the interview at the person's home, upon verification that the accommodation requested meets the need presented by the disability.

### **Collection of Information**

The family is required to complete a Personal Declaration form prior to all annual and interim recertification interviews. (Update Form may be used for interims). Based on the information the family provides on this form, additional information may be requested from the family.

The following family members will be required to sign the personal declaration along with other required forms:

- The head of household, spouse, co-head, and
- All adult household members, age 18 and older.

### **Failure to Respond to Notification to Recertify**

The written notification will explain which family members are required to participate in the recertification.

**If the family does not respond to the initial notice to recertify, the SMHA will send a second and final notification to recertify.**

**If the family fails to respond to the second notice to recertify, the SMHA will:**

**the Recertification Specialist will issue a 30 day eviction notice to begin eviction proceedings.**

**If the tenant has not completed the requirements for their annual recertification,**

**appointments and/or provide all documents, prior to the expiration of the 30 day eviction notice, the Property Manager will be notified that a 3 day eviction notice must be issued to the resident for the eviction proceedings to continue.**

### **Documents Required From the Family**

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

- Documentation of income for all family members
- Documentation of assets
- Documentation to substantiate any deductions or allowances
- Documentation of family composition
- Personal Declaration Form completed by head of household and signed by all household members age 18 years or older
- Documentation of community service requirements
- Other required documents on new family members, such as SSN or citizenship requirements
- Other required documentation required by HUD or SMHA

### **Verification of Information**

All information which affects the family's continued eligibility for the program, and the family's Total Tenant Payment (TTP) will be verified in accordance with the verification procedures and guidelines described in this Policy.

When the information has been verified, it will be analyzed to determine:

- the continued eligibility of the resident as a family or as the remaining member of a family;
- the unit size required by the family;
- the amount of rent the family should pay.

### **EIV Documentation**

**A. New Admission-** For each new admission (form HUD-50058 action type 1), the SMHA is required to do the following:

- i. Review the EIV Income Report to confirm/validate family-reported income within 120 days of the PIC submission date; and
- ii. Print and maintain a copy of the EIV Income Report in the tenant file; and
- iii. Resolve any income discrepancy with the family within 60 days of the EIV Income Report date.

**B. Historical Adjustments-**For each historical adjustment (form HUD-50058 action type 14), the SMHA is required to do the following:

- i. Review the EIV Income Report to confirm/validate family-reported income within 120 days of the PIC submission date; and
- ii. Print and maintain a copy of the EIV Income Report in the tenant file; and
- iii. Resolve any income discrepancy with the family within 60 days of the EIV Income Report date.

**C. Interim Adjustments-** For each interim reexamination (form HUD-50058 action type 3) of family income and composition, the SMHA is required to have the following documentation in the tenant file:

- i. **EIV Income Report or ICN Page** when there is **no** household income discrepancy noted on the household's Income Discrepancy Report tab or Income Discrepancy Report- when it is available. (PHAs have the discretion to print the EIV Income report, however, only the ICN page is required when available.)
- ii. **EIV Income Report** when there **is** an income discrepancy noted on the household's Income Discrepancy Report tab or Income Discrepancy Report.

**D. Annual Recertification-** For each annual reexamination of family income and composition, the SMHA is required to have the following documentation in the tenant file:

- i. **No Dispute of EIV Information:** EIV Income Report, current acceptable tenant-provided documentation, and *if necessary* (as determined by the SMHA), traditional third party verification form(s).
- ii. **Disputed EIV Information:** EIV Income report, current acceptable tenant-provided documentation, and/or traditional third party verification form(s) for disputed information.
- iii. **Tenant-reported income not verifiable through EIV system:** Current tenant-provided documents, and *if necessary* (as determined by the SMHA), traditional third party verification form(s).

### **Changes In The Tenant Rent**

If there is any change in rent, including change in family's choice in rent, the lease will be amended, or a new lease will be executed, or a Notice of Rent Adjustment will be issued [24 CFR 966.4(c)].

### **Tenant Rent Increases**

If tenant rent increases , a thirty-day notice will be mailed to the family prior to the anniversary date.

If less than thirty days are remaining before the anniversary date, the tenant rent increase will be effective on the first of the second month following the thirty day notice.

If there has been a misrepresentation or a material omission by the family, or if the family causes a delay in the reexamination processing, there will be a retroactive increase in rent to the anniversary date.

### **Tenant Rent Decreases**

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

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

**If the tenant rent decreases and the tenant reported the change prior to the annual recertification anniversary date or between the annual recertification anniversary date and the effective date of the annual recertification, the change will be treated as an interim. The change will be effective the first of the following month that the family reported the change. If necessary, the SMHA will run another HUD 50058 as an annual recertification.**

## **C. INTERIM REEXAMINATIONS, NOTICE of CHANGES and REPORTING INTERIM CHANGES**

### **Decreases in Adjusted Income**

**Regulations:** 24 CFR §§ 5.657(c)(2); 882.515(b)(2); 891.105; 891.410(g)(2); 891.610(g)(2); 960.257(b)(2); and 982.516(c)(2)

A family may request an interim determination of family income for **any** change since the last determination. However, the SMHA may decline to conduct an interim reexamination of family income if the SMHA estimates that the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income. SMHA has the discretion to set a lower percentage threshold, in which case that lower percentage threshold must be included in the ACOP, Administrative Plan, or Tenant Selection Plan, as applicable.

SMHA must conduct an interim reexamination of family income when the SMHA becomes aware that a family's annual adjusted income has changed by an amount that the SMHA estimates will result in a decrease of 10 percent or more in annual adjusted income or a lower threshold set by HUD or by the SMHA in their ACOP, Administrative Plan, or Tenant Selection Plan, as applicable. In addition to decreases in family income, increases in deductions may produce a sufficient decrease in adjusted income to support an interim reexamination effective January 1, 2024, or later.

HUD is using its discretion, as authorized by HOTMA, to establish a lower threshold through notice to process interim reexaminations under certain circumstances. Specifically, HUD is requiring SMHA to apply a 0-percent threshold and to process an interim reexamination when there is a decrease in family size attributed to the death or permanent move-out from the assisted unit of a family member during the period since the family's last reexamination that results in a decrease in adjusted income of any amount. If there is no change/decrease in adjusted income as a result of the decrease in family size, then a non-interim transaction is processed instead of an interim reexamination. This 0-percent threshold for interim reexamination applies only to decreases in family size that result in a **decrease** in adjusted income. If the net effect of the changes in annual adjusted income due to a decrease in family size results in an **increase** in annual adjusted income, then SMHA will process the removal of the household member(s) as a non-interim reexamination transaction **without** making changes to the family's annual adjusted income.

SMHA is **not permitted** to establish a dollar-figure threshold amount instead of a percentage threshold. SMHA may establish policies to round calculated percentage decreases up or down to the nearest unit (e.g., a calculated decrease of 9.5 percent may be rounded up to 10 percent).

#### SMHA Policy

SMHA will use the generally accepted rounding rule of .5 or higher will be rounded up.

### Increases in Adjusted Income

**Regulations:** 24 CFR §§ 5.657(c)(3); 882.515(b)(3); 960.257(b)(3); and 982.516(c)(3); 891.105; 891.410(g)(2); and 891.610(g)(2)

SMHA must conduct an interim reexamination of family income when the SMHA becomes aware that the family's adjusted income has changed by an amount that the SMHA estimates will result in an increase of 10 percent or more in annual adjusted income or another amount established through a HUD notice, with the following exceptions:

- SMHA **may not** consider any increases in **earned income** when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and
- SMHA may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

#### SMHA Policy

SMHA will not conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date. SMHA will make the change at the time of the annual reexamination.

Families are still required to report all changes within 10 days of the occurrence.

**Note:** Families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the SMHA's policies.

SMHA **must not** process interim reexaminations for income increases that result in less than a 10-percent increase in annual adjusted income. When the family previously received an interim reexamination for a decrease to annual adjusted income during the same annual cycle, the SMHA has the discretion to consider or ignore a subsequent increase in **earned** income for the purposes of conducting an interim reexamination. SMHA must identify in their ACOPs, Administrative Plans, and Tenant Selection Plans, as applicable, if they perform interim reexaminations for **earned** income increases that result in a 10-percent increase in annual adjusted income. If the SMHA has a policy of considering increases in earned income after an interim conducted for a decrease in income, and the family's adjusted income has increased by 10 percent or more, the SMHA must conduct an interim reexamination in accordance with local policies. Conversely, if SMHA adopts local policies to never consider increases in **earned** income must not perform an interim reexamination.

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point the SMHA must conduct an interim reexamination. When an increase of any size is reported by a family, the SMHA will note the reported increase in the tenant file.

#### SMHA Policy

SMHA will conduct an interim and consider increases in any income (earned or unearned) after an interim conducted for a decrease in income, and the family's adjusted income has increased by 10 percent or more.

### **Interim Reexaminations to Determine Public Housing Over-Income Status**

#### **Regulations: 24 CFR § 960.507**

Regardless of changes in adjusted annual income, in some circumstances SMHA is required to conduct interim reexaminations of Public Housing families to determine whether they continue to exceed the income limit. When SMHA makes an initial determination that a Public Housing family is over-income during an interim reexamination, the SMHA must conduct a second interim reexamination 12 months after the over-income determination, and then again 12 months after the second over-income determination, unless the family's income falls below the over-income limit during the 24-month period.

Per 24 CFR 960.507(c), SMHA is required to conduct income examinations of Public Housing families who have been determined to exceed the over-income limit at specific intervals. This continued evaluation of the family's over-income status requires the SMHA to notify any family that exceeds the over-income limit that they remain over the income limit, even if the family is paying the flat rent. (24 CFR 960.253). The SMHA must conduct an income examination 12

months after the initial over-income determination to determine and provide notification if the family remains over-income, unless the SMHA determined the family's income fell below the over-income limit since the initial over-income determination. The SMHA must again conduct an income examination and provide notification 24 months after the initial over-income determination, unless the SMHA determined the family's income fell below the over-income limit since the second over-income determination. An interim income reexamination to determine if a Public Housing family remains over-income does not reset the family's normal annual reexamination date.

### **Non-Interim Reexamination Transactions**

**Regulations:** 24 CFR §§ 5.657(c)(2) 891.105; 891.410(g)(2); and 891.610(g)(2)

Families may experience changes within the household that do not trigger an interim reexamination under HOTMA but still need to be reported in a non-interim reexamination submission to HUD. In these cases, SMHA will submit a separate, new action code on form HUD-50058. Further instructions on the use of this action code will be provided along with supplemental guidance on other revisions to forms HUD-50058. The code will be used for the following transaction types when an interim reexamination is not triggered under the regulation.

- Adding or removing a hardship exemption for the child-care expense deduction;
- Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (the phased-in relief will begin at an eligible family's first annual or interim reexamination, whichever is sooner, after January 1, 2024);
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
- Ending a family's EID or excluding 50 percent (decreased from 100%) of a family member's increase in employment income at the start of the second 12-month EID period.
- Adding a family member and the **increase in adjusted income** does not trigger an interim reexamination under the final rule;
- Removing a family member and the **increase in adjusted income** does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number; and



- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

### **Policies for Families to Report Changes to Annual Adjusted Income or Household Composition**

**Regulations:** 24 CFR §§ 5.657(c)(4); 882.515(b)(1)–(4); 882.808(i)(4); 891.105; 891.410(g)(2); 891.610(g)(2); 960.257(b)(4); and 982.516(d)

SMHA must require families to report **household composition changes**; however, SMHA determines the timeframe in which reporting happens. SMHA must develop policies that describe when and under what conditions families must report **changes in annual adjusted income** consistent with the new requirements for processing interim reexaminations. SMHA is responsible for educating families on the requirements for reporting changes. Families are responsible for reporting these changes to the SMHA. It is the SMHA's responsibility to track all reported changes to a family's annual adjusted income to ensure that the SMHA is correctly processing interim reexaminations in accordance with HUD's requirements.

SMHA's policies may require families to report only changes that the family estimates meet the threshold for an interim reexamination, and the SMHA must determine if an interim reexamination is necessary. Alternatively, SMHA may establish policies requiring that families report all changes in income and household composition, and the SMHA will subsequently determine if the change requires an interim reexamination.

#### **SMHA Policy**

Families are required to report all changes in income and household composition, and the SMHA will subsequently determine if the change requires an interim reexamination or other changes.

### **Processing Time Period for Interim Reexaminations**

**Regulations:** 24 CFR §§ 5.657(c)(1); 882.515(b)(1); 891.105; 891.410(g)(2); 891.610(g)(2); 960.257(b)(1); and 982.516(c)(1)

The updated regulations codified long-standing guidance on how long SMHA should take to process an interim reexamination.

Families may request an interim determination of income or household composition because of any changes since the last determination. While the SMHA may decline to conduct an interim reexamination of family income if they estimate the family's annual adjusted income will change by less than 10 percent, when the SMHA conducts an interim reexamination, it must be conducted within a reasonable period after the family's request or after the SMHA becomes aware of an

increase in the family's adjusted income. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the SMHA generally should conduct the interim reexamination not longer than 30 days after the SMHA becomes aware of changes in income.

SMHA Policy

Once reported and verified, the SMHA shall complete the process in 30 days.

**Effective Date of Interim Rent Changes**

**Regulations:** 24 CFR §§ 5.657(c)(5); 882.515(b)(4)–(b)(5); 891.105; 891.410(g)(2); 891.610(g)(2); 960.257(b)(6); and 982.516(c)(4)

The updated regulation codified long-standing guidance on when interim reexaminations are made effective.

- **Changes Reported Timely:** If the family has reported a change in family income or composition in a timely manner according to the SMHA's policies, then the SMHA must provide the family with a 30-day advance notice of any rent increases, and such rent increases will be effective the first day of the month beginning after the end of that 30-day period.

If the tenant has complied with the interim reporting requirement and the tenant's rent is anticipated to decrease, rent decreases will be effective on the first day of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

- **Changes Not Reported Timely:** If the family has failed to report a change in family income or composition in a timely manner according to the SMHA's policies, SMHA must implement any resulting rent increases retroactively to the first day of the month following the date of the change leading to the interim reexamination of family income.

Any resulting rent decrease must be implemented no later than the first rent period following completion of the reexamination. The SMHA may choose to adopt a policy that would make the effective date of an interim reexamination retroactive to the first of the month following the date of the actual decrease in income as opposed to the first of the month following completion of the reexamination.

SMHA Policy

SMHA will make the effective date of an interim reexamination first of the month following completion of the reexamination,

Extreme circumstances such as natural disaster or death in the family will be taken into consideration.

SMHA may also choose to establish conditions or requirements for when such a retroactive application would apply (e.g., where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to the SMHA management operations).

If, SMHA chose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of the first of the month following the date of the change that led to the interim reexamination, or the first of the month following the most recent previous income examination (i.e., most recent interim or annual reexamination or the family's initial examination if that was the family's only income examination before the interim reexamination in question).

In applying a retroactive change in rent or family share as the result of an interim reexamination, the SMHA must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

Note: In the HCV and Moderate Rehabilitation/SRO programs, the SMHA must also clearly communicate the effect of the retroactive adjustment to the owner as well. These policies may reduce the potential hardship on families and eliminate or significantly reduce the amount a family may owe the SMHA for back rent if the family has had difficulty in making timely rent payments during the time between the loss of income and the interim reexamination.

An exception to the requirement that the SMHA implement resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination exist if the SMHA failed to process a family's interim reexamination because the family did not timely report an income decrease.

### **Streamline Income Determination**

**Regulation:** 24 CFR §§ 5.609(c)(2)(i); 5.657(d); 891.105; 891.410(g)(4); 891.610(g)(4); 960.257(c); and 982.516(b)

HOTMA did not update or otherwise change the streamlined income determination provision codified in the FAST Act<sup>13</sup> and in HUD's regulations found in 24 CFR §§ 5.657(d), 960.257(c), and 982.516(b); however, SMHA is aware that the adjustments of non-fixed income sources at annual reexamination using third-party verification must follow the HOTMA income calculation rules outlined in PIH 2023-27 [Attachment B](#).

Under current program regulations, SMHA may elect to apply a streamlined income determination for families receiving fixed income using the methodology below.

### **New Admissions and Interim Reexaminations**

**Regulations:** 24 CFR §§ 5.609(c)(1); 882.515; 891.410(c) and (g)(2); 891.610(c) and (g)(2); 960.257; and 982.516

When calculating a household's income, including asset income, at the time of admission to the program or during interim reexaminations, SMHA must use anticipated income (current income) (i.e., the family's estimated income for the upcoming 12-month period). This requirement is consistent with the pre-HOTMA process for conducting income examinations at admission and for interim reexaminations.

For any income determined pursuant to a streamlined income determination, SMHA must obtain third-party verification of all income amounts every 3 years.

When **90 percent or more** of a family's unadjusted income consists of fixed income, the SMHA using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income need not be adjusted and must not be adjusted by a COLA, but SMHA may choose to adjust sources of non-fixed income by the amount determined on the basis of third-party verification. SMHA has the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years 2 and 3. Adjustments to non-fixed income must be calculated in accordance with the Annual Reexamination requirements of SMHA and HOTMA provisions.

#### SMHA Policy

SMHA will review, verify and recalculation the non-fixed source of income under the 90 percent rule.

When **less than 90 percent** of a family's unadjusted income consists of fixed income, SMHA using streamlined income determinations must apply a COLA to each of the family's sources of fixed income. SMHA must determine all other income pursuant to the Annual Reexamination requirements of SMHA and HOTMA provisions.

### **Impact of Interim Reexamination Requirements on Family Self-Sufficiency (FSS) Programs**

If SMHA operates FSS programs, SMHA should note two effects that the new interim reexamination regulations will have on families participating in their FSS programs.

First, HOTMA requires that interim reexaminations must be conducted: (1) when a family's income decreases by at least 10 percent of their annual adjusted income, or such lower threshold established by the SMHA or by HUD through notice; or (2) when a family's income increases

by at least 10 percent of their annual adjusted income or such other amount established by HUD through notice, except in certain circumstances as described earlier in the policies.

SMHA may not consider any increases in **earned income** when estimating or calculating whether the family's adjusted income has increased unless the family has previously received an interim reduction during the same reexamination cycle. Families participating in the FSS program are subject to these interim requirements, therefore their escrow accounts may not grow as their earnings increase throughout the year.

Second, the "Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to Family Self-Sufficiency Program" final rule states that the FSS contract of participation (COP) will generally expire 5 years **from the date of the family's first re-certification of income after** the effective date of the FSS COP. The SMHA may not perform an interim reexamination of annual income when enrolling a family in the FSS program unless the family experienced a change in annual adjusted income that meets the threshold for conducting an interim reexamination under the HOTMA final rule. Families for whom their first reexamination of income does not occur until their regularly scheduled annual reexamination will not have the opportunity to begin escrowing their increased earnings until that time and may have fewer escrow increases over the life of the 5-year contract.

Although families participating in FSS may experience fewer escrow increases under the HOTMA final rule, the revised interim reexamination regulations may provide these families the opportunity to use their increased earnings to realize other short- or long- term goals outside of the scope of the FSS program, such as investing in a hobby, going on a vacation with family, purchasing a car, etc.

#### **Other Interim reexaminations conditions.**

(1) A family may request an interim reexamination of family income or composition because of any changes since the last determination. The SMHA must conduct any interim reexamination within a reasonable period of time (within 30 days) after the family request or when the PHA becomes aware of an increase in family adjusted income under paragraph (3) of this section. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but generally should not be longer than 30 days after changes in income are reported.

The PHA may decline to conduct an interim reexamination of family income if the PHA estimates the family's adjusted income will decrease by an amount that is less than ten percent of the family's annual adjusted income (or a lower amount established by HUD by notice), or a lower threshold established by the PHA.

#### **SMHA Policy**

If the decrease is less than ten (10) percent of the family's annual adjusted income, the SMHA will not conduct an interim reexamination, unless specifically required by

HUD to use a lower threshold.

HOTMA changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations.

When the SMHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income. For example, if the family is reporting a decrease in annual adjusted income that is more than 10 percent, but the family also had a change in assets that would result in a change in income, the change in assets must also be reviewed. HUD recommends as a best practice that SMHA maintain documentation of all reported decreases in annual adjusted income in the family's file, including those that did not result in an interim reexamination. HUD also recommends reviewing the applicable regulations to ensure that any program-specific reexamination requirements are addressed.

The SMHA must conduct an interim reexamination of family income when the PHA becomes aware that the family's adjusted income (as defined in § 5.611 of this title) has changed by an amount that the PHA estimates will result in an increase of ten percent or more in annual adjusted income or such other amount established by HUD through notice, except:

The SMHA may not consider any increase in the earned income of the family when estimating or calculating whether the family's adjusted income has increased, except that, based on the PHA's established written policy, the PHA may consider increases in earned income if the PHA has processed an interim reexamination for a decrease in the family's income under paragraph (b)(1) of this section within the same annual or biennial reexamination cycle; and

The SMHA may choose not to conduct an interim reexamination in the last three months of a family's certification period, in accordance with the SMHA's established written policy.

For over-income families in the period of up to six months before their tenancy termination pursuant to § 960.507(d)(2), the SMHA must conduct an interim reexamination of family income as otherwise required under this paragraph. However, the resulting income determination will not make the family eligible to remain in the public housing program beyond the period before termination as defined by PHA policy.

The SMHA must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

*Effective date of rent changes.*

If the family has reported a change in family income or composition in a timely manner according to the SMHA's policies, the SMHA must provide the family with

30 days advance notice of any rent increases, and such rent increases will be effective the first day of the month beginning after the end of that 30-day period. Rent decreases will be effective on the first day of the first month after the date of the actual change leading to the interim reexamination of family income.

If the family has failed to report a change in family income or composition in a timely manner according to the SMHA's policies, SMHAs must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income. Any resulting rent decrease must be implemented no later than the first rent period following completion of the reexamination. However, a PHA may apply rent decreases retroactively at the discretion of the PHA, in accordance with the conditions established by the SMHA in written policy and subject to paragraph (b)(6)(iii) of this section.

A retroactive rent decrease may not be applied by the SMHA prior to the later of the first of the month following:

The date of the change leading to the interim reexamination of family income; or

The effective date of the family's most recent previous interim or annual reexamination (or initial examination if that was the family's last examination).

Reviews of family income under this section are subject to the provisions in section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended (42 U.S.C. 3544).

*De minimis errors.*

The SMHA will not be considered out of compliance with the requirements in this section solely due to de minimis errors in calculating family income but is still obligated to correct errors once the SMHA becomes aware of the errors. A de minimis error is an error where the SMHA determination of family income varies from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income).

The SMHA must take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent as a result of an error (including a de minimis error) in the income determination. Families will not be required to repay the PHA in instances where the SMHA has miscalculated income resulting in a family being undercharged for rent or family share.

HUD may revise the amount of de minimis error in this paragraph (f) through a rulemaking published in the **Federal Register** for public comment.

Families must report all changes in household composition and income to SMHA between annual reexaminations. This includes additions due to birth, adoption and court-awarded custody. The family must obtain SMHA approval prior to all other additions to the household.

When there is a change in head of household or a new adult family member is added, SMHA will complete a personal declaration or update form and reverify, using the same procedures SMHA staff would use for an annual reexamination, except for effective dates of changes. In such case, the Interim Reexamination Policy would be used.

The annual reexamination date will not change as a result of this action.

The U.S. citizenship/eligible immigrant status of additional family members must be declared and verified prior to the approval by the SMHA of the family member being added to the lease.

### **Increases in Income to be Reported**

For a family that chooses the flat rent option, the SMHA must conduct a reexamination of family income and composition at least once every three years, except for families a PHA determines exceed the over-income limit described in § 960.507(b). Once a PHA determines that a family has an income exceeding the over-income limit, the PHA must follow the income examination and notification requirements under § 960.507(c).

Families paying flat rent and not over-income are not required to report any increases in income or assets between the recertification periods.

Families paying an income-based rent must report all increases in income/assets of all household members to SMHA in writing within 10 calendar days of the occurrence.

**Families are required to report any and all changes in income to include but not limited to the following increases in income:**

**Increases in unearned income resulting in a 10 percent in the annual adjusted income;**

**Increases in income because a person with income joins the household;**

**Increases in household income of more than 10 percent;**

**Increases in household income which come as a result of a *new* income source.**

### **Increases in Income and Rent Adjustments**

SMHA will process an interim rent adjustments for increases in income according to HOTMA which are reported between regularly scheduled recertifications.

Rent increases (except those due to misrepresentation) require 30 days' notice.



**Decreases in Income and Rent Adjustments**

Residents may report a decrease in income and other changes, such as an increase in allowances or deductions which would reduce the amount of the total tenant payment.

Rent decreases go into effect in accordance to HOTMA provisions.

SMHA will process the rent adjustment unless SMHA confirms that the decrease in income will last less than 30 calendar days.

**The SMHA will process rent adjustments whenever there is a decrease in income, as provided by HOTMA.**

**Special Reexaminations**

If a family's income is unstable and cannot be projected for twelve months, including families that temporarily have no income or a temporary decrease in income, the SMHA may schedule a special reexamination until the income stabilizes and an annual income can be determined.

**D. INCOME CHANGES RESULTING FROM WELFARE PROGRAM REQUIREMENTS**

The SMHA will not reduce the public housing rent for families whose welfare assistance is reduced due to a "specified welfare benefit reduction," which is a reduction in welfare benefits due to:

Fraud by a family member in connection with the welfare program; or

Noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program

A "specified welfare benefit reduction" does not include a reduction of welfare benefits due to:

The expiration of a lifetime time limit on receiving benefits; or

A situation where the family has complied with welfare program requirements but cannot or has not obtained employment, such as:

the family has complied with welfare program requirements, but the durational time limit, such as a cap on the length of time a family can receive benefits, causes the family to lose their welfare benefits.

Noncompliance with other welfare agency requirements.

**Definition of Covered Family:**

A household that receives 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":**

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 the SMHA, based on written information supplied to the SMHA by the welfare agency, including:

The amount of the benefit reduction

The term of the benefit reduction

The reason for the reduction

Subsequent changes in the term or amount of benefit reduction

Imputed welfare income will be included at annual and interim reexaminations during the term of reduction of welfare benefits.

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

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

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

The SMHA will obtain written verification from the welfare agency stating that the family's benefits have been reduced for fraud or noncompliance *before* denying the family's request for rent reduction.

The SMHA will rely on the welfare agency's written notice to the SMHA regarding welfare sanctions.

**Cooperation Agreements**

The SMHA has a **written** cooperation agreement in place with the local welfare agency that assists the SMHA in obtaining the necessary information regarding welfare sanctions.

The SMHA has taken a proactive approach to culminating an effective working relationship between the SMHA and the local welfare agency for the purpose of targeting economic self-sufficiency programs throughout the community that are available to public housing residents.

The SMHA and the local welfare agency have mutually agreed to notify each other of any economic self-sufficiency and/or other appropriate programs or services that would benefit public housing residents.

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

If the family disputes the amount of imputed income and the SMHA denies the family's request to modify the amount, the SMHA will provide the tenant with a notice of denial, which will include:

An explanation for the SMHA's determination of the amount of imputed welfare income.

A statement that the tenant may request a grievance hearing.

**A statement that the information received from the welfare agency cannot be disputed at the grievance hearing, and the issue to be examined at the grievance hearing will be the SMHA's determination of the amount of imputed welfare income, not the welfare agency's determination to sanction the welfare benefits.**

If the tenant requests a grievance hearing, the tenant is not required to pay an escrow deposit pursuant to 966.55(e) for the portion of tenant rent attributable to the imputed welfare income.

## **E. OTHER INTERIM REPORTING ISSUES**

**Residents are required to report all changes in family composition or status to SMHA within 10 calendar days of the occurrence.** Failure to report within the 10 calendar days may result in a retroactive rent increase, but not a retroactive credit or rent reduction. In order to qualify for rent reductions, residents must report and verify income decreases promptly.

### **SMHA Errors**

If SMHA makes a calculation error at admission to the program or at an annual reexamination, an interim reexamination will be conducted to correct the error, but the family will not be charged retroactively.

## **F. TIMELY REPORTING OF CHANGES IN INCOME (AND ASSETS)**

### **Standard for Timely Reporting of Changes**

The SMHA requires that families report interim changes to the SMHA within **10** days of when the change occurs. Any information, document or signature needed from the family that is needed to verify the change must be provided within **10** days of the change.

If the change is not reported within the required time period, or if the family fails to provide signatures, certifications or documentation, (in the time period requested by the SMHA), it will be considered untimely reporting.

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

The SMHA will notify the family of any changes in Tenant Rent to be effective according to the following guidelines:

Increases in the Tenant Rent are effective on the first of the month following at least thirty days' notice.

Decreases in the Tenant Rent are effective the first of the month following the month in which the change is reported.

**The change will not be made until the third party verification is received.**

### **Procedures when the Change is not Reported by the Tenant in a Timely Manner**

If the family does not report the change as described under Timely Reporting, the family will have caused an unreasonable delay in the interim reexamination processing and the following guidelines will apply:

**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 underpaid rent, and may be required to **sign a Repayment Agreement**.

**The SMHA will not execute a payment agreement if the payback is so much that it will take the family longer than 24 months to complete the agreement.**

**Decrease in Tenant Rent** will be effective on the first of the month following completion of processing by the SMHA and not retroactively.

### **Procedures when the Change is not Processed by the SMHA in a Timely Manner**

"Processed in a timely manner" means that the change goes into effect on the date it should 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 the SMHA in a timely manner.

Therefore, an increase will be effective after the required thirty days' notice prior to the first of the month after completion of processing by the SMHA.

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 family will be credited for the amount.

## **G. REPORTING OF CHANGES IN FAMILY COMPOSITION**

The members of the family residing in the unit must be approved by SMHA. The family must inform SMHA and request approval of additional family members other than additions due to birth, adoption or court-awarded custody before the new member occupies the unit.

**The SMHA will not approve the addition of family members other than by birth, adoption, marriage or court-awarded custody where the occupancy standards would require a larger size unit.**

All changes in family composition must be reported within 10 working days of the occurrence in writing.

If an adult family member is declared permanently absent by the head of household, the notice must contain a certification by the head of household that the member (who may be the head of household) removed is permanently absent.

**The head of household must provide a statement that the head of household will notify the SMHA if the removed member returns to the household for a period longer than the visitor period allowed in the lease.**

**Deceased Tenant Actions (PIH 2010-9)**

**Corrective Actions Required by SMHAs.** When the Deceased Tenants Report identifies an individual as being deceased, SMHA is required to take the following actions:

- a. Immediately contact the head of household (HOH) or emergency contact person (if the HOH is deceased and there is no other adult household member) to confirm the death of the listed household member. A letter should be sent to the HOH, followed by a telephone call.
- b. SMHA shall conduct a home visit to determine if anyone is residing in the unit. If there are unauthorized persons in the unit of a deceased single member household SMHA must pursue judicial intervention to have them lawfully removed from the unit. SMHA will follow the State and local Tenant and Landlord laws to regain possession of the unit.
- c. **When the remaining household member is a live-in aide.** When the HOH dies and the only remaining household member is the live- in aide, the live- in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. The SMHA may not designate the live-in aide as the new HOH or change the relation code (line item 3h on the form HUD-50058) of the live- in aide to make him or her an eligible household member (eligible for assistance). The SMHA must notify the live- in aide s/he is required to vacate the unit at the end of month. If the live- in aide does not vacate the unit, the SMHA must follow local Tenant and Landlord laws to regain possession of the unit.

**What to do if the HOH is deceased and the remaining household members are minors.**

SMHA shall follow the established policy for dealing with situations when the HOH dies during tenancy and the remaining household members are minors. SMHA's policy includes (but is not limited to) allowing a temporary adult guardian to reside in the unit until a court-appointed

guardian is established. In accordance with its screening policies, the SMHA may add the new guardian as the new HOH should the legal appointment be of a duration of greater than 6 months. SMHA will work with the local Department of Social Services to ensure that the best interests of the children are addressed.

**What to do if an identified household member is reported to be deceased and is actually alive.**

There are a very few instances when an error has been made in the SSA's Death Match File (DMF), where an individual is reported as deceased, but actually living. In the event that a household member is misidentified as deceased on the Deceased Tenants Report, SMHA will immediately notify the individual in writing and advise the individual to contact SSA so that SSA may correct its records. The individual may contact SSA at (800) 772-1213, or visit his/her local SSA office for assistance.

The SMHA will provide the individual with his/her section of the EIV Income Report, which shows the death information. SMHA is authorized to provide EIV information only to the individual the information pertains to. The SMHA will provide the minor's information to the minor's adult parent or guardian.

SMHA will make a note in the tenant file that the individual has been identified as deceased; however, the SMHA has confirmed that the individual is actually alive. Only SSA can correct erroneous death information.

For deceased single member households (where there are no unauthorized unit occupants), SMHA may list the date of death as the last day of the month, in which the death occurred. SMHA is required to then classify the unit as vacant in PIC. The SMHA may not use a later date based on the date that all personal belongings were removed from the unit by the family. The SMHA may coordinate the removal of personal belongings within a reasonable time frame (not to exceed 14 days). In situations where the SMHA seeks judicial intervention to regain possession of the public housing unit, the SMHA must list eviction date (the day in which the SMHA has regained possession of the unit) as the effective date of action.

**Increase in Family Size**

SMHA will consider a unit transfer (if needed under the Occupancy Guidelines) for additions to the family in the following cases:

- Addition by marriage/or marital-type relation.
- Addition of a minor who is a member of the nuclear family who had been living elsewhere.
- Addition of the SMHA-approved live-in attendant.
- Addition due to birth, adoption or court-awarded custody.

**Families who need a larger sized unit because of voluntary additions will have lower priority**

**on the Transfer List than other families who are required to change unit size.**

If a change due to birth, adoption, court-awarded custody, or need for a live-in attendant requires a larger size unit due to overcrowding, the change in unit size shall be made effective upon availability of an appropriately sized unit.

**Definition of Temporarily/Permanently Absent**

SMHA must compute all applicable income of every family member who is on the lease, including those who are temporarily absent.

Income of persons permanently absent will not be counted. If the spouse is temporarily absent and, in the military, all military pay and allowances (except hazardous duty pay when exposed to hostile fire and any other exceptions to military pay HUD may define) is counted as income.

It is the responsibility of the head of household to report changes in family composition. SMHA will evaluate absences from the unit in accordance with this policy.

**Absence of Entire Family**

These policy guidelines address situations when the family is absent from the unit but has not moved out of the unit. In cases where the family has moved out of the unit, SMHA will terminate tenancy in accordance with the appropriate lease termination procedures contained in this Policy.

Families are required to notify SMHA before they move out of a unit in accordance with the lease and to give SMHA information about any family absence from the unit.

Families must notify SMHA if they are going to be absent from the unit for more than seven (7) consecutive days. A person with a disability may request an extension of time as a reasonable accommodation.

"Absence" means that no family member is residing in the unit.

In order to determine if the family is absent from the unit, the SMHA may:

- Conduct home visit

- Write letters to the family at the unit

- Post letters on exterior door

- Telephone the family at the unit

- Interview neighbors

- Verify if utilities are in service

Check with Post Office for forwarding address

Contact emergency contact

If the entire family is absent from the unit, without SMHA permission, for more than 30 consecutive days, the unit will be considered to be vacant and the SMHA will terminate tenancy.

As a reasonable accommodation for a person with a disability, the SMHA may approve an extension. (See Absence Due to Medical Reasons for other reasons to approve an extension.) During the period of absence, the rent and other charges must remain current.

If the absence which resulted in termination of tenancy was due to a person's disability, and the SMHA can verify that the person was unable to notify the SMHA in accordance with the lease provisions regarding absences, and if a suitable unit is available, the SMHA may reinstate the family as an accommodation if requested by the family.

#### **Absence of Any Member**

Any member of the household will be considered permanently absent if s/he is away from the unit for 30 consecutive days in a 12 month period except as otherwise provided in this Chapter.

#### **Absence due to Medical Reasons**

If any family member leaves the household to enter a facility such as hospital, nursing home, or rehabilitation center, SMHA will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the family member will be permanently confined to a nursing home, the family member will be considered permanently absent and removed from the lease. If the verification indicates that the family member will return in less than 180 consecutive days, the family member will not be considered permanently absent, as long as rent and other charges remains current.

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

Temporary caretaker request must be provided by the resident and verified by a medical provider. The status must be updated every thirty (30) days. The SMHA will review the request and verified reasons for the caretaker during an extended medical hardship. Approval of the caretaker to occupy the unit for a period beyond 2 weeks will require prior approval by the Property Manager.

#### **Absence due to Incarceration**

If the sole member is incarcerated for more than 30 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if s/he is incarcerated for more than 90 consecutive days. The rent and other charges must remain current during this period.

SMHA will determine if the reason for incarceration is for drug-related or criminal activity that would threaten the health, safety and right to peaceful enjoyment of the dwelling unit by other



residents. If the offense is drug related or criminal activity that violates the lease and policy, the lease will be terminated.

**Foster Care and Absences of Children**

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

If the time period is to be greater than 12 months from the date of removal of the child(ren), the family will be required to move to a smaller size unit. If all children are removed from the home permanently, the unit size will be reduced in accordance with the SMHA's occupancy guidelines.

**Absence of Adult**

If neither parents remains in the household and the SMHA and appropriate agency has determined that another adult is to be brought into the assisted unit to care for the children for an indefinite period, SMHA will treat that adult as a visitor for the first 30 calendar days.

If by the end of that period, court-awarded custody or legal guardianship has been awarded to the guardian, and the guardian qualifies under Tenant Suitability criteria, the lease will be transferred to the guardian.

If the court has not awarded custody or legal guardianship, but the action is in process, SMHA will secure verification from social services staff or the attorney as to the status.

The guardian will be allowed to remain in the unit, as a visitor, until a determination of custody is made.

SMHA will transfer the lease to the guardian, in the absence of a court order, if the guardian qualifies under the Tenant Suitability criteria and has been in the unit for more than 30 days and it is reasonable to expect that custody will be granted.

When the SMHA approves a person to reside in the unit as guardian for the child(ren), the income of the guardian should be counted pending a final disposition. SMHA will work with the appropriate service agencies to provide a smooth transition in these cases.

If an adult child goes into the military and vacates the unit, they will be considered permanently absent.

Full time students who attend school away from the home will be treated in the following manner:

**SMHA Policy**

The family will determine whether to consider a full-time (other than head or spouse), who attends school away from home but lives with the family during recess, temporarily or

permanently absent. If they are not part of the household, the student will not be included on the lease, income of the student will not be included in the total income and the student will not be included in determining unit size for the family.

A student (other than head of household or spouse) who attends school away from home but lives with the family during school recesses may, at the family's choice, be considered either temporarily or permanently absent. If the family decides that the member is permanently absent, income of that member will not be included in total household income, the member will not be included on the lease, and the member will not be included for determination of unit size.

If the student is considered temporarily absent from the household, applicable income for that person will be appropriately counted.

**Visitors (See Chapter on Leasing)**

Any adult not included on the HUD 50058 who has been in the unit more than **14** consecutive days, or a total of **30** cumulative days in the year will be considered to be living in the unit as **an unauthorized** household member.

Absence of evidence of any other address will be considered verification that the visitor is an unauthorized household member.

Statements from neighbors and/or SMHA staff will be considered in making the determination.

The SMHA will consider:

- Statements from neighbors and/or SMHA staff

- Vehicle license plate verification

- Post Office records

- Driver's license verification

- Law enforcement reports

- Credit reports

Use of the unit address as the visitor's current residence for any purpose that is not explicitly temporary shall be construed as permanent residence.

The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual will be considered an unauthorized member of the family and the SMHA will terminate the family's lease since prior approval was not requested for the addition.

Minors and college students who were part of the family but who now live away from home during the school year and are not considered members of the household may visit for up to **30** days per

year without being considered a member of the household.

In a joint custody arrangement, if the minor is in the household less than **180** days per year, the minor will be considered to be an eligible visitor and not a family member. If both custodial parties reside in Subsidized Housing of any kind, only one custodial party would be able to claim the child for deductions and for determination for the occupancy standards.

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

The lease must provide the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)]. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near SMHA premises [24 CFR 966.4(f)].

A resident family must notify the SMHA in writing when overnight guests will be staying in the unit for more than 14 days.

Residents are responsible for the actions and conduct of their guests in accordance with the lease.

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

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.

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

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

Absence of evidence of any other address will be considered verification that the visitor is an unauthorized household member.

Statements from neighbors and/or SMHA staff will be considered in making the determination.

If both parents reside in Public Housing, only one parent would be able to claim the child for deductions and for determination for the occupancy standards.

#### **H. REMAINING MEMBER OF TENANT FAMILY - RETENTION OF UNIT**

To be considered the remaining member of the tenant family, the person must have been previously approved by SMHA to be living in the unit for at least 120 days prior to the existing head of household being removed.

In order for a minor child to continue to receive assistance as a remaining family member:

- The court has to have awarded emancipated minor status to the minor or is legally married; or
- SMHA has verified that social services and/or the Juvenile Court has arranged for another adult to be brought into the unit to care for the child(ren) for an indefinite period.

A reduction in family size may require a transfer to an appropriate unit size per the Occupancy Standards.

#### **I. CHANGES IN UNIT SIZE**

The SMHA shall grant exceptions from the occupancy standards if the family requests and the SMHA determines the exceptions are justified according to this policy.

The SMHA will consider the size of the unit and the size of the bedrooms, as well as the number of bedrooms, when an exception is requested.

When an approvable change in the circumstances in a tenant family requires another unit size, the family's move depends upon the availability of a suitable size and type of unit. If the unit is not available at the time it is requested, the family will be placed on the Transfer List.

#### **J. CONTINUANCE OF ASSISTANCE FOR "MIXED" FAMILIES**

Under the Noncitizens Rule, "Mixed" families are families that include at least one citizen or eligible immigrant and any number of ineligible members. Mixed families are eligible for prorated assistance in accordance with the mixed-family portion of the policy. Family members that have temporary eligible status will be re-verified for eligibility at the annual recertification period.

#### **K. DE MINIMIS ERRORS**

**Regulations:** 24 CFR §§ 5.609(c)(4); 5.657(f); 960.257(f); 982.516(f); 882.515(f); 882.808(i)(5); 891.105; and 891.655

SMHA will not be considered out of compliance solely due to de minimis errors in calculating family income. De minimis errors occur when a SMHA determination of a family's income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (or \$360 in annual adjusted income). HUD may revise the threshold amount that constitutes a "de minimis error" through rulemaking. SMHA will not be issued a finding by HUD or the Contract Administrator (MFH only) for de minimis errors in income calculation.

As SMHA become aware of the existence of an income calculation error, they are obligated to correct the error(s) retroactive to the effective date of the action the error was made regardless of the dollar amount associated with the error. SMHA must take corrective action to credit or repay a family if the family was overcharged tenant rent, including when SMHA make de minimis errors in the income determination. Families will not be required to repay the SMHA in instances where the SMHA miscalculated income resulting in a family being undercharged for rent. SMHA must revise their Administrative Plans, ACOPs, and Tenant Selection Plans, as applicable, to reflect how they will repay or credit a family the amount they were overcharged as a result of the SMHA's de minimis error in income determination.

#### SMHA Policy

SMHA will issue a credit on the amount they were overcharged.

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<sup>1</sup> 24 CFR § 5.5

<sup>2</sup> 24 CFR § 960.257

<sup>3</sup> 24 CFR § 960.259(c)

<sup>4</sup> 24 CFR § 5

<sup>5</sup> 24 CFR § 966.4 (c)(2)

<sup>6</sup> 24 CFR § 966.4 (c) & (o)

<sup>7</sup> 24 CFR § 966.4 (c)(3)

## **Chapter 12**

### **LEASE TERMINATIONS** **[24 CFR 966.4]**

#### **INTRODUCTION**

SMHA may terminate tenancy for a family because of the family's action or failure to act in accordance with HUD regulations [24 CFR 966.4 (l)(2)], and the terms of the lease. This Chapter describes SMHA's policies for notification of lease termination and provisions of the lease.

#### **A. TERMINATION BY TENANT**

The tenant may terminate the lease by providing SMHA with a written 30-day advance notice as defined in the lease agreement.

#### **B. TERMINATION BY SMHA**

Termination of tenancy will be in accordance with SMHA's lease.

The public housing lease is automatically renewable, EXCEPT the public housing lease shall have a 12-month term for community service and will not be renewed in the case of noncompliance with the community service requirements. See Chapter 15 for Community Service.

The Violence against Women Reauthorization Act of 2013 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking as “other good cause” for terminating the tenancy or occupancy rights of the victim of such violence.

The lease may be terminated by SMHA at any time by giving written notice for serious or repeated violation of material terms of the lease, such as, but not limited to the following:

- Nonpayment of rent or other charges due under the Lease, or repeated chronic late payment of rent;
- Failure to provide timely and accurate statements of income, assets, expenses and family composition at Admission, Interim, Special or Annual Rent Recertifications;
- Assignment or subleasing of the premises or providing accommodation for boarders or lodgers;
- Use of the premises for purposes other than solely as a dwelling unit for the Tenant and Tenant's household as identified in this Lease, or permitting its use for any other purposes;

- Failure to pass annual inspections with adequate notices to correct;
- Failure to abide by necessary and reasonable rules made by the Landlord for the benefit and well being of the housing project and the Tenants;
- Failure to abide by applicable building and housing codes materially affecting health or safety;
- Failure to dispose of garbage waste and rubbish in a safe and sanitary manner;
- Failure to use electrical, plumbing, sanitary, heating, ventilating, air conditioning and other equipment, including elevators, in a safe manner;
- Acts of destruction, defacement or removal of any part of the premises, or failure to cause guests to refrain from such acts;
- Failure to pay reasonable charges (other than for normal wear and tear) for the repair of damages to the premises, project buildings, facilities, equipment, or common areas; or
- The Tenant, any member of the Tenant's household, or a guest or other person on the premises due to tenant's residency shall not engage in criminal activity, including drug-related criminal activity, on or off public housing premises (as defined in the lease), while the Tenant is a Tenant in public housing, and such criminal activity shall be cause for termination of tenancy
  - o The term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).
  - o Any other person under the tenant's control shall not engage in such activity on public housing premises.
- Inviting, allowing, or creating a situation that causes any person or persons who have been banned from SMHA property to be present on the SMHA property. An up-to-date banned list is maintained at the SMHA's main office and management offices.
- Alcohol abuse that SMHA determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
- Non-compliance with Non-Citizen Rule requirements.

- Non-compliance with Smoke Free Housing Rule requirements
- Failure of a family member to comply with community service provisions, as grounds only for non-renewal of the lease and termination of tenancy at the end of the 12-month lease term;
- Discovery after admission of facts that made the tenant ineligible;
- Discovery of materially false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;
- Failure to accept the SMHA's offer of a lease revision to an existing lease that is on a form adopted by the SMHA in accordance with HUD regulations, with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family.
- Over-income for Public Housing
- Exceeding the Asset Limitations
- Other good cause.
- Four (4) late payments in a 12-month period

### **C. NOTIFICATION REQUIREMENTS**

SMHA's **written** Notice of Lease Termination will state the reason for the proposed termination, the date that the termination will take place, and it will offer the resident all of the rights and protections afforded by the regulations and this policy. (See Chapter on Complaints, Grievances and Hearings.)

Notices of lease termination must be in writing and delivered to the tenant or adult member of the household; or posted and sent by First Class Mail properly addressed to tenant.

3-day notices of termination of tenancy termination and 3- day notice to vacate must be in writing and delivered to tenant or adult member of the household; or posted and sent by Certified Mail properly addressed to tenant.

All notices of lease termination will include a statement of the protection against termination provided by VAWA for victims of domestic violence, dating violence, sexual assault or stalking. Any family member who claims that the cause for termination involves (a) criminal acts of



physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in Chapter 12-D.

**Disclosure of Criminal Records to Family**

Before the SMHA terminates the lease based on a criminal record, the tenant and subject of record will be provided the opportunity to review a copy of the criminal record. Tenants may dispute the accuracy and relevance of that record at the grievance hearing or court hearing.

**Timing of the Notice**

If SMHA terminates the lease, written notice will be given as follows:

At least 14 calendar days prior to termination in the case of failure to pay rent;

A reasonable time, defined in the **lease as 3 working days**, considering the seriousness of the situation:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA as described in 24 CFR 966.51(a)(2)(i)(A);
- Any violent or drug-related criminal activity on or off the premises as described in 24 CFR 966.51(a)(2)(i)(B); **or**
- Any criminal activity that resulted in felony conviction of a household member as described in 24 CFR 966.51(a)(2)(i)(C):

At least thirty days prior to termination in all other cases.

SMHA shall notify the Post Office that mail should no longer be delivered to the person who was evicted for criminal activity, including drug-related criminal activity.

**Criminal Activity**

SMHA will **immediately and permanently** terminate tenancy of persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law. "Premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.

SMHA will terminate assistance of participants in cases where SMHA determines there is reasonable cause to believe that the person is illegally using a controlled substance or engages in drug-related or other criminal activity. The same will apply if it is determined that the person abuses alcohol in a way that interferes with the health, safety or right to peaceful enjoyment of the premises by other residents. This includes cases where SMHA determines that there is a pattern of a pattern of alcohol abuse.

SMHA will consider the use of alcohol to be a pattern if there are 2 or more than incidents during the previous 6 month period.

"Engaged in or engaging in a recent history of" drug related criminal activity means any act within the past 3 years by applicants or participants, household members, or guests which involved drug-related criminal activity including, without limitation, drug-related criminal activity, possession and/or use of narcotic paraphernalia, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

"Engaged in or engaging in a recent history of" criminal activity means any act within the past 3 years by applicants or participants, household members, or guests which involved criminal activity that would threaten the health, safety or right to peaceful enjoyment of the public housing premises by other residents or employees of SMHA, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

In evaluating evidence of negative behavior, SMHA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

SMHA will waive the requirement regarding drug-related criminal activity if:

The person demonstrates successful completion of a credible rehabilitation program verified by SMHA, or

The individual involved in drug-related criminal activity is no longer in the household because the person is incarcerated.

The SMHA may permit continued occupancy provided the family accepts imposed conditions that the involved family member(s) does not reside in the unit. The SMHA will consider evidence that the person is no longer in the household such as a divorce decree/incarceration/ death/ copy of a new lease for the person including the owner's telephone number and address/ or other substantiating evidence.

**D. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING (VAWA 2013)**

The Violence against Women Reauthorization Act of 2013 (VAWA), provides that "criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or affiliated individual in the tenant's family is the victim or threatened victim of that abuse." VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as serious or repeated violations of the lease by the victim

of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

VAWA does not limit the SMHA's authority to terminate the tenancy of any tenant if the SMHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property.

**VAWA protection does not apply of the individual is not on the lease. VAWA protection does not apply to a live-in aide or caretaker.** While a live-in aide or caregiver who resides in a unit may be a lawful occupant, nonetheless such individual is not a tenant and the protections of VAWA would not apply, except that the live-in aide or caregiver cannot be denied assistance if he or she independently applies for assistance.

Similarly, if an affiliated individual is a victim of domestic violence, dating violence, sexual assault, or stalking, the tenant with whom the affiliated individual resides cannot be evicted or have assistance terminated on the basis of the violence suffered by the affiliated individual, and, consequently, the affiliated individual may receive indirectly the benefit of continued assistance to the tenant.

"Affiliated individual", with respect to an individual, means: (A) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent to a child (for example, the affiliated individual is a child in the care, custody, or control of that individual); or (B) any individual, tenant, or lawful occupant living in the household of that individual.

VAWA 2013 provides that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as: (1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or (2) good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of a victim or threatened victim of such incident.

#### Victim Documentation

##### SMHA Policy

When a tenant family is facing lease termination because of the actions of a tenant, household member, guest, or other person under the tenant's control and a tenant or immediate family member of the tenant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the SMHA will require the individual to submit documentation affirming that claim.

The documentation must include two elements:

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking.

One of the following:

A police or court record documenting the actual or threatened abuse; or

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

**VAWA Certification Form- HUD 5382**

The required certification and supporting documentation must be submitted to the SMHA within 14 business days after the SMHA request is received by the victim. Upon written request from the tenant, the SMHA will extend the 14-day deadline for an additional 10 business days as long as the extension request is submitted within the initial 14 business-day period.

If the individual does not provide the required certification and supporting documentation within 14 business days or the approved extension period, the SMHA may proceed with termination of the family's lease.

Regardless of the certificate- the SMHA may proceed to terminate the perpetrator by bifurcation of the lease when allowed by the state law.

If the SMHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant's tenancy is not terminated, the SMHA will bypass the standard process and proceed with the immediate termination of the family's lease.

If the SMHA is confronted with conflicting documentation about the incident of domestic violence, dating violence, sexual assault, or stalking. VAWA provides, as does the existing regulation on conflicting documentation, that if the SMHA receives documentation under § 5.2007(b)(1) (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the SMHA may require an applicant or tenant to submit third-party documentation as provided in § 5.2007(b)(1)(ii) or (b)(iii). The statute specifies no time period in which the third-party documentation is to be submitted, however SMHA requires submission within 30 days.

**Terminating or Evicting a Perpetrator of Domestic Violence**

Although VAWA provides protection from termination for victims of domestic violence, it does not provide protection for perpetrators. In fact, VAWA gives the SMHA the explicit authority to bifurcate a lease, or to remove a household member from 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.” This authority supersedes any local, state, or other federal law to the contrary. However, if the SMHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance [Pub.L. 109-271].

#### SMHA Policy

When the actions of a tenant or other family member result in a determination by the SMHA to terminate the family’s lease and another family member claims that the actions involve criminal acts of physical violence against family members or others, the SMHA will request that the victim submit the above required certification and supporting documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time frame or any approved extension period, the SMHA will bifurcate the lease and evict or terminate the occupancy rights of the perpetrator. If the victim does not provide the certification and supporting documentation, as required, the SMHA will proceed with termination of the family’s lease.

If the SMHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant’s tenancy is not terminated, the SMHA will bypass the standard process and proceed with the immediate termination of the family.

#### Reasonable Time to Establish Eligibility (bifurcation)

For individual victims that are ineligible, but residing in the unit legally, HUD allows a minimum 90-day period that would be divided into two time periods to possibly gain eligibility:

One time period would be to establish eligibility to remain in the unit in which the tenant is now residing, and a second time period would be to allow the tenant to locate alternative housing if the tenant is unable to establish eligibility for the unit in which the tenant is now residing.

For the first period, the process provides for 60 calendar days, commencing from the date of bifurcation of the lease, for the tenant to establish eligibility to remain in the unit in which the tenant is now residing. For the second reasonable period, the process provides for 30 calendar days, commencing from the 61st date from the date of bifurcation of the lease for the tenant to find alternative housing.

Of course, during first (60 days) period and the second (30 days) period, the tenant may undertake efforts to both establish eligibility to remain in the unit in which the tenant is residing and to find alternative housing.

SMHA is strongly encouraged to assist a tenant in efforts to establish eligibility for the covered housing in which the tenant is participating, and then assist in finding alternative housing if it no longer seems possible that the tenant will be able to establish eligibility for the covered housing program.

For each of these time periods, the process would allow, but not mandate, the SMHA to grant an extension for up to 30 days, subject, however, to the program regulations under the applicable covered housing program authorizing the SMHA to grant an extension, as part of the SMHA's standard policies and practices or, alternatively, granting such an extension on a case-by-case basis.

SMHA's public housing and Section 8 voucher programs where demand for available housing and assistance is high—a period of more than 90 days may adversely affect applicants waiting for admission to public housing or receipt of a voucher, and, therefore, for these programs, the process is for a maximum period of 90 days, without an extension.

It is important to note that the reasonable time period may only be provided to tenants by covered housing providers that remain subject to the requirements of the other covered housing program once the eligible tenant departs the unit.

#### SMHA Confidentiality Requirements

All information provided to the SMHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law. The SMHA will not disclose to other parties where the victims have moved- if the victim is transferred or allowed to enter into another program.

### **E. RECORD KEEPING**

A written record of every termination and/or eviction shall be maintained by SMHA through the data-based system and as a minimum shall contain the following information:

- Name of resident, number and identification of unit occupied;
- Date of the Notice of Lease Termination and any other notices required by State or local law; these notices may be on the same form and will run concurrently;
- Specific reason(s) for the Notices; citing the lease section or provision that was violated, and other facts pertinent to the issuing of the Notices described in detail (other than the Criminal History Report)
- Date and method of notifying the resident;
- Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

**F. TERMINATIONS DUE TO INELIGIBLE IMMIGRATION STATUS [24 CFR 5.514]**

If SMHA determines that a family member has knowingly permitted an ineligible individual to reside in the family's unit on a permanent basis, the family's assistance will be terminated for 24 months. This provision does not apply to a family if the eligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

## **Chapter 13**

### **GRIEVANCES AND APPEALS**

[24 CFR Part 966 Subpart B]

#### **INTRODUCTION**

This document describes the policies to be used when families disagree with a decision by the SMHA based on any action, decision, or inaction by SMHA. It is the policy of SMHA to ensure that all families have the benefit of all protections due to them under the law.

If a Complainant does not follow the procedures set forth in this policy and/or does not request a hearing, then the Authority's action, inaction, or decision shall be considered final on part of SMHA. Failure of a Complainant to request a hearing does not constitute a waiver of his/her right to contest the Authority in an appropriate judicial proceeding.

For all aspects of the grievance and appeals process, a disabled person shall be provided reasonable accommodation to the extent necessary to provide the disabled person with an opportunity to use the grievance procedures equal to a non-disabled person.

The informal hearing requirements defined in HUD regulations are applicable to participating families who disagree with an action, decision, or inaction of the SMHA. This Chapter describes the policies to be used when families disagree with a SMHA decision. It is the policy of the SMHA to ensure that all families have the benefit of all protections due to them under the law.

- Grievances shall be handled in accordance with the SMHA's approved Grievance Procedures (Adopted August, 1971) (Revised May, 1994, May 2018 and January 2024). The written grievance procedure is incorporated into this document by reference and is the guideline to be used for grievances and appeals.

#### **A. RIGHT TO A HEARING**

1. Upon filing of a written request as provided herein, a Complainant shall be entitled to an informal settlement hearing by an impartial person not involved in the original decision and/or a formal grievance before a 3<sup>rd</sup> party hearing officer.
2. Notwithstanding any other provision herein, all rights of a resident under this Grievance Procedure shall be deemed waived on disputes regarding rent, unless such resident has paid and continues to pay to Stark Metropolitan Housing Authority (SMHA) all rentals on the



scheduled due dates pursuant to the terms of his lease with SMHA. If the dispute is over the amount of rent or other charges which SMHA claims is due, any disputed amounts may be deposited with the local Clerk of Courts.

3. Because HUD has issued a due process determination that the law of the State of Ohio requires that a resident be given the opportunity for a hearing in court which provides the basic elements of Due Process before eviction from the dwelling unit, this Grievance Procedure shall not be applicable to any termination of tenancy or eviction that involves:
  - a. Any criminal activity that threatens the health, safety, or right to a peaceful enjoyment of the premises of other residents or employees of the SMHA. (see Chapter on Lease Terminations and Chapter on Evictions)
  - b. Violent or drug-related criminal activity on or off the premises
  - c. Any criminal activity that resulted in felony conviction of a household member
4. This Grievance Procedure shall not be applicable to disputes between residents not involving the SMHA or to class Grievances. This Grievance Procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the SMHA's Board of Commissioners.

**B. INFORMAL SETTLEMENT HEARING OF A GRIEVANCE**

1. Any grievance or complaint must be personally presented, if possible, to the Central Office of SMHA or to the management office of the development in which the Complainant resides so that the grievance may be informally discussed and settled without a formal grievance hearing. The grievance must be signed by the Complainant and filed in such office by him or his representative within a reasonable time, not in excess of five (5) working days of the SMHA action or failure to act which is the basis of the grievance. It may be simply stated, but shall specify:
  - a. The particular ground(s) upon which it is based;
  - b. The action requested; and
  - c. The name, address and telephone number of Complainant and similar information about his representative, if any.
2. An informal settlement hearing may be held at the Complainant's request. Otherwise, an answer, in writing, to each Complainant, dated and signed by the development manager or other appropriate official, shall be delivered or mailed to the Complainant within five (5) working days. A copy of the answer shall be filed with the Complainant in the appropriate project office or the Central Office. The answer shall specify:

- a. The proposed disposition of the complaint and the specific reasons therefore;
- b. The right of the Complainant to a formal grievance hearing; and
- c. The procedure by which a formal grievance hearing may be obtained. The answer may challenge whether a proper grievance under this procedure has been stated.

**C. REQUEST FOR A FORMAL GRIEVANCE HEARING**

1. If the Complainant is dissatisfied with the proposed disposition of his complaint, as stated in the development manager's or other SMHA official's answer, he may submit a written request to the SMHA Central Office or project management or other office at which the complaint was filed for a hearing. This written request shall be made within ten (10) working days of the date of the answer to his complaint. The written request for a formal grievance hearing must be date-stamped and filed in the appropriate SMHA office along with the original complaint and answer. The 3<sup>rd</sup> party formal grievance hearing officer shall be advised, promptly as possible. A date, time and place reasonably convenient to the Complainant and hearing officer will be established and the Complainant will be notified thereof in writing.
2. If the Complainant does not request a hearing within the time period allowed in subsection c. above, he waives his right to the formal grievance hearing, and SMHA's proposed disposition of the grievance will become final.

**D. HEARING OFFICER**

The Executive Director shall appoint a suitable person to be the 3<sup>rd</sup> party hearing officer to hear and determine outcomes in Formal Grievances.

The hearing officer may be a person, with legal training, if possible. Outside appointees shall serve at the pleasure of the Executive Director and may be paid for services on a time basis.

The hearing officer will be informed that they will be expected to disqualify themselves from hearing Formal Grievances that involve personal friends, other residents of developments in which they work or reside, or Formal Grievances in which they have a conflict of interest or some personal interest.

**E. THE FORMAL GRIEVANCE HEARING**

The parties shall be entitled to a fair hearing before the 3<sup>rd</sup> party hearing officer for formal grievances and may be represented by counsel or another person chosen as a representative.

The formal grievance hearing shall be private unless Complainant requests and hearing officer agrees to a public hearing. This shall not be construed to limit the attendance of persons with a valid interest in the proceedings. Any person may be excluded for willful interference with orderly procedure.

The complainant may examine before the hearing, (and at his expense), copy all documents, records and regulations of SMHA that are relevant to the hearing. Any document not made available after the request, therefore by the Complainant, may not be relied on by SMHA or the development manager at the hearing. The Complainant may arrange for the taking and preparation of a transcript of the hearing at his expense.

If the dispute is over the amount of rent or other charges which SMHA claims is due, the Complainant shall deposit the amount in dispute with the Clerk of Courts pending settlement of the dispute by the hearing officer.

If the Complainant fails to appear at a hearing, the hearing officer may postpone the hearing for five working days, or may make a determination that the Complainant has waived his right to the hearing. If postponed, notice of same shall be delivered or mailed to the Complainant. Failure to appear on the date to which the hearing is postponed, shall constitute a waiver of Complainant's right to the hearing.

At the hearing, the Complainant must make a (prima facie case) and then the burden of proof is on SMHA to justify the action or inaction proposed by it in its answer to the Complainant, controvert evidence relied on by SMHA and confront and cross examine all witnesses on whose testimony or information SMHA relies. Any oral or documentary evidence, as limited, however to the facts and issues raised by the complaint and answer, may be received by the hearing officer without regard to whether that evidence would be admissible under the rules of evidence employed in judicial proceedings.

The SMHA will provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the Complainant is visually impaired, any notice to the Complainant which is required under this procedure must be an accessible format.

#### **F. DECISIONS OF THE HEARING OFFICER**

1. If the hearing officer's answer to the formal grievance filed challenges whether a proper grievance under this procedure has been filed, the hearing officer shall first determine that question and enter such finding in the record of the proceeding. He may permit, at that point, the Complainant or his representative to modify the stated complaint to clarify their complaint. If the hearing officer decides no proper grievance under this procedure has been filed, the record of the proceeding shall so state and any monies on deposit for Complainant shall be withdrawn and disbursed to SMHA. The hearing officer may find a formal grievance to be improper, among other reasons for frivolity or by reasons of prior determination of the same of a similar claim of grievance.
2. The decision of the hearing officer shall be based solely and exclusively upon facts presented at the formal grievance hearing and upon applicable SMHA and HUD regulations. To the extent that the decision is not inconsistent with State law, the United States Housing Act of 1937, as amended, HUD regulations and requirements promulgated thereunder, or the Annual Contributions Contract, and to the extent provided in subsection 6. below, the decision of the hearing officer shall be binding. At the request of the established hearing officer, SMHA will provide the hearing officer with a pre-hearing packet prior to the formal grievance hearing being conducted. This pre-hearing packet will contain only information directly relevant to the hearing and information that will be formally presented at the formal grievance hearing.
3. After hearing a formal grievance, the hearing officer shall either find a grievance has been proven or has not been proven. In finding that a grievance has been proven, he shall make specific findings as to:
  - a) Which lease requirements and which of its regulations, policies or procedures SMHA has not acted in accordance with;
  - b) What facts constituted the action or inaction not in accordance with such lease requirements, regulations, policies or procedures.
4. If the hearing officer does not find that a grievance has been proven, all monies deposited on account of the Complainant shall be distributed to SMHA.
5. If the hearing officer does find a grievance has been proven, he may take one or more of the following actions as is appropriate to correct the grievance:
  - a) Order SMHA to furnish a utility, service, repair, maintenance, alteration or improvement;
  - b) Order SMHA to credit Complainant with an abatement of a specific dollar amount of rent for a specified period of time for violation of management obligations;
  - c) Order SMHA to cancel an improper charge to resident's account;

- d) Order SMHA to refund a security deposit to Complainant;
  - e) Order SMHA to repay or to credit Complainant with a disputed amount of rent;
  - f) Order SMHA to adjust rent in accordance with the lease;
  - g) Order SMHA to cancel its notice to Complainant to move to another unit in his development, pursuant to the lease;
  - h) Order SMHA to cancel its notice to move, termination of lease and/or proposed eviction.
  - i) Order SMHA to cease entering Complainant's dwelling unit except pursuant to lease provisions.
  - j) Order SMHA to reverse decision regarding applicant's eligibility and reinstate applicant on the waiting list.
  - k) Recommend another proposed action to SMHA for its approval.
6. If the hearing officer orders the furnishing of a utility, service, repair, maintenance alteration or improvement to a Complainant:
- a) Which would equally apply to other residents similarly situated;
  - b) Which would be covered by funds approved by HUD for SMHA expenditure in its management budget, modernization program funding or development program funding;
7. If both parties agree to prepare a proposed decision, each party shall submit same to the hearing officer for his consideration as he may direct.
8. The hearing officer shall prepare his written decision, including the statement of findings and actions as set forth above. This shall be done within a reasonable time or within 30 days after the date of the formal grievance hearing. Copies thereof shall be mailed or delivered to the parties and/or their representative.
9. If the decision is in favor of the Complainant, SMHA shall promptly take all actions necessary to carry out such a decision or refrain from any action prohibited by such decision unless the Board of SMHA determines and notifies the Complainant, in writing, within 30 days that:
- a) The hearing officer has acted arbitrarily or exceeded his authority; or
  - b) Unless Subparagraph F. above applies.

10. A log of all decisions made by the 3<sup>rd</sup> party hearing officer shall be maintained on file by SMHA and made available for inspection by the hearing officer, a complainant or his representative.
11. Any judicial decision or related settlement pertaining to the decision of the hearing officer shall also be maintained on file by SMHA and made available for inspection.

**G. APPEALS**

A decision by the hearing officer, which is in favor of SMHA and/or denies the Complainant his requested relief in whole or in part, shall not constitute a waiver of, not affect in any manner, whatever rights the Complainant may have to a trial de novo in judicial proceedings which may thereafter be brought in that manner.

**H. NOTICE OF TERMINATION OF LEASE**

Notice of termination of a resident's lease may be given at such time as management determines good cause for termination exists, notwithstanding SMHA's obligations to tell residents of the reasons for proposed eviction and the affording of an opportunity to reply or explain pursuant to Paragraph 10 below or any rights to an informal settlement hearing or formal grievance hearing pursuant to this grievance procedure.

**I. NOTICE TO VACATE PREMISES**

1. At the time of the private conference or other appropriate method of advice of reasons for the proposed eviction required by regulation, the resident must be informed in writing, of:
  - a) The specific reasons for the proposed eviction; and
  - b) His right to request an informal settlement hearing or formal grievance hearing as applicable upon the grounds for the eviction within five (5) working days from the date of the conference or notice.
2. If the resident is entitled to a formal grievance hearing on the proposed eviction and the hearing officer by his decision, upholds SMHA's proposal to evict, and action to regain possession may not be commenced unless the resident's right to use and/or occupy the premises has been terminated by State required statutory notice to vacate. Such notice to vacate may not be given prior to the date on which the hearing officer's decision upholding the proposed eviction is delivered or mailed to the resident unless his rights have been waived under this Grievance Procedure.
3. When such notice to vacate is given to the resident, he must be informed in writing that:
  - a) If he fails to quit the premises within three (3) days, appropriate legal action will be brought against him;

- b) If suit is brought against him, he may be required to pay court costs incurred;
- c) If he chooses to contest the legal action, SMHA or development management must prove that the reasons upon which it originally relied constituted good cause for eviction under the applicable law, rules and regulations.

**J. LIMITATIONS**

Procedures and decisions of the hearing officer shall be valid to the extent that they are not inconsistent with the laws of Ohio, the U.S. Housing Act of 1937, as amended, HUD regulations, or the Annual Contributions Contract.

**K. AMENDMENTS**

The SMHA shall, before amending or changing this Grievance Procedure, provide at least 30-days notice to residents and the Resident Organization of proposed changes in this Grievance Procedure. Within the 30 day period, residents and the Resident Organization may submit written comments to the SMHA. Such written comments shall be considered by the SMHA before adoption of any changes to this Grievance Procedure.

**L. APPEALS BY APPLICANTS**

Applicants who are determined ineligible, who do not meet SMHA's admission standards, or where SMHA does not have an appropriate size and type of unit in its inventory will be given written notification promptly, including the reason for the determination. The written notification will state that the applicant may seek an Informal Settlement Hearing. Applicants are ineligible for a Formal Grievance hearing.

Applicants must submit their request for an Informal Settlement Hearing **in writing** to SMHA within 10 working days from the date of the notification of their ineligibility. SMHA will then provide an Informal Hearing within 15 working days of receiving the applicant's request. SMHA will notify the applicant of the place, date, and time of the hearing.

Informal Hearings will be conducted by an impartial person that is not the person who made the determination of ineligibility or a subordinate of that person.

The applicant may bring to the hearing any documentation or evidence s/he wishes. The applicant's information, along with data compiled by SMHA, will be considered by the person conducting the informal settlement hearing. A determination will be made based upon the merits of the evidence presented by both sides.

Within 10 working days of the date of the Informal Hearing, the individual that conducted the informal settlement hearing will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

**M. SPECIAL HEARING AND APPEAL PROVISIONS FOR APPLICANTS NOTIFIED OF INELIGIBILITY BASED ON "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS"**

Assistance to a family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on an Immigration and Naturalization Service (INS) appeal.

**INS Determination of Ineligibility [24 CFR 912.9(e)]**

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, SMHA will notify the applicant within 10 working days of their right to appeal to the INS. The family will have 30 days from the date of SMHA's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating in writing directly to the INS. The family must provide SMHA a copy of the written request for appeal, and proof of mailing. For good cause shown, SMHA shall grant the family an extension of the time within which to request an appeal.

Documentation to be submitted to the INS as apart of an appeal to the INS:

1. Copy of original Form G-845S received from INS annotated at the top center in bold print: **HUD APPEAL**.
2. Include two stamped envelopes, one addressed to the applicant and one addressed to SMHA.
3. Attach any and all documentation available to support the reason or basis for the appeal. This should include legible copies of both sides of Form G-845S.

The INS will issue the results of the appeal to the family, with a copy to SMHA, within 30 days of its receipt. If, for any reason, the INS is unable to issue a response within the 30-day time period, the INS will inform the family and SMHA of the reason for delay.

When SMHA receives a copy of the INS response, SMHA will notify the family of its right to request an Informal Hearing on SMHA's ineligibility determination in accordance with the procedures outlined in "Section B. Appeals by Applicants."

If the person conducting the informal settlement hearing decides that the individual is not eligible, and there are no other eligible family members SMHA will:

1. Deny the applicant family, or
2. Defer termination if the family is a participant and qualifies for deferral, or
3. Terminate the participant if the family does not qualify for deferral.



If there are eligible members in the family, SMHA will offer to prorate assistance or give the family the option to remove the ineligible members.

A decision against an applicant under the INS appeal process or SMHA's Informal Hearing does not preclude the applicant from exercising the right to seek redress directly through judicial procedures [24 CFR 912.9(g)].

All other complaints related to eligible citizen/immigrant status:

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide documentation and/or certification.

Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to either an informal settlement hearing or formal grievance hearing regarding determinations of Tenant Rent and Total Tenant Payment.

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

## **N. EVIDENCE**

The SMHA will use the concept of the preponderance of the evidence as the standard for making all admission, termination, and grievance decisions.

*Preponderance of the evidence* is defined as the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may, or may not, be identical with quantity (the greater number of witnesses).

Consider all evidence. In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

Equally balanced. If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

## **O. DEFINITIONS**

**“Authority”** shall mean the Housing Authority abbreviated also as SMHA.

**“Complainant”** shall mean any Tenant (as defined below) whose grievance is presented to the SMHA in accordance with the requirements presented in this procedure.

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

**“Elements of due process”** shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

- (1) Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
- (2) Right of the Tenant to be represented by counsel;
- (3) Opportunity for the Tenant to refute the evidence presented by the PHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
- (4) A decision on the merits.

**“Hearing Officer”** shall mean a person selected in accordance with 24 CFR Section 966.55 and this procedure to hear grievances and render a decision with respect thereto.

**“Hearing Panel”** shall mean a panel selected in accordance with 24 CFR Section 966.55 and this procedure to hear grievances and render a decision with respect thereto or a system adopted by the SMHA.

**“Tenant”** shall mean the adult person (or persons)(other than a Live-in aide): (1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) Who resides in the unit, and who is the remaining head of the household of the Tenant family residing in the dwelling unit.

**“Grievance”** shall mean any dispute that a Resident may have with respect to any SMHA action, or failure to act, in accordance with the Resident’s lease or SMHA regulations, policies, or procedures that adversely affect the Resident’s rights, duties, welfare, or status with SMHA

**“Request for Hearing”** shall mean a written request filed in accordance with the provisions of the SMHA’s Grievance Policy and Procedures. The Request for Hearing should state the reason for the grievance, and the action or relief sought.

**“Violent Criminal Activity”** shall mean 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.

**“VAWA Activities”** shall mean any act in which the applicant claims they are a victim of domestic violence, dating violence, sexual assault, or stalking.

## Chapter 14

### FAMILY DEBTS TO THE SMHA

#### INTRODUCTION

This Chapter describes the SMHA's policies for the recovery of monies that have been underpaid by families. It describes the methods that will be utilized for collection of monies and the guidelines for different types of debts. It is the SMHA's policy to meet the informational needs of families, and to communicate the program rules in order to avoid family debts. Before a debt is assessed against a family, the file must contain documentation to support the SMHA's claim that the debt is owed. The file must further contain written documentation of the method of calculation, in a clear format for review by the family or other interested parties.

#### TENANT REPAYMENT AGREEMENTS

Tenants are required to reimburse the SMHA if they were charged less rent than required by HUD's rent formula due to the tenant's underreporting or failure to report income. The tenant is required to reimburse the PHA for the difference between the tenant rent that should have been paid and the tenant rent that was charged. This rent underpayment is commonly referred to as retroactive rent. If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new repayment agreement, the SMHA **must** terminate the family's tenancy or assistance, or both. HUD does **not** authorize any PHA-sponsored amnesty or debt forgiveness programs.

All repayment agreements must be in writing, dated, signed by both the tenant and the Property Manager and Supervisor or his/her designee, include the total retroactive rent amount owed, amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. At a minimum, repayment agreements must contain the following provisions:

- a. Reference to the paragraphs in the SMHA lease or Section 8 information packet whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
- b. The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the SMHA.
- c. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
- d. Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.

SMHA is required to determine retroactive rent amount as far back as the SMHA has documentation of family reported income.

When families owe money to the SMHA, the SMHA will make every effort to collect it. The SMHA will use a variety of collection tools to recover debts including, but not limited to:

Requests for lump sum payments

Civil suits

Payment agreements

Collection agencies

Credit bureaus

Income tax set-off programs

**A. PAYMENT AGREEMENT FOR FAMILIES**

A Payment Agreement as used in this Plan is a document entered into between the SMHA and a person who owes a debt to the SMHA. It is similar to a promissory note but contains more details regarding the nature of the debt, the terms of Repayment, any special provisions of the agreement, and the remedies available to the SMHA upon default of the agreement.

When a resident falls behind in rent, owes for damages, or other charges and is unable to pay the balance by the due date, the resident may request a SMHA Repayment be executed. SMHA has the sole discretion of whether to accept such an agreement.

All Repayment Agreements must ensure that the delinquent amount is paid within a period not to exceed 36 months or the term of the current lease, whichever is less. The Repayment Agreement form clearly states a schedule of repayments, due dates for repayments should be the 1<sup>st</sup> of the month.

Failure to comply with the Repayment Agreement terms may subject the resident to eviction proceedings.

Prior to the execution of the Repayment Agreement, the family must pay a minimum of 10% (ten percent) of the balance owed to the property.

Residents are allowed one Repayment Agreement within a 12-month period (the 12 month period will start when the entire balance has been paid to SMHA)

Residents who have previously defaulted on a Repayment Agreement will not be approved to enter into any other Repayment Agreements.

All Repayment Agreements must be in writing and signed by the Property Manager and Supervisor and the head of household/spouse/co-head/ and all signers on the lease (or ex-resident as the case may be).

All future rents must be paid on time or the Repayment Agreement becomes enforceable for payment in full.

The Repayment Agreement will accelerate and become due immediately upon move out of a current resident.

Failure to pay according to the Repayment Agreement and/or failure to make current rent payments on time will make the Repayment Agreement invalid and the debt will accelerate and become due immediately.

No Repayment Agreement will be accepted for the first month rent or for security deposits unless program requirements specifically require this be allowed.

A Repayment Agreement signed by the resident (s) must be approved and signed by a Supervisor before it takes effect. A copy of the signed agreement will be provided to the resident.

The maximum amount for which the SMHA will enter into a Repayment Agreement with a family is \$5,000.

The minimum amount for which SMHA will enter into Repayment Agreement with a family is \$100.

The maximum length of time the SMHA will enter into a payment agreement with a family is 36 Months.

The minimum monthly amount of monthly payment for any payment agreement is \$25.

**Acceptable cause for a Repayment Agreement (back-up documentation required):**

1. Loss of a job in the past 30 days-up to 12-month Repayment plan. Exceptions will be considered on a case-by-case basis and must be approved by the Supervisor or his/her designee.
2. An unexpected medical emergency in the past 30 days – up to 12 months Repayment plan. Exceptions will be considered on a case-by-case basis and must be approved by the Director of Asset Management or his/her designee.
3. Damages caused by misuse and neglect – up to 12 months Repayment agreement. Exceptions will be considered on a case-by-case basis and must be approved by the Supervisor or his/her designee.

4. An approved agency, such as SCDJFS, etc. with verification that the full Repayment will be paid within 60 days – up to 12 months Repayment plan.
5. Documentation that monies will be late due to no fault of resident – up to 2-month Repayment plan.

### **Late Payments**

A Repayment will be considered to be in arrears if:

The Re payment has not been received by the close of the business day in accordance to rent collection policies after which the Repayment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day.

If the family's Repayment agreement is in arrears, the SMHA may:

Require the family to pay the balance in full

Pursue civil collection of the balance due

Terminate tenancy

Grant an extension of 15 days

If the family requests a transfer to another unit and has a Repayment agreement in place and the Repayment agreement is not in arrears:

The family will **not** be permitted to move, except as provided under SMHA authorized extenuating circumstances, VAWA or reasonable accommodation.

There are some circumstances in which the SMHA may not enter into a Repayment agreement. They are:

If the family already has a Repayment agreement in place.

If the SMHA determines that the family has committed program fraud.

If the SMHA determines that the debt, due to fraud or failure to report income, is so large that it would take more than 36 months to repay.

### **Guidelines for Payment Agreements**

Repayment agreements will be executed between the SMHA and the head of household and spouse.

Monthly Repayments may be decreased in cases of hardship with the prior notice of the family, verification of the hardship, and the approval of the Supervisor or his/her designee. In no case will the payment decrease below \$25/month.

### **Additional Monies Owed**

If the family has a Repayment agreement in place and incurs an additional debt to the SMHA:

The SMHA will not enter into more than one Repayment agreement with the same family.

## **B. DEBTS DUE TO FRAUD/NON-REPORTING OF INFORMATION**

HUD's definition of program fraud and abuse is a single act or pattern of actions that constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead.

### **Family Error/Late Reporting**

Families who owe money to the SMHA due to the family's failure to report increases in income will be required to repay in accordance with the guidelines in the Repayment Section of this Chapter.

### **Program Fraud**

Families who owe money to the SMHA due to program fraud will be required to repay in accordance with the guidelines in Section A of this Chapter.

If a family owes an amount which equals or exceeds \$5,000 as a result of program fraud, the SMHA may refer the case for criminal prosecution. SMHA will consider a second incident of non-reporting of required information as deliberate misrepresentation.

### **Payment Procedures for Program Fraud**

Families who commit program fraud or untimely reporting of increases in income will be subject to the following procedures:

The maximum time period for a Repayment agreement will be 36 months.

The minimum monthly Repayment will be \$25.

The amount of the monthly Repayment will be the greater of \$25 or Total Debt divided by total months allowable.



**C. WRITING OFF DEBTS**

Semi-annually, the Finance Director will submit to the Board of Commissioners a list of accounts, including past due rent amount, to be written off because they have been determined to be uncollectible under the following guidelines:

1. The tenant has vacated the unit.
2. They are a current vacated account on the Housing Authorities books and records and stop payment.
3. The former tenant has not made a Repayment within the previous 60 days, nor have they contacted the Housing Authority to make other Repayment arrangements. All attempts to contact the former resident have been unsuccessful.
4. The account has been, or is in the process of being, turned over to a collection agency.

The Housing Authority, in concert with the collection agency and the judicial system, will continue to pursue all reasonable means to collect amounts due after an account is written off. In accordance with HUD guidelines, records will be maintained so that if necessary, the former resident may pay the balance in full prior to being accepted back on the public housing or assisted housing waiting list.

**D. DEBTS OWED BY TENANTS WITH UAPs**

SMHA will counsel families to use the utility reimbursement to satisfy debts owed by tenants.

**E. FORMS**

## **Chapter 15**

### **COMMUNITY SERVICE and SELF SUFFICIENCY REQUIREMENTS** **[24 CFR Part 960 Subpart F and 24 CFR 903.7(l)]**

#### **INTRODUCTION**

The Quality Housing and Work Responsibility Act of 1998 requires that all non-exempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes and other activities which help an individual toward self-sufficiency and economic independence. This is a requirement of the dwelling lease signed with all residents of SMHA.

SMHAHUD issued the PIH 2015-15 notice to assist SMHA's understanding and administration of the mandated Community Service and Self-Sufficiency Requirement (CSSR) and in response to an audit report issued by the Office of Inspector General on February 13, 2015. The Notice addressed:

- Statutory/Regulatory Requirements for Administering CSSR;
- Data Collection and Reporting Requirements;
- Action to take against non-compliant tenants; and,
- Penalties/sanctions against SMHAs housing ineligible households.

**Background:** Section 12(c) [42 U.S.C. Section 1437j] of the United States Housing Act of 1937, as amended on October 12, 1998 by Section 512 (Pub. L. 105-276) of the Quality Housing and Work Responsibility Act of 1998, contained a CSSR that every adult resident of public housing contributes eight hours of community service per month, or participate in an economic self-sufficiency program for eight hours per month. Regulations for the CSSR requirement can be found at 24 CFR Subpart F, 960.600 through 960.609.

On April 7, 2016 HUD issued PIH 2016-06 to allow flexibility when verifying Community Service and Self-certification which was based on the March 8, 2016 final rule in the Federal Register providing programmatic streamlining across several HUD programs. The rule amended a provision in 24 CFR Subpart F, 960.605, to permit, but not require, a PHA to accept resident self-certifications of compliance with the CSSR. The final rule also amended 24 CFR, Subpart F, 960.607 to require a PHA that elects to accept self-certification to notify residents the self-certifications may be subject to third-party verification, and to require PHAs to validate the self-certifications annually. SMHA will exercise the option to accept self-certifications.

#### **Contents of Annual Notification to Residents and Self-Certification**

Residents eligible to complete the CSSR must sign an acknowledgement of their obligation to complete the CSSR annually. This obligation is outlined in more detail in Notice PIH 2015-12.

However, a PHA that elects to permit resident self-certifications must notify the resident of the resident's ability to submit a self-certification. Notifications are provided in in Form Attachments to these policies.

As required in Section 11 of Notice PIH 2015-12, in order to determine compliance with CSSR, at each regularly scheduled rent re-examination, each non-exempt family member presents a signed certification on a form provided by the PHA of CSSR activities performed over the previous twelve (12) months. SMHA has developed a standardized form with places for signature confirmation by supervisors, instructors, or counselors certifying the number of hours contributed. SMHA elects to permit self-certifications and SMHA's developed form includes the following information:

- a statement that the resident has completed the number of hours listed and this statement is subject to penalties of perjury;
- the number of hours and type of activity (community service or self-sufficiency) that the resident completed;
- the name of the organization or person for which the activity was completed;
- the address of the organization or person;
- the phone number of the organization or person; and
- a contact person in the organization or the person for which the activity was completed.

If a resident completes their CSSR obligation for more than one organization or person during the course of a year, the resident must complete one self-certification for each organization or person for which the resident performed the CSSR activity.

**SMHA Policies:** SMHA chooses to accept resident self-certifications of compliance with CSSR and has made updates its CSSR policies prior to accepting resident self-certifications. Further, SMHA understands that when it elects to accept self-certifications, it may only do so prospectively after making necessary policy changes. For residents under lease at the time SMHA amends its policies, SMHA must review annual compliance and obtain third party verification for that lease cycle. However, for any subsequent lease cycles beginning after SMHA has adopted the policy change, SMHA may accept resident self-certifications for those periods. SMHA may not accept resident self-certifications for a tenant subject to a work-out agreement until the resident has completed, and the SMHA has verified through a third party, that the resident has completed the required hours.

**Sampling Methodology and Validation Requirements:** As required by amended 24 CFR Part 960.605, SMHA elects to accept self-certifications must validate of self-certifications with the third-party for whom the resident completed the community service or self-sufficiency activity. The self-certifications SMHA validates must be a statistically valid, random verification. These policies provide the appropriate sampling methodology to be used by SMHA when determining how many self- certifications must be validated annually.

The universe of self-certifications should only include residents that submitted a self-certification, and should not include:

- Residents that are under the age of 18 years or 62 years or older;
- Residents that are exempt;

- Residents for which SMHA receives third party verification of completion with CSSR; and
- Residents that did not complete the required CSSR.

Because the number of residents subject to the CSSR is constantly in fluctuation due to unit turnover, resident employment, etc., SMHA must choose a point in time annually to calculate the universe of self-certifications received during the previous 12 months. However, SMHA does not need to wait until the end of the 12-month period to begin validating self-certifications. For example, SMHA can reasonably determine the expected number of self-certifications to be received throughout the 12-month period may validate the appropriate number of self-certifications during the 12-month period rather than waiting until the end of that time period, subject to any necessary reconciliations once the final universe size is determined.

To validate a self-certification, SMHA must obtain third-party documentation that includes, at a minimum, the name of the organization or person, the number of hours completed by the resident, a signature from the appropriate staff person within the third-party organization or person and that staff person's contact information. Consistent with the written third-party verification techniques outlined in Notice PIH 2010-19, SMHA may accept third-party generated documentation directly from the third-party or from the resident.

**Treatment of Fraudulent Self-Certifications:** In the event SMHA determines a resident has submitted a fraudulent self-certification, SMHA must provide a notice of noncompliance to the resident pursuant to 24 CFR 960.607. If the resident agrees to sign a work-out agreement, SMHA must obtain written third-party documentation of the resident's compliance with the requirements of the workout agreement. Should the resident refuse to enter into a work-out agreement pursuant to the notice of noncompliance, SMHA must take steps to terminate the tenancy of the resident. For more information on this process, see Notice PIH 2015-12.

**HUD Oversight:** SMHA elects to accept self-certifications and must retain the self-certification, any third-party validation, and any information related to fraudulent self-certifications in the resident's file for at least two years from the date the documents are received by SMHA for possible HUD review. As part of HUD's oversight and regulatory review processes, and on a risk basis, HUD may review SMHA's administration of CSSR, resident self-certifications, and SMHA validations.

**Statutory/Regulatory Requirements for Administering CSSR:** Community Service is "The performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities."

Community service volunteer work and economic self-sufficiency requirements mandate that each nonexempt adult household member (18 years or older) shall either contribute 8 hours per month of community service within his or her community or participate in an economic self-sufficiency

program for 8 hours per month (see 24 CFR 960.603(a)). The requirements can also be met by a combination of 8 hours of community service and participation in an economic self-sufficiency program. At least 8 hours of activity must be performed each month (see 24 CFR 960.603(a)) or a total of 96 hours annually.

PHAs may administer qualifying community service and self-sufficiency activities directly, or make the activities available to residents through a contractor or partnership with qualifying organizations (including resident organizations), community agencies, or institutions (see 24 CFR 960.605(b)).

**SMHA requires residents to verify compliance annually, at least 30 days before the expiration of the lease term. Residents may self-certify their compliance with this requirement; however, self-certification may be subject to third party verification.**

**Administrative Provisions:** SMHA must develop a local policy for administration of the CSSR for public housing residents (see 24 CFR 960.605(a)) within the Admissions and Continued Occupancy Policies (ACOP). Elements of the CSSR policy include, but are not limited to, the PHA responsibility to administer the requirement; eligible and non-eligible activities; exemptions from the requirement; and compliance review standards. These elements are described further in this document.

SMHA may administer qualifying community service and self-sufficiency activities directly or make the activities available to residents through a contractor or partnership with qualifying organizations (including resident organizations), community agencies, or institutions (see 24 CFR 960.605(b)). In administering the CSSR, the SMHA may provide names and contacts of agencies offering opportunities for residents, including persons with disabilities, to fulfill their community service obligations. In administering the CSSR, SMHA may choose to coordinate with social service agencies, local schools and human service offices to develop a referral list of names and agency contacts. If the SMHA administers a ROSS or Family Self-Sufficiency program, SMHA may wish to engage the Program Coordinating Committee in this endeavor. SMHA is encouraged to create agreements with local organizations, including faith-based and community organizations, to assist CSSR. Specifically, such agreements would allow local organizations to advertise their programs, assist with transportation, child-care or other barriers to CSSR attainment and verify hours within individual monthly logs. HUD strives to provide maximum flexibility to SMHA to allow successful CSSR implementation without adding excessive costs or administrative burdens (see 24 CFR 960.605(b)).

## **A. GENERAL PROVISIONS**

- 1. Community Services:** Eligible community service activities include, but are not limited to, serving at:
  - A. Local public or nonprofit institutions, such as schools, Head Start Programs, before- or after-school programs, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult daycare programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or

clothes closets (distributing donated clothing);

- B. Nonprofit organizations serving SMHA residents or their children, such as: Boy or Girl Scouts, Boys or Girls Club, 4-H Clubs, Police Activities League (PAL), organized children's recreation, mentoring, or education programs, Big Brothers or Big Sisters, Garden Centers, community clean-up programs, beautification programs;
- C. Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels;
- D. Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods or performing arts;
- E. SMHA housing to improve grounds or provide gardens (so long as such work does not alter the SMHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board, outreach and assistance with SMHA-run self-sufficiency activities including supporting computer learning centers; and,
- F. Care for the children of other residents so parents may volunteer.

SMHA may form policy in regard to accepting community services at profit-motivated entities, acceptance of volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work.

Pursuant to 24 CFR 960.609, SMHA may not substitute community service activity performed by a resident for work ordinarily performed by a SMHA employee. However, residents may do community service on SMHA property or with or through SMHA programs to assist with or enhance work done by a SMHA employee.

**Self-Sufficiency:** Eligible self-sufficiency activities include, but are not limited to:

- A. Job readiness or job training while not employed;
- B. Training programs through local One-Stop Career Centers, Workforce Investment Boards (local entities administered through the U.S. Department of Labor), or other training providers;
- C. Higher education (junior college or college);
- D. Apprenticeships (formal or informal);
- E. Substance abuse or mental health counseling;
- F. Reading, financial and/or computer literacy classes;
- G. English as a second language and/or English proficiency classes;
- H. Budgeting and credit counseling.
- I. Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF).

- J. Employment and Training programs
- K. Homeownership educational programs or seminars (offered by SMHA and other community organizations)
- L. Any kind of class that helps a person move toward economic independence

**CSSR Partnerships:** If SMHA has a ROSS Service Coordinators program or Family Self-Sufficiency (FSS) program, SMHA may coordinate Individual Training and Services Plans (ITSPs) with CSSR. The ITSP is a tool to plan, set goals and track movement towards self-sufficiency through education, work readiness and other supportive services such as health, mental health and work supports. Specific CSSR activities may be included in ITSPs to enhance a person's progress towards self-sufficiency. Regular meetings with SMHA coordinators may satisfy CSSR activities and SMHA Service Coordinators or FSS Program Coordinators may verify community service hours within individual monthly logs.

**Exempt Residents:** SMHA is required to set out in their Admissions and Continuing Occupancy Policy (ACOP) how the SMHA determines if an individual is exempt from the CSSR and the documentation needed to support the exemption. Exemptions for adult residents, as codified at 24 CFR 960.601, include persons who are:

- A. 62 years or older;
- B. 1. Blind or disabled, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. Section 416(i)(1); Section 1382c), and who certify that, because of this disability, she or he is unable to comply with the service provisions of this subpart, or  
2. is a primary caretaker of such individual;
- C. Engaged in work activities for 20 hours per week. In order for an individual to be exempt from the CSSR requirement because he/she is "engaged in work activities," the person must be participating in an activity that meets one of the following definitions of "work activity" contained in Section 407(d) of the Social Security Act (42 U.S.C. Section 607(d)):
  - 1. Unsubsidized employment;
  - 2. Subsidized private-sector employment;
  - 3. Subsidized public-sector employment;
  - 4. Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
  - 5. On-the-job-training;
  - 6. Job-search;
  - 7. Community service programs;
  - 8. Vocational educational training (not to exceed 12 months with respect to any individual);
  - 9. Job-skills training directly related to employment;
  - 10. Education directly related to employment in the case of a recipient who has

- not received a high school diploma or a certificate of high school equivalency;
11. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalency, in the case of a recipient who has not completed secondary school or received such a certificate;
- D. Able to meet requirements under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. Section 601 et seq.) or under any other welfare program of the State in which PHA is located including a State-administered Welfare-to-Work program; or,
- E. A member of a family receiving assistance, benefits, or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. Section 601 et seq.), or under any other welfare program of the State<sup>1</sup> in which the PHA is located, including a State-administered Welfare-to-Work program, and has not been found by the State or other administering entity to be in noncompliance with such a program.
- F. HUD has determined that the Supplemental Nutrition Assistance Program (SNAP) qualifies as a welfare program of the state. Therefore, if a tenant is a member of family receiving assistance under SNAP, and has been found by the administering State to be in compliance with the program requirements, that tenant is exempt from the CSSR.
- G. Is a member of a non-public housing over-income family.

SMHA must describe in its CSSR policy the process to determine which family members are exempt from the requirement, as well as the process for determining any changes to the exempt status of the family member. SMHA provides the family a copy of CSSR policy at initial application and secure certification of receipt as shown in Attachment A, (see 24 CFR 960.605(c)(2)).

SMHA makes the final determination whether to grant an exemption from the community service requirement. If a resident does not agree with the SMHA's determination, the resident may dispute the decision through the SMHA's Grievance Procedures (see 24 CFR Part 966 Subpart B, 24 CFR 960.607(b)).

Each adult member of the household must sign a Community Service Exemption Certification at each annual recertification or if they become an "exempt adult" at any time between recertification that the status should change.

At least 30 days before the annual reexamination and/or lease expiration, the SMHA reviews the exempt or nonexempt status and compliance of family members (see 24 CFR 960.605(c)(3)).

**Resident Responsibilities at Lease Execution or Re-examination:** At lease execution or re-examination, after the effective date of the adopted policy, all adult members (18 or older) of a public housing resident family must:

- A. Provide documentation, if applicable, that they qualify for an exemption; (Documentation provided by the tenant will be used by the SMHA to determine whether the tenant is exempt from the CSSR) and,



- B. Sign a certification that they have received and read the policy and understand that if they are not exempt, failure to comply with the community service requirement will result in nonrenewal of their lease, per 24 CFR 966.4(l)(2)(iii)(D).

When a non-exempt person becomes exempt, it is his or her responsibility to report this to the SMHA and provide documentation. When an exempt person becomes non-exempt, it is his or her responsibility to report this to the SMHA as soon as possible.

**Documentation of CSSR Completion:** SMHA must include in the CSSR policy that exemption/CSSR completion is verified annually by the SMHA. At least 30 days before the annual reexamination and/or lease expiration, the SMHA reviews the exempt or nonexempt status and compliance of non-exempt family members (see 24 CFR 960.605(c)(3)). At each regularly scheduled rent re-examination, each non-exempt family member presents a signed certification on a form provided by the SMHA of CSSR activities performed over the previous twelve (12) months. When allowed, the SMHA will use self-certifications. When required, SMHA must obtain third-party verification of CSSR completion administered through outside organizations. The SMHA has developed a standardized form with places for signature confirmation by supervisors, instructors, or counselors certifying the number of hours contributed. Additional supporting documentation may be requested of the resident to verify CSSR participation or exempt status or if allowed, self-certification. Copies of the certification forms and supporting documentation will be retained in tenant file or community service file.

**B. SMHA REQUIREMENTS OF THE PROGRAM**

1. The eight- (8) hours per month may be either volunteer service or self-sufficiency program activity or a combination of the two.
2. At least eight (8) hours of activity must be performed each month. An individual may skip a month and then double up the following month as long as the 96 hours are performed within the 12month period.
3. Activities must be performed within the community and not outside the jurisdictional area of SMHA.
4. Family obligations

At lease execution or re-examination, all adult members (18 or older) of a public housing resident family must

- 1) Provide documentation that they are exempt from Community Service requirement, if they qualify for an exemption, and;
  - 2) Sign a certification that they have received and read this policy and understand that if they are not exempt, failure to comply with the Community Service requirement will result in non-renewal of their lease.
- At each annual re-examination, non-exempt family members must present a completed documentation form (to be provided by SMHA's recertification area) of activities performed over the previous twelve (12) months, or if allowed by HUD, a self-certification. This form may include places for signatures of supervisors, instructors,

or counselors certifying to the number of hours contributed. If allowed by HUD, the family member may provide self-certification.

- If a family member is found to be noncompliant at re-examination, he/she and the Head of Household will sign an agreement with SMHA to make up the deficient hours over the next twelve- (12) month period or certify that the non-compliant family member is no longer in the household.

5. Change in exempt status:

- If, during the twelve- (12) month period, a non-exempt person becomes exempt, it is his/her responsibility to report this to the management office and provide documentation of such.
- If, during the twelve- (12) month period, an exempt person becomes non-exempt, it is his/her responsibility to report this to the management office. SMHA will provide the person with the Recording/Certification documentation form and a list of agencies in the community that provide volunteer and/or training opportunities.

**C. SMHA OBLIGATIONS**

1. To the greatest extent possible and practicable, SMHA will:
  - Provide names and contacts at agencies that can provide opportunities for residents, including disabled, to fulfill their Community Service obligations. (According to the Quality Housing and Work Responsibility Act, a disabled person who is otherwise able to perform community service is not necessarily exempt from the Community Service requirement).
  - Provide opportunities for volunteer service or self-sufficiency programs.
2. SMHA offices will provide the family with: Community Service Exemption Certification Form; Community Service Compliance Certification Form; Record and Certification of Community Service and Self-Sufficiency Activities Form; and Caretaker Verification for Community Service Exemption Form; and a copy of this policy at initial application and at lease execution.
3. SMHA's Executive Director or their designee will make the final determination as to whether or not a family member is exempt from the Community Service requirement. Residents may use the Grievance Procedure if they disagree with SMHA's determination.
4. Non-compliance of family member. The responsibility for enforcement will be with the SMHA.
  - At least thirty (30) days prior to annual re-examination and/or lease expiration, SMHA will begin reviewing the exempt or non-exempt status and compliance of family members.

- If SMHA finds a family member to be non-compliant, the SMHA will enter into an agreement with the non-compliant member and the head of household to make up the deficient hours over the next twelve- (12) month period.
- If, at the next annual reexamination, the family member still is not compliant, the lease will not be renewed, unless the non-compliant member agrees to move out of the unit and a new lease is signed with the family amending its composition accordingly.
- The family may use the Grievance Procedure to appeal the lease termination, after attending a private conference with the SMHA representative.

**Noncompliant Residents:** SMHA may not evict a family due to CSSR non-compliance. However, if PHA finds a tenant is non-compliant with CSSR, then the SMHA must provide written notification to the tenant of the noncompliance which must include:

- A. A brief description of the finding of non-compliance with CSSR.
- B. A statement that the SMHA will not renew the lease at the end of the current 12-month lease term unless the tenant enters into a written work-out agreement with the SMHA or the family provides written assurance that is satisfactory to the SMHA explaining that the tenant or other noncompliant resident no longer resides in the unit. Such written work-out agreement must include the means through which a noncompliant family member will comply with the CSSR requirement.

The tenant may request a grievance hearing on the SMHA determination, in accordance with 24 CFR Part 966, subpart B, and the tenant may exercise any available judicial remedy to seek timely redress for the SMHA's nonrenewal of the lease because of such determination.

**Enforcement Documentation:** Should a family member refuse to sign a written work-out agreement or fail to comply with the terms of the work-out agreement, SMHA is required to initiate termination of tenancy proceedings at the end of the current 12-month lease (see 24 CFR 966.53(c)) due to the fact that the family is failing to comply with lease requirements. When initiating termination of tenancy proceedings, the SMHA will provide the following procedural safeguards:

- A. Adequate notice to the tenant of the grounds for terminating the tenancy and for non-renewal of the lease;
- B. Right of the tenant to be represented by counsel;
- C. Opportunity for the tenant to refute the evidence presented by the SMHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have; and,
- D. A decision on the merits.

#### **Enforcement Determinations and Documentation**

SMHA is required to initiate due process (see 24 CFR 966.53(c)) against households failing to comply with lease requirements including CSSR. When initiating due process, the following procedural safeguards are required:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
- Right of the tenant to be represented by counsel;
- Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have; and,
- A decision on the merits.

**Sanctions Against PHAs:** Section 6(j)(4)(A) of the United States Housing Act of 1937 provides sanctions against any housing authority failing to comply substantially with any provision of the Act relating to the public housing program. Sanctions include, but are not limited to, terminating, withholding, or reducing assistance payments. These sanctions are applicable to housing authorities failing to substantially comply with the CSSR requirement.

**D. FORMS**

The following forms shall be used to process and account for community service requirements.

## **CS-01**

### **SMHA Community Service Requirement Policy Summary**

In accordance with recent changes in HUD regulations, non-exempt residents must contribute eight-hours per month of community service. According to our records, you may be required to provide such service. Reproduced below is Section IV.E. Community Service & Self-Sufficiency Requirements from SMHA Leasing & Occupancy Policy, which explains the program in detail. If you feel you are qualified for an exemption, please provide written, signed verification of such claims to your manager. Determination of non-exempt status and compliance are subject to SMHA standard grievance procedures.

#### **A. COMMUNITY SERVICE AND SELF-SUFFICIENCY**

Each non-exempt adult resident (defined below) who is 18 years of age and older must contribute eight (8) hours each month of community service (not including political activities) or participate in an economic self-sufficiency program for (8) hours in each month. A self-sufficiency program includes such activities as education, training, job readiness, counseling, treatment, etc.

#### **DEFINITIONS:**

1. Community Service - The performance of voluntary work or duties in the public benefit that serve to improve the quality of life and/or enhance resident self-sufficiency, or/and increase the self-responsibility of the resident within the community in which the resident resides. Political activity is excluded.
2. Economic Self-Sufficiency Program- Any program designed to encourage, assist, train, or facilitate the economic independence of participants and their families or to provide work for participants. These programs may include programs for job training, employment training, work placement, basic skill training, and education. English proficiency, work fare, financial or household management, apprenticeship and many programs necessary to ready a participant to work (such as substance abuse or mental health treatment.)
3. Exempt adults. Exempt adult family members include the following categories:
  - Persons 62 years of age or older
  - Persons who are vision impaired or persons with disabilities, as defined under Section 216 (I) or 1614 of the Social Security Act (42 USC 416 (I) (1); 1382 c) or who is unable to comply with this section or is a primary caretaker of such an individual.
  - Persons engaged in at least 30 hours of work activities per week (as defined by section 407 (d) of the Social Security Act (42 USC 607 (d), as in effect on and after 7/1/97)
  - Persons meeting the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program.
  - Persons receiving assistance from and in compliance with a State program funded under Part A, title IV of the Social Security Act (42 U.S.C. 601 et. seq.) or under any other welfare program of the state in which the public housing agency is located, including a State-administered welfare to work program, and has not been found by the State or other administering entity to be in noncompliance with such a program.
  - HUD has determined that the Supplemental Nutrition Assistance Program (SNAP) qualifies as a welfare program of the state. Therefore, if a tenant is a member of family receiving assistance under SNAP, and has been found by the administering

State to be in compliance with the program requirements, that tenant is exempt from the CSSR.

- Is a member of a non-public housing over-income family.

The status of exempt adults will be re-verified each year as part of the resident's annual rent recertification, at least 30 days prior to the lease expiration date regarding this requirement. Verification will occur at that time and the status change effective to coincide with the new lease term. At the time of re-verification of status, the resident must also provide written documentation of compliance with this community service requirement. Residents may submit a self-certification of compliance; however, self-certifications are subject to third party verification. Residents who are not in compliance will have 12 months to make up the hours needed to meet the requirement. Continued noncompliance with this provision will result in eviction of the entire family, unless the non-compliant family member is no longer a part of the household. Residents must provide written proof establishing the new permanent residency of the non-compliant family member.

*Please contact your Manager for more information on your responsibility in meeting this requirement or if you have any questions.*

*CS-02*



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Web: [www.starkmha.org](http://www.starkmha.org)



## **Community Service & Self-Sufficiency Requirements Certification of Hours Worked- (may self certify)**

HOH's Name: \_\_\_\_\_ HH Member Completing Hours: \_\_\_\_\_

I certify that I have completed the hours listed below in order to comply with the Community Service and Self Sufficiency Requirements (CSSR). I understand that should I fail to provide third party verification of the hours worked and self-certify as to my compliance, my self-certification is still subject to SMHA completing third party verification. I understand that I must complete one form for each organization I performed CSSR hours at.

| Date Worked | # of Hours Worked | Community Service or Self Sufficiency                   | Organization | Address | Phone Number | Contact Person Name/Signature |
|-------------|-------------------|---|--------------|---------|--------------|-------------------------------|
|             |                   | <input type="checkbox"/> CS <input type="checkbox"/> SS |              |         |              |                               |
|             |                   | <input type="checkbox"/> CS <input type="checkbox"/> SS |              |         |              |                               |
|             |                   | <input type="checkbox"/> CS <input type="checkbox"/> SS |              |         |              |                               |
|             |                   | <input type="checkbox"/> CS <input type="checkbox"/> SS |              |         |              |                               |
|             |                   | <input type="checkbox"/> CS <input type="checkbox"/> SS |              |         |              |                               |
|             |                   | <input type="checkbox"/> CS <input type="checkbox"/> SS |              |         |              |                               |

☐ Please accept the signature(s) from the contact person above as my third party verification of compliance with CSSR hours worked.

☐ Please accept my signature below as my self-certification of my compliance with CSSR. I understand that this self-certification is subject to SMHA third party verification with the contact person listed above.

I understand that falsification of this form and/or fraudulently reporting hours is subject to penalties of perjury and termination of tenancy.

Signature

Date

CS-03



400 East Tuscarawas Street Canton, Ohio 44702-1131  
Phone: (330) 454-8051 Fax: (330) 454-8065  
TDD: (330)454-9404

Web: [www.starkmha.org](http://www.starkmha.org)



## Community Service Certification of Understanding of Policy

**I have received and read SMHA's Community Service Requirement Policy. I understand that as a resident of public housing, I am required by law to contribute 8 hours per month (96 hours over the course of every 12 month period) of community service or participate in an economic self-sufficiency program. I further understand that if I am not exempt, failure to comply with Community Service and Self Sufficiency Requirements is grounds for lease nonrenewal.**

**I have received the SMHA Community Service Certificate of Hours Worked to bring back completed at my next annual re-certification (if applicable). I understand that I may submit this form as a self-certification of compliance with the CSSR and that my self-certification of compliance is subject to validation with the organization(s) for which I completed the required hours.**

**My signature below certifies that I have received notice of this requirement.**

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
SMHA Staff Signature

\_\_\_\_\_  
Date





CS-04  
**Stark Metropolitan Housing Authority**

400 East Tuscarawas Street  
Canton, Ohio 44702-1131

Phone: (330) 454-8051 • FAX: (330) 454-8065  
Web: [www.starkmha.org](http://www.starkmha.org)



Account # \_\_\_\_\_ HOH \_\_\_\_\_

**Community Service & Self Sufficiency Requirement Status  
Certification**

I certify that I am eligible for an exemption from the Community Service requirement for the following reasons:

- ☐ I am 62 or older.
- ☐ I am blind or disabled as defined under 216(i)(1) or 1614 of the Social Security Act or I am the primary caretaker of such an individual.  
*(Receipt of Social Security DISABILITY benefits will serve as documentation.)*
- ☐ I am engaged in work activities **at least 30 hours per week**.  
*(Employment Verification will serve as documentation.)*
- ☐ I am participating in a "Welfare to Work" Program or other self-sufficiency activities as required by a State Agency in order to receive benefits or services and I certify that I am in compliance with their requirements.  
*(Must provide a verification letter from the agency.)*
- ☐ I am a full time student and/or I am a full time participant in a job training program.  
*(Must provide verification from school or job training program attended.)*
- ☐ HUD has determined that the Supplemental Nutrition Assistance Program (SNAP) qualifies as a welfare program of the state. Therefore, if a tenant is a member of family receiving assistance under SNAP, and has been found by the administering State to be in compliance with the program requirements, that tenant is exempt from the CSSR.

I acknowledge that I am not eligible for an exemption from the Community Service requirement:

- ☐ I do not meet the requirements to be exempt from community service and I understand that I must complete 8 hours of community service per month until such time that I may become exempt. I have received and read SMHA's Policy on CSSR. I have received the Certification of Hours Worked form to use for tracking my compliance. I understand that I may submit a self-certification of compliance with the CSSR; however, such self-certification is subject third party verification.

---

Household Member Name      - Print

---

---

Date

---

---

Household Member Signature

---

Date

CS-05



**Stark Metropolitan Housing Authority**

400 East Tuscarawas St.

Canton, OH 44702

PH: 330-454-8051

FX: 330-454-8065

[www.starkmha.org](http://www.starkmha.org)



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**Notice of Non-Compliance of  
Community Service Requirements**

On October 1, 2002, the Stark Metropolitan Housing Authority re-instated the HUD policy wherein certain residents are required to perform community service to remain in compliance with their lease.

This letter is to serve as your notification that the following family member is not in compliance with this policy:

\_\_\_\_\_

The family member is not in compliance due to the following reason:

\_\_\_\_\_

The Stark Metropolitan Housing Authority will not renew your lease at the end of your twelve month lease term unless:

- A. The head of household and the non-compliant family member enter into a written agreement with the Stark Metropolitan Housing Authority, to cure such non-compliance by agreeing to complete the additional hours of community service or economic self-sufficiency activity needed to make up the total number of hours required over the twelve-month term of the lease or;
- B. The resident provides written proof establishing a new permanent residency for the non-compliant family member.

You must submit the information requested above to correct the Non-Compliance of Community Service Requirement by the following date or your lease will not renew: \_\_\_\_\_

You may request an informal grievance hearing regarding this notice by submitting your request in writing within ten (10) days from the receipt of this notice. Please address your letter to SMHA, Attn: PH Hearing Requests, 400 E. Tuscarawas St., Canton, OH 44702. Participants with disabilities have the right to request reasonable accommodations in order to participate in the informal hearing process.

Please contact your manager if you have any questions or concerns regarding this notice.

Sincerely,

SMHA Management

CS-06



**Stark Metropolitan Housing Authority**

400 East Tuscarawas St.

Canton, OH 44702

PH: 330-454-8051

FX: 330-454-8065

[www.starkmha.org](http://www.starkmha.org)



Account # \_\_\_\_\_

**Repayment Agreement of First Year Community Service Hours  
To be Completed During Second Year**

I/We understand that I/We have not complied with the requirements of SMHA's Community Service/Self Sufficiency Policy, and that in accordance with that policy; I/We have until my/our next annual recertification to complete all **past** and **current** service requirements.

I/We understand that this is a requirement of the Quality Housing and Work Responsibility Act of 1998 and that if we do not comply with this requirement my/our lease will not be renewed.

I/We have received the SMHA Community Service Certificate to be completed and returned at my/our next annual recertification.

I/We have received a copy of and have read and understand the contents of SMHA's Community Service/Self Sufficiency Policy.

I/We agree to provide written documentation of having completed the \_\_\_\_\_ hours of community service or economic self-sufficiency activity needed to comply with the Community Service/Self Sufficiency Policy by:

\_\_\_\_\_

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
SMHA Staff Signature

\_\_\_\_\_  
Date



## **Chapter 16**

### **PROGRAM INTEGRITY**

#### **INTRODUCTION**

SMHA is committed to assure that the proper level of benefits is paid to all tenants, and that housing resources reach only income-eligible families so that program integrity can be maintained.

SMHA will take all steps necessary to prevent fraud, waste, and mismanagement so that program resources are utilized judiciously.

This Chapter outlines the SMHA's policies for the prevention, detection and investigation of program abuse and tenant fraud.

#### **A. CRITERIA FOR INVESTIGATION OF SUSPECTED ABUSE AND FRAUD**

Under no circumstances will SMHA undertake an inquiry or an audit of a tenant family arbitrarily or retaliatory. SMHA's expectation is that tenant families will comply with HUD requirements, provisions of the lease, and other program rules. SMHA staff will make every effort (formally and informally) to orient and educate all families in order to avoid unintentional violations. However, SMHA has a responsibility to HUD, to the Community, and to eligible families in need of housing assistance, to monitor tenants' lease obligations for compliance and, when indicators of possible abuse come to SMHA's attention, to investigate such claims.

SMHA will initiate an investigation of a tenant family only in the event of one or more of the following circumstances:

Referrals, Complaints, or Tips. SMHA will follow up on referrals from other agencies, companies or persons which are received by mail, e-mail, or in person, which allege that a tenant family is in non-compliance with, or otherwise violating the lease or the program rules. Such follow-up will be made providing that the referral contains at least one item of information that is independently verifiable. A copy of the allegation will be retained in the tenant file.

Internal File Review. A follow-up will be made if SMHA staff discovers (as a function of a [re]certification, an interim redetermination, or a quality control review), information or facts which conflict with previous file data, SMHA's knowledge of the family, or is discrepant with statements made by the family.

Verification or Documentation. A follow-up will be made if SMHA receives independent verification or documentation which conflicts with representations in the tenant file (such as public record information or credit bureau reports, reports from other agencies).

#### **B. STEPS SMHA WILL TAKE TO PREVENT PROGRAM ABUSE AND FRAUD**

The management and occupancy staff will utilize various methods and practices (listed below) to prevent program abuse, non-compliance, and willful violations of program rules by applicants and tenant families. This policy objective is to establish confidence and trust in the management by emphasizing education as the primary means to obtain compliance by tenant families.

Things You Should Know: The program integrity bulletin (created by HUD's Inspector General) will be furnished and explained to all applicants to promote understanding of program rules, and to clarify the PHA's expectations for cooperation and compliance.

Program Orientation Session: Mandatory orientation sessions will be conducted by Housing Management for all within a tenant's at the time of initial occupancy. At the conclusion of all Program Orientation Sessions, the family representative will be required to sign a "Program Authorization Checklist" to confirm that all rules and pertinent regulations were explained to them.

Resident Counseling: SMHA will routinely provide tenant counseling as a part of every recertification interview in order to clarify any confusion pertaining to program rules and requirements.

Review and explanation of Forms: SMHA will explain all required forms and review the contents of all (re)certification documents prior to signature.

Use of Instructive Signs and Warnings: Instructive signs will be conspicuously posted in common areas and interview areas to reinforce compliance with program rules and to warn about penalties for fraud and abuse.

Third-Party Verifications: SMHA will use EIV and other third-party verification whenever possible, and if using tenant supplied or other documents for verification purposes, SMHA will document the attempts to obtain third party verification.

### **C. STEPS SMHA WILL TAKE TO DETECT PROGRAM ABUSE AND FRAUD**

SMHA Staff will maintain a high level of awareness to indicators of possible abuse and fraud by assisted families.

Quality Control File Reviews: Prior to initial certification, and at the completion of all subsequent recertifications, each tenant file will be reviewed. Such reviews shall include, but are not limited to:

- Changes in reported Social Security Numbers or dates of birth.
- Authenticity of file Documents.
- Third party and other verifications

- Differences between reported income and expenditures.
- Consistency of signatures with previously signed file documents
- Review of signatures for consistency with previously signed file documents.

Observation: SMHA Management and Occupancy Staff (to include maintenance personnel) will maintain high awareness of circumstances which may indicate program abuse or fraud, such as unauthorized persons residing in the household and unreported income.

Public Record Bulletins may be reviewed by Management and Staff.

State Wage Data Record Keepers: Inquiries to State Wage and Employment record keeping agencies as authorized under Public Law 100-628, the Stewart B. McKinley Homeless Assistance Amendments Act of 1988, may be made annually in order to detect unreported wages or unemployment compensation benefits.

Use of UIV/EIV and Third-Party Computer Matching Verification: SMHA shall use the Enterprise Income Verification and other computer matching systems for the determination of income, and other information that is available through computer matching. SMHA will verify the existence of the families in EIV and use the HUD reports in the system to further confirm accuracy for RIM.

Credit Bureau Inquiries: Credit Bureau inquiries may be made (with proper authorization by the tenant) in the following circumstances:

At the time of final eligibility determination

When a tenant's expenditures exceed his/her reported income, and no plausible explanation is given.

#### **D. SMHA'S HANDLING OF ALLEGATIONS OF POSSIBLE ABUSE AND FRAUD**

SMHA staff will encourage all tenant families to report suspected abuse. All such referrals, as well as referrals from community members and other agencies, will be thoroughly documented and placed in the tenant file. All allegations, complaints and tips will be carefully evaluated in order to determine if they warrant follow-up. The Property Manager or other SMHA staff will not follow up on allegations that are vague or otherwise non-specific. They will only review allegations which contain one or more independently verifiable facts.

File Review: An internal file review will be conducted to determine:

If the subject of the allegation is a tenant of SMHA and, if so, to determine whether or not the information reported has been previously disclosed by the family.



It will then be determined if SMHA is the most appropriate authority to do a follow-up (more so than police or social services). Any file documentation of past behavior as well as corroborating complaints will be evaluated.

Conclusion of Preliminary Review: If at the conclusion of the preliminary file review there is/are fact(s) contained in the allegation which conflict with file data, and the fact(s) are independently verifiable, the Property Manager, Occupancy/Eligibility Specialist, or other appropriate personnel will initiate an investigation to determine if the allegation is true or false.

#### **E. HOW SMHA WILL INVESTIGATE ALLEGATIONS OF ABUSE AND FRAUD**

If SMHA determines that an allegation or referral warrants follow-up, the staff person who is responsible for the file will conduct the investigation. The steps taken will depend upon the nature of the allegation and may include, but are not limited to, the items listed below. In all cases, SMHA will secure written authorization from the program participant for the release of information.

Credit Bureau Inquiries: In cases involving previously unreported income sources, a CBI inquiry may be made to determine if there is financial activity which conflicts with the reported income of the family.

Verification of Credit: In cases where the financial activity conflicts with file data, a Verification of Credit form may be mailed to the creditor in order to determine the unreported income source.

Employers and Ex-Employers: Employers or ex-employers may be contacted to verify wages which may have been previously undisclosed or misreported.

Neighbors/Witnesses: Neighbors and/or other witnesses may be interviewed who are believed to have direct or indirect knowledge of facts pertaining to SMHA's review.

Other Agencies: Investigators, caseworkers or representatives of other benefit agencies may be contacted.

Public Records: If relevant, SMHA will review public records kept in any jurisdictional courthouse. Examples of public records which may be checked are: real estate, marriage, divorce, uniform commercial code financing statements, voter registration, judgments, court or police records, state wage records, utility records and postal records.

Interviews with Head of Household or Family Members: SMHA will discuss the allegation (or details thereof) with the Head of Household or family member by scheduling an appointment at the appropriate PHA office. A high standard of courtesy and professionalism will be maintained by the SMHA Staff Person who conducts such interviews. Under no circumstances will inflammatory language, accusation, or any unprofessional conduct or language be tolerated by the management. If possible, an additional staff person will attend such interviews.

**F. PLACEMENT OF DOCUMENTS, EVIDENCE AND STATEMENTS OBTAINED BY SMHA**

Documents and other evidence obtained by SMHA during the course of an investigation will be considered "work product" and will either be kept in the tenant file, or in a separate "work file." In either case, the tenant file or work file shall be kept in a locked file cabinet. Such cases under review will not be discussed among SMHA Staff unless they are involved in the process or have information which may assist in the investigation.

**G. CONCLUSION OF SMHA'S INVESTIGATIVE REVIEW**

At the conclusion of the investigative review, the reviewer will report the findings to his/her supervisor or designee. It will then be determined whether a violation has occurred, a violation has not occurred, or if the facts are inconclusive.

**H. EVALUATION OF THE FINDINGS**

If it is determined that a program violation has occurred, SMHA will review the facts to determine:

- The type of violation (Procedural, non-compliance, fraud).
- Whether the violation was intentional or unintentional.
- The amount of money (if any) that is owed by the tenant.
- Is the family eligible for continued occupancy.

**I. ACTION PROCEDURES FOR VIOLATIONS WHICH HAVE BEEN DOCUMENTED**

Once a program violation has been documented, SMHA will propose the most appropriate remedy based upon the type and severity of the violation.

**Procedural Non-compliance**

This category applies when the tenant "fails to" observe a procedure or requirement of SMHA, but does not misrepresent a material fact, and there is no retroactive rent owed by the family.

Examples of non-compliance violations are:

- Failure to appear at a pre-scheduled appointment.
- Failure to return verification in time period specified by SMHA.

Warning Notice to the Family. In such cases a notice will be sent to the family which contains the following:

- A description of the non-compliance and the procedure, policy or obligation which was violated.
- The date by which the violation must be corrected, or the procedure complied with.
- The action which will be taken by SMHA if the procedure or obligation is not complied with by the date specified by SMHA.
- The consequences of repeated (similar) violations.

**Procedural Non-compliance - Retroactive Rent**

When the tenant owes money to SMHA for failure to report changes in income or assets, SMHA will issue a Notification of Underpaid Rent. This Notice will contain the following:

- A description of the violation and the date(s).
- Any amounts owed to the SMHA.
- The number of days within which a response must be received.
- The right to disagree and to request an informal hearing with instructions for the request of such hearing.

Tenant Fails to Comply with SMHA's Notice. If the Tenant fails to comply with SMHA's notice, and a material provision of the lease has been violated, SMHA will initiate termination of tenancy.

Tenant Complies with SMHA's Notice. When a tenant complies with SMHA's notice, the staff person responsible will meet with him/her to discuss and explain the obligation or lease provision which was violated. The staff person will document to the tenant file that the tenant has complied.

**Intentional Misrepresentations**

When a tenant falsifies, misstates, omits or otherwise misrepresents a material fact which results (or would have resulted) in an underpayment of rent by the tenant, SMHA will evaluate whether or not:

- the tenant had knowledge that his/her actions were wrong, and
- that the tenant willfully violated the lease or the law.

Knowledge that the action or inaction was wrong. This will be evaluated by determining if the tenant was made aware of program requirements and prohibitions. The tenant's signature on various certifications, briefing certificate, Personal Declaration and *Things You Should Know* are

adequate to establish knowledge of wrong-doing.

The tenant willfully violated the law. Any of the following circumstances will be considered adequate to demonstrate willful intent:

- An admission by the tenant of the misrepresentation.
- That the act was done repeatedly.
- If a false name or Social Security Number was used.
- If there were admissions to others of the illegal action or omission.
- That the tenant omitted material facts which were known to them (e.g., employment of self or other household member).
- That the tenant falsified, forged or altered documents.
- That the tenant uttered and certified to statements at a rent (re)determination which were later independently verified to be false.

**The Tenant Conference for Serious Violations and Misrepresentations**

When SMHA has established that material misrepresentation(s) have occurred, a Tenant Conference will be scheduled with the family representative and the SMHA staff person who is most knowledgeable about the circumstances of the case.

This conference will take place prior to any proposed action by SMHA. The purpose of such conference is to review the information and evidence obtained by SMHA with the tenant, and to provide the tenant an opportunity to explain any document findings which conflict with representations in the tenant file. Any documents or mitigating circumstances presented by the tenant will be taken into consideration by SMHA. The tenant will be given 5 working days to furnish any mitigating evidence.

A secondary purpose of the Tenant Conference is to assist SMHA in determining the course of action most appropriate for the case. Prior to the final determination of the proposed action, SMHA will consider:

- The duration of the violation and number of false statements.
- The tenant's ability to understand the rules.
- The tenant's willingness to cooperate, and to accept responsibility for his/her actions.
- The amount of money involved.

- The tenant's past history.
- Whether or not criminal intent has been established.
- The number of false statements.

**Dispositions of Cases Involving Misrepresentations**

In all cases of misrepresentations involving efforts to recover monies owed, SMHA may pursue, depending upon its evaluation of the criteria stated above, one or more of the following actions:

Criminal Prosecution: If SMHA has established criminal intent, and the case meets the criteria for prosecution, SMHA may:

Refer the case to the local state or district attorney, notify HUD's regional inspector general for investigation (RIGI), and terminate rental assistance.

Administrative Remedies: SMHA may:

- Terminate tenancy and demand payment of restitution in full.
- Terminate tenancy and execute an administrative repayment agreement in accordance with the SMHA's Repayment Policy.
- Permit continued occupancy at the correct rent and execute an administrative repayment agreement in accordance with SMHA's Repayment Policy.

**Notification to Tenant of Proposed Action**

SMHA will notify the tenant of the proposed action no later than 10 working days after the tenant conference by mail.

## **Chapter 17**

### **CRIMINAL RECORDS and RECORDS MANAGEMENT POLICY**

#### **INTRODUCTION**

In the course of its regular operations, SMHA comes into possession of criminal records and other records, as well as other documents related to criminal offenses of applicants (i.e. drug and alcohol abuse treatment documentation). While necessary to accomplish Housing Authority business, these records must be maintained securely and kept from improper use.

The Housing Authority may also be called upon to perform criminal record and other record checks regarding applicants or tenants for housing that receives federal assistance from SMHA. SMHA shall maintain the records received for these residents or applicants in the manner prescribed in this policy.

#### **A. ACQUISITION**

All adult applicants shall complete the required forms authorizing the release of their criminal record history to the Authority upon applying for housing, or at any time an existing resident household wishes to add an adult member to the lease. Through its cooperative agreement with local law enforcement, a check of police records will be made. This check is done for the purpose of screening adult applicants for housing and determining continued eligibility.

All requests for criminal records and records relating to criminal history shall be sent to the designated Occupancy/Eligibility Specialist for initial review. Only the designated Leasing/Occupancy Specialists, Director of Property Management, Supervisor of Property Management, Legal Counsel, Executive Director or Designee, and the Hearings Officer, shall have access to these records.

SMHA maintains tenant files electronically- however, SMHA does provide for limited access for those that need to know. The designated staff and Hearing Officer shall discuss the records with other Authority employees only as required to make a housing decision.

#### **B. MAINTENANCE**

The Authority will keep all criminal records or records relating to criminal history that are received confidential. These records will be used only to screen applicants for housing and/or to pursue evictions. The records will not be disclosed to any person or entity except for official use in the application process, Hearing process, in accordance with the regulations, and/or in court proceedings. No copies will be made of the records except as required for official or court proceedings.

Criminal records or records relating to criminal history status are maintained in a separate file from other application or eviction information. These files are maintained in locked cabinetry in a secured office with limited access. The designated staff are the only employees having access to the cabinet or electronic information.

### **C. DISPOSITION**

The records shall be destroyed immediately upon determination of applicant leasing the unit and becoming a tenant. If contested, the records shall be retained until all issues are resolved. In the event eligibility is denied, the records shall be destroyed at the conclusion of 60 calendar days, such time affording the applicant or resident the opportunity for a Hearing. The 60 calendar days may be extended in order to complete an action underway (i.e. Hearing, court proceeding), but the record shall be destroyed upon finalization of the action. Denial for housing requires the SMHA to keep the record for three (3) years from date of denial.

### **D. PRIVACY PROTECTION on RECORDS (PIH 2015-06)**

#### **Overview**

SMHA is responsible for safeguarding personally identifiable information (PII) required by HUD and preventing potential breaches of this sensitive data. SMHA and HUD is committed to protecting the privacy of individuals' information stored electronically or in paper form, in accordance with federal privacy laws, guidance, and best practices. HUD expects SMHA and other parties who collect, use, maintain, or disseminate HUD information to protect the privacy of that information in accordance with applicable law.

General HUD program requirements are set forth in 24 C.F.R. Part 5. Compliance with the Privacy Act and other requirements for grants and contracts is spelled out in 24 C.F.R. § 5.212 which states:

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

ii) *Privacy Act Notice.* All assistance applicants shall be provided with a Privacy Act notice at the time of application. All participants shall be provided with a Privacy Act notice at each annual income recertification. The Federal Acquisition Regulation (FAR), 48 C.F. R. Subpart 1524.1, sets forth that compliance with the requirements of the Privacy Act be included in HUD contracts at clause 52.224-2.

## **Personally Identifiable Information (PII)**

The PII is defined in OMB M-07-16 as “. . . information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

## **Sensitive Personally Identifiable Information**

Sensitive Personally Identifiable Information is defined as PII that when lost, compromised or disclosed without authorization could substantially harm an individual. Examples of sensitive PII include social security or driver’s license numbers, medical records, and financial account numbers such as credit or debit card numbers.

## **Guidance on Protecting Sensitive Privacy Information**

The Privacy Act requires that federal agencies maintain only such information about individuals that is relevant and necessary to accomplish its purpose. The Privacy Act also requires that the information be maintained in systems or records – electronic and paper – that have the appropriate administrative, technical, and physical safeguards to protect the information, however current. This responsibility extends to contractors and SMHA, who are required to maintain such systems of records by HUD.

SMHA will take the following steps to help ensure compliance with these requirements:

### **i) Limit Collection of PII**

(1) Do not collect or maintain sensitive PII without proper authorization. Collect only the PII that is needed for the purposes for which it is collected.

### **ii) Manage Access to Sensitive PII**

(1) Only share or discuss sensitive PII with those personnel who have a need to know for purposes of their work. Challenge anyone who asks for access to sensitive PII for which you are responsible.

(2) Do not distribute or release sensitive PII to other employees, contractors, or other third parties unless you are first convinced that the release is authorized, proper and necessary.

(3) When discussing sensitive PII on the telephone, confirm that you are speaking to the right person before discussing the information and inform him/her that the discussion will include sensitive PII.



- (4) Never leave messages containing sensitive PII on voicemail.
- (5) Avoid discussing sensitive PII if there are unauthorized personnel, contractors, or guests in the adjacent cubicles, rooms, or hallways who may overhear your conversations.
- (6) Hold meetings in a secure space (i.e., no unauthorized access or eavesdropping possible) if sensitive PII will be discussed and ensure that the room is secured after the meeting.
- (7) Treat notes and minutes from such meetings as confidential unless you can verify that they do not contain sensitive PII.
- (8) Record the date, time, place, subject, chairperson, and attendees at any meeting involving sensitive PII.

iii) Protect Hard Copy and Electronic Files Containing Sensitive PII

- (1) Clearly label all files containing sensitive PII by placing appropriate physical labels on all documents, removable media such as thumb drives, information systems, and applications. Examples of appropriate labels might include **“For Official Use Only”** or **“For (Name of Individual/Program Office) Use Only.”**
- (2) Lock up all hard copy files containing sensitive PII in secured file cabinets and do not leave them unattended.
- (3) Protect all media (e.g., thumb drives, CDs, etc.) that contain sensitive PII and do not leave unattended. This information should be maintained either in secured file cabinets or in computers that have been secured.
- (4) Keep accurate records of where PII is stored, used, and maintained.
- (5) Periodically audit all sensitive PII holdings to make sure that all such information can be readily located.
- (6) Secure digital copies of files containing sensitive PII. Protections include encryption, implementing enhanced authentication mechanisms such as two factor authentication and limiting the number of people allowed access to the files.
- (7) Store sensitive PII only on workstations that can be secured, such as workstations located in areas that have restricted physical access.

iv) Protecting Electronic Transmissions of Sensitive PII via fax, email, etc.

(1) When faxing sensitive PII, use the date stamp function, confirm the fax number, verify that the intended recipient is available, and confirm that he/she has received the fax. Ensure that none of the transmission is stored in memory on the fax machine, that the fax is in a controlled area, and that all paper waste is disposed of properly (e.g., shredded). When possible, use a fax machine that uses a secure transmission line.

(2) Before faxing PII, coordinate with the recipient so that the PII will not be left unattended on the receiving end.

(3) When faxing sensitive PII, use only individually-controlled fax machines, not central receiving centers.

(4) Do not transmit sensitive PII via an unsecured information system (e.g., electronic mail, Internet, or electronic bulletin board) without first encrypting the information.

(5) When sending sensitive PII via email, make sure both the message and any attachments are encrypted.

(6) Do not place PII on shared drives, multi-access calendars, the Intranet, or the Internet.

**v) Protecting Hard Copy Transmissions of Files Containing Sensitive PII**

(1) Do not remove records about individuals with sensitive PII from facilities where HUD information is authorized to be stored and used unless approval is first obtained from a supervisor. Sufficient justification, as well as evidence of information security, must be presented.

(2) Do not use interoffice or translucent envelopes to mail sensitive PII. Use sealable opaque solid envelopes. Mark the envelope to the person's attention.

**vi) Records Management, Retention and Disposition**

(1) Follow records management laws, regulations, and policies applicable within your jurisdiction.

(2) Ensure all SMHA locations and all entities acting on behalf of the Authority are managing records in accordance with applicable laws, regulations, and policies.

(3) Include records management practices as part of any scheduled oversight protocols.

(4) Do not maintain records longer than required.

(5) Destroy records after retention requirements are met.

(6) Dispose of sensitive PII appropriately – use cross-cut shredders or burn bags for hard copy records and permanently erase (not just delete) electronic records.

vii) Incident Response

(1) Supervisors should ensure that all personnel are familiar with reporting procedures.

(2) Promptly report all suspected compromises of sensitive PII related to HUD programs and projects to the Director of Housing Management.

## **Chapter 18**

### **SECURITY DEPOSITS**

#### **INTRODUCTION**

Tenant security deposits are required to minimize collection losses and to encourage tenants to leave their apartments clean and in good condition when they vacate.

#### **A. SECURITY DEPOSIT AMOUNT**

The security deposit for SMHA public housing shall be \$50 or the TTP whichever is higher.

Security deposits will be updated for current residents and any additional amounts will be collected upon execution of a new lease after the effective date of this policy. Payment agreements may be made for the difference of their current deposit and the new amount.

SMHA will not use the security deposit for payment of rent or other charges while the tenant is living in the unit.

#### **B. PAYMENT AGREEMENT**

Generally the entire security deposit is due prior to move-in and at the time of the lease execution. Arrangements may be made to pay the security deposit in more than one payment in cases of hardship. The resident must sign a payment agreement if the entire amount is not paid at the time of move-in.

Families are expected to obtain the funds to pay security deposits from their own resources and/or other private or public sources. The deposit may be paid in up to three monthly installments, with the minimum payment being one-third of the amount and the first installment due at the time of move-in.

#### **C. ADDITIONAL SECURITY DEPOSIT COLLECTION PROCEDURES**

Security Deposits are governed by the terms of the lease, 24CFR's and State Statutes. The SMHA reserves the right to bill a resident's account additional charges if any of the situations below exist or take place within a resident's apartment. This money will be added to the resident's current security deposit. Such deposits may be collected for the following:

- 1) Unauthorized wallpapering.
- 2) Unauthorize painting walls or painting any color other than the original or authorized color.
- 3) If the resident fails a housing inspection due to unsanitary housekeeping or excessive damage to the unit that is beyond normal wear and tear.

If any of the above items are found within a household the resident will be immediately billed fifty dollars (\$50) per room. The SMHA has enacted this change to protect the interest of our housing

stock and to reduce the billable charges due by the resident once they have moved out of SMHA housing.

The security deposit amount will be held by SMHA until the termination of the resident's lease and vacate of the unit by the resident. After vacating and inspection, the security deposit may be returned to the resident if:

- 1) There is no unpaid rent or other charges.
- 2) The unit, exterior surroundings, and all equipment therein is left clean.
- 3) There is no breakage or damage that is not due to normal wear and tear.
- 4) There is no equipment missing.
- 5) The security deposit for cases of unauthorized wallpapering or painting will be fully refundable should the resident restore the unit back to original condition with normal wear and tear accepted.
- 6) A thirty-day (30) written notice is provided to SMHA and the keys to the dwelling are surrendered to the management office.

**Refund of Security Deposit**

SMHA will refund to the Tenant the amount of the security deposit, less any amount needed to pay the cost of:

- Unpaid Rent;
- Damages listed on the Move-Out Inspection Report that exceeds normal wear and tear;
- Other charges under the Lease.

SMHA will provide the tenant or designee identified above with a written list of any charges against the security deposit. If the tenant disagrees with the amount charged to the security deposit, SMHA will provide a meeting to discuss the charges.

SMHA will refund the Security Deposit less any amounts owed, within 30 days after move-out and tenant's notification of new address. The tenant will provide information on where the refund will be sent.

**D. TRANSFER OF SECURITY DEPOSIT**

If a resident transfers, the original security deposit transfers also. The resident will be responsible for payment of any additional security deposit as outlined in the policy. The tenant will also be further billed for any maintenance or other charges beyond the security deposit.

## Chapter 19

### EVICTIION POLICY AND PROCEDURES

#### A. OVERVIEW

The eviction of a resident from Public Housing, Non-Federally Aided, and other federally aided, state aided, or affordable housing program as operated by the SMHA. Eviction is not the preferred method of resolving agency or resident problems. However, when all other reasonable efforts have failed, resident eviction becomes necessary to enforce reasonable rules and regulations of the agency and to ensure that the individual rights of the resident population as a whole are protected.

This eviction policy and procedure IS IN ADDITION TO AND INTENDED TO SUPPLEMENT AND CLARIFY THE ALLOWED GROUNDS FOR EVICTION UNDER THE LEASE(S) and the Admission and Occupancy Policies.

#### B. CAUSES FOR EVICTION

Tenancy may be terminated for **serious and/or repeated** violation of material terms of the lease agreement. The most common causes of lease termination are as follows:

1. Failure to pay rent
2. Failure to pay charges other than rent (maintenance repair costs, late fees, repayment agreements, or other charges as applicable)
3. Drug-related criminal activity on or off SMHA premises
4. Disruptive, violent, or criminal behavior that threatens the health, safety or right to peaceful enjoyment of the premises
5. Unit damage/destruction
6. Failure to maintain the unit in a decent, safe and sanitary condition
7. Assignment of lease, subletting of premises, or providing accommodations for persons not on the lease
8. Failure to appear for scheduled appointments or failure to provide information to management for continued occupancy recertifications ("family obligations")
9. Permitting individuals that are banned from the property to visit, or reside on the property.
10. Over-income for Public Housing

*Note: The above listing is not all inclusive of evictable violations. Violation of any material term of the lease agreement may be grounds for lease termination/eviction.*

Evictions are to be based solely upon documented facts.

**C. DOCUMENTATION AND PROCESSING THE REQUEST FOR EVICTION****Documentation Sources**

The Property Manager or designee prior to filing any action with the Courts shall compile all the necessary documentation regarding the tenant(s) failure to uphold the material terms of the lease. Documentation must clearly support the need for eviction. Documentation must show that all other reasonable efforts to resolve the problem and to enforce the rules and regulations have been made by the Property Manager, and/or other SMHA staff as applicable (i.e. Inspectors, Hearing Officers, Resident Services), **or** that the seriousness of such offense requires immediate action. Documentation may consist of one or more of the following items:

- Proof of arrest or a preponderance of evidence (Note: Conviction of crime is not necessary for eviction)
- Incident Report or other written statement from law enforcement
- Written statements from credible neighbors and/or residents
- Written statements from SMHA staff acting as eye-witnesses
- Photographic evidence
- UPCS Inspection Report, maintenance inspection, maintenance work order
- Prior written warnings from Property Manager (Written warnings must quote the applicable lease provision violated).
- Memorandum of Understanding previously executed with the tenant.

**CAUTION: Attention should be given to the Witness's/Complainant's credibility, motivation, and source(s) of documentation provided.**

Note: In the event that the eviction is for violation of health/safety (commonly referred to as "housekeeping") or for tenant damages, tenants must have been afforded the opportunity to pay the costs for repairs and failed to do so or other follow-up procedures (re-inspections, referral of tenant to outside service agencies for assistance) have failed to remedy the deficiency.

**Presentation of Documentation**

In "packaging" the documentation for presentation to the Supervisor, the program staff Manager shall prepare a statement requesting review of documents for eviction and summarizing the documentation available supporting his/her request to evict setting

forth the reason for the proposed eviction, outlining relevant supporting documentation including dates/times as applicable. The statement shall be attached to the supporting documentation (photographs, Incident Reports, etc.).

The complete tenant file shall be delivered for presentation to the Supervisor with the packaged documents securely placed as the top item on the right-hand side of the tenant file. The Supervisor will review the documentation and the file and will return the file to the program staff with authorization to proceed to evict or will disapprove the file and provide rationale (based on regulation, policy, or current SMHA procedure) for the disapproval and provide to the program staff any recommendation for follow-up or for additional documentation as may be needed.

In no event shall a supervisor approve a request to evict without the packaged documentation (proof of need) or without the complete tenant file (in order to provide opportunity to review past tenant history and past management action).

The Property Manager is authorized to serve the initial notice and to proceed in the action, up to and forward the document to the legal department for filing the legal documents with the Courts as dictated by the appropriate jurisdiction.

#### **D. TYPES OF EVICTION NOTICES AND FILING PROCEDURES**

##### **Non-Payment of Rent**

Notice (*Notice of Charges Due*) shall be served for delinquency of rent. Notice may be served by (a) Personal Service (with Notice delivered personally to Head of Household and witnessed by other SMHA personnel) or certified mail, return receipt requested, (b) Substitute Service (with Notice delivered personally to family member over the age of 18 years), or (c) Conspicuous Service (with Notice adhered to premise door). The Certificate of Mailing shall be retained as proof of service when served through this method.

14-Day Notice or as required by HUD                      Public Housing

Lockout paperwork (*Affidavit of Complaint for Summery Eviction*) shall be filed with the appropriate jurisdictional Court and with the Constable in the event payment is not received in full prior to the Notice deadline.

##### **Processing Fees:**

The resident will be charged a Processing Fee according to the posted Schedule of Charges.

##### **30-Day Notice for Lease Violations**

For general lease violations not inclusive of drug or criminal activity or activity posing an extreme threat to health/safety, a 30-Day Notice is served to the resident household (30-



*Day Notice of Violation of Lease and Intent to Terminate*) citing the provision(s) of the Lease violated.

The 30-Day Notice must be served with the applicable programmatic Grievance Procedure and VAWA information included to the Notice.

The Notice and other provisions may be served by (a) First class or Personal Service or certified mail, return receipt requested, (b) Substitute Service, and (c) Conspicuous Service by posting on the door.

In the event the resident grieves the action (in compliance with the Grievance Procedure or Court), the Eviction is stayed until such time as a decision is rendered or time expired.

In the event the resident does not grieve the action and the Notice period elapses, or, in the event the resident grieves the action and the Hearing or Court results in a recommendation to proceed with the Eviction and the Notice period has elapsed, the Property Manager shall file action with the Court requesting removal of the family and release of the unit (*5 Day Unlawful Detainer*).

In the event the resident does not vacate once the five (5) days have elapsed, the Property Manager shall file for lockout with the appropriate jurisdictional Court.

### **Criminal Activity**

Any person who while a resident of the Authority is found to have engaged in one or more of the following specified criminal offenses or disruptive behaviors on any property owned by the Authority, or in the case of drug-related criminal activity committed any violation whether or not such offense was committed on or off Authority property, the resident, tenant and/or the entire household *shall be evicted* from the Authority dwelling unit. For the purposes of this section, proof of engaging in or committing a prohibited act shall not require a formal court proceeding or conviction, but rather may be based solely upon evidence of arrest for a proscribed act or other competent and reliable evidence tending to suggest that such a criminal offense or prohibited act was committed. The criminal activities and other disruptive behaviors that will result in eviction include:

- Any violation (relating to Homicide)
- Any violation (relating to Assault or Battery)
- Any violation (relating to Sexual Battery)
- Any violation (relating to Lewd and Lascivious Behavior)
- Any violation (relating to Robbery, Car Jacking and Home Invasion Robbery)
- Any violation (relating to Weapons and Explosives)
- Any violation (relating to the Possession, Sale or Distribution of Controlled Substances)
- Any violation (relating to Kidnapping and False Imprisonment)

- Any violation (relating to Burglary and Trespass)
- Any violation (relating to Arson and Criminal Mischief)
- Any violation (relating to Child Abuse)
- Any violation (relating to Threats and Extortion)
- Any violation (relating to Disorderly Intoxication)
- Any violation (relating to Disorderly Conduct and Breach of Peace)
- Any other violation of any state or federal law which contains as an element of the offense the use of force or violence, the possession of a controlled substance, or the presence of a state of intoxication or inebriation.
- Any disruptive or dangerous activity or conduct of a person while on or off Authority property, which is committed while such person is intoxicated or in an inebriated state.

The SMHA will immediately and permanently terminate the tenancy of persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law. "Premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.

### **3-Day Expedited Notice**

3-Day Expedited Notice (*Notice of Violation of Lease with Intent to Terminate*) is served in cases of drug-related criminal activity, criminal activity, or any activity of an extreme nature that pose a threat to the health/safety of others including but not limited to a threat to the safety of staff.

The 3-Day Expedited Notice must be served and the State of Ohio allows due process and therefore no applicable Grievance Procedure is attached or incorporated in the Notice. The Grievance Procedure states that for lease violations involving drug related criminal activity, criminal activity, or any activity of an extreme nature or violence, there is no SMHA grievance granted by the Property Manager or the Hearing Officer. Any response the resident shall make in regard to such Notice shall be made to the court of law in the jurisdiction in which the Notice was issued.

The Notice may be served by (a) posting on the door and certified mail, return receipt requested, The Certificate of Mailing shall be retained as proof of service.

In the event the resident does not vacate the unit within the 3-Day Notice period, the Property Manager shall file action with the Court requesting removal of the family and release of the unit (*3-Day Unlawful Detainer*).

In the event the resident does not vacate the premises once the three (3) days have elapsed under the *Unlawful Detainer*, the Property Manager shall file for lockout with the appropriate jurisdictional Court.

**E. ACCEPTANCE OF PAYMENTS DUE WHILE UNDER EVICTION**

Evictions for Non-Payment: No payments may be accepted by SMHA, its agents or employees, for charges due under the lease agreement (including rent, late fees, maintenance charges, etc.) *except* when payment is for charges in full\*. Acceptance of funds, whether payment in full or partial payment, negates the eviction and halts all eviction actions and process.

\*SMHA will not accept personal or private third-party checks in matters of eviction for non-payment. If the resident desires to cease the eviction action through payment of all charges, payment must be made by money order. (Third party checks are acceptable from known social service agencies.)

Evictions for Other than Non-Payment: No payments may be accepted by SMHA, its agents or employees, for charges due under the lease agreement (including rent, late fees, maintenance charges, etc.) *including* when payment is for full charges. *However*, such payment may be requested to be paid to the Court by either the Court or the lessee and held in escrow pending the outcome of the Court's decision.

**F. DECISIONS OF THE COURT**

In matters of Eviction, all Evictions pursued by SMHA are subject to civil law including evictions for drug-related or criminal activity.

The decisions of the presiding Court shall be considered final in all matters of eviction unless through Administrative Review it is found that staff has erred or other similar mitigating circumstances prevail. In cases wherein the decision of the Court is subject to reversal, the complete file (hardcopy of tenant file, all Eviction documentation) shall be presented to the Executive Director/or Designee for review and decision. Only the Executive Director/or Designee may reverse a decision of the Court and reinstate an Evicted household.

**G. TERMINATIONS PROTECTED BY VAWA**

Criminal Activity directly relating to domestic violence, dating, sexual assault 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 an immediate member of the tenant's family is the **victim** of threatened victim of that domestic violence, dating violence, sexual assault, or stalking.

The SMHA may bifurcate the lease to terminate assistance to remove a lawful occupant or tenant who engages in criminal acts of violence to a family member or others without terminating assistance/evicting victimized lawful occupants.

## **Chapter 20**

### **SMOKE-FREE PUBLIC HOUSING POLICY**

#### **A. INTRODUCTION**

A Final Rule issued by the Department of Housing and Urban Development (HUD), 81 FR 87430, requires the Stark Metropolitan Housing Authority, hereinafter referred to as “SMHA”, to implement a smoke-free policy. This Final Rule improves indoor air quality in the housing; benefits the health of public housing residents, visitors, and SMHA staff; reduces the risk of catastrophic fires; and lowers overall maintenance costs. To comply with this Final Rule, SMHA has developed and hereby implements this Smoke-Free Public Housing Policy, hereinafter referred to as “Policy”.

#### **B. DEFINITION OF PROHIBITED TOBACCO PRODUCTS AND SMOKING**

Prohibited tobacco products are defined as:

- (1) Items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, Vaping, electronic nicotine delivery systems (ENDS), and pipes.
- (2) To the extent not covered by Section (C)(1) above, water pipes (hookahs), and
- (3) Other lighted smoking devices used for burning tobacco or any other plant.

Smoking means inhaling, exhaling, breathing, carrying, or possessing any lighted cigar, cigarette, pipe, other tobacco product, other plant products or similar lighted product in any manner or in any form.

#### **C. RESTRICTED AREAS**

The use of prohibited tobacco products and smoking is prohibited in all public housing living units, interior areas (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as, any exteriors areas, including, but not limited to, the grounds, site, and/or parking or paved areas (owned or operated by SMHA) adjacent to public housing units and administrative office buildings (collectively, “restricted areas”) in which public housing is located. SMHA is a smoke-free campus.

#### **D. DESIGNATED SMOKING AREA**

There are no designated smoking areas. The entire property that houses public housing units and/or administrative buildings are restricted areas. SMHA is considered a smoke free campus.

**E. APPLICATION OF POLICY**

If there is any conflict between this Policy and laws or regulations, the laws and regulations will prevail.

It is the policy of SMHA to fully comply with all Federal, State and local nondiscrimination laws; the Americans with Disabilities Act; and the U. S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity. SMHA shall affirmatively further fair housing in the administration of this Policy.

No person shall, on the grounds of race, color, sex, religion, national or ethnic origin, familial status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Policy.

Upon the Effective Date of the Policy, SMHA will uniformly and promptly enforce the Policy. Violations will be addressed in a timely manner. Smoking violations will be treated like any other violation. Residents shall be liable for smoking-related damages to Public Housing units and all other restricted areas. SMHA may charge Residents for damages to a unit beyond normal wear and tear caused by smoking.

**F. HOUSING AUTHORITY RESPONSIBILITIES**

SMHA is responsible for enforcing the Policy in accordance with the provisions and requirements specified in the Policy, the Lease, and SMHA's Admission and Continued Occupancy Policy.

SMHA is not required to take steps in response to violations of this Policy unless SMHA has knowledge of the violation.

**G. RESIDENT RESPONSIBILITIES**

- (1) To assure that no resident, member of the resident's household, or guest engages in:
  - (a) any smoking of prohibited tobacco products in restricted areas, as described in Section (D) of this Policy, and
- (2) To assure that no other person under the resident's control engages in:

- (a) any smoking of prohibited tobacco products in restricted areas, as described in Section (D) of this Policy.

**H. Lease Enforcement**

Enforcement of the Policy will begin on **April 1, 2018**. SMHA will be responsible for enforcement of the Policy as stated in Section (G) above. Annual Inspections is a tool available to SMHA as a means of monitoring resident compliance with the Policy. It is the responsibility of all residents to notify guests of this Policy. If a resident witnesses someone smoking or smells tobacco smoke that is not in accordance with this Policy, the resident should report the violation or the odor to the property manager as soon as possible. Property managers receiving a report involving a violation of this Policy will take appropriate enforcement action.

**(1) 1<sup>st</sup> Violation**

- (a) SMHA will have an informal meeting with the resident and issue a verbal and written warning referencing the section of the Lease that has been violated.
- (b) SMHA will provide the resident a copy of the Policy, warning notice and cessation materials.
- (c) SMHA will require the resident to sign an Acknowledgement of the Warning and an agreement not to violate the Policy again or face further action.
- (d) SMHA will document the resident file.

**(2) 2<sup>nd</sup> Violation**

- (a) SMHA will send a written warning to the resident citing the section of the Lease that has been violated.
- (b) Resident may be assessed a charge of \$25 for SMHA maintenance to remediate the smoke or associated debris. Further, Resident may be charged the actual expense to repair property damage that beyond normal wear and tear in accordance with the Dwelling Lease.
- (c) SMHA will require the resident to sign an Acknowledgement of 2<sup>nd</sup> Warning and an agreement not to violate the Policy again or face eviction action.
- (d) SMHA will document the resident file.

**(3) 3<sup>rd</sup> Violation**

- (a) SMHA will send a written warning to the resident citing the section of the Lease that has been violated.
- (b) Resident may be assessed a charge of \$50 for SMHA maintenance to remediate the smoke or associated debris. Further, Resident may be charged the actual expense to repair property damage that beyond normal wear and tear in accordance with the Dwelling Lease.

- (c) SMHA will require the resident to sign an Acknowledgement of Final Warning and an agreement not to violate the Policy again or face eviction action.
  - (d) SMHA will document the resident file that this is the final warning.
- (4) **4<sup>th</sup> Violation**
- (a) SMHA will take action to terminate the Lease with a 30 day notice of termination..

**I. Right to Request a Reasonable Accommodation**

Allowing a resident to smoke in a restricted area is not an accommodation that can be granted under HUD's Final Rule.

However, requests for a reasonable accommodation will be further evaluated under section 504 of the Rehabilitation Act of 1973, Title II of the American with Disabilities Act, and the Fair Housing Act. Individualized determinations will be made on a case-by-case basis by SMHA.

**J. Statement that SMHA is not a Guarantor of Smoke-Free Living Environment and Disclaimer**

SMHA's adoption of a smoke-free living environment, and the efforts to designate its properties as smoke free, do not make SMHA the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas nor does it in any way change the standard of care that SMHA would have to a Resident household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. However, SMHA shall take reasonable steps to enforce the smoke- free terms of its Leases/House Rules and this Policy in order to make its properties smoke-free.

SMHA specifically disclaims any implied or express warranties that the building, common areas, or Resident's premises will have any higher or improved air quality standards than any other rental property. SMHA cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke. SMHA's ability to police, monitor or enforce the Policy is dependent in significant part on mandatory compliance by Resident and Resident's guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that SMHA does not assume any higher duty of care to enforce the Policy than any other SMHA obligation under the Lease.



## **Chapter 21**

### **EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE**

#### **INTRODUCTION**

##### **EMERGENCY TRANSFERS**

The Stark Metropolitan Housing Authority (SMHA) is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA), SMHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability of SMHA to honor such request for tenants currently receiving rental assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether SMHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the Department of Housing and Urban Development (HUD), the Federal agency that oversees that Public Housing is in compliance with VAWA.

Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, disability, or age.

#### **A. ELIGIBILITY FOR EMERGENCY TRANSFERS**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer, if:

- The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit;
- The tenant is a victim of a sexual assault, and the sexual assault occurred on the premises within the 90-day period preceding a request for an emergency

transfer.

- A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

## **B. EMERGENCY TRANSFER REQUEST DOCUMENTATION**

To request an emergency transfer, the tenant shall notify SMHA's management office and submit a written request for a transfer to the Central Office or the Management Office.

The tenant's written request for an emergency transfer should include either:

1. A statement expressing why the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under SMHA's program.
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for an emergency transfer.

SMHA may request additional documentation from a tenant in accordance with the documentation policies of HUD's regulations at 24 CFR part 5, subpart L.

Submission of the HUD Form 5383 is considered adequate documentation for VAWA.

## **C. CONFIDENTIALITY**

SMHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives SMHA written permission to release the information, or disclosure of the information is required by law or in the course of an eviction or termination proceeding. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant.

## **D. EMERGENCY TRANSFER TIMING AND AVAILABILITY**

SMHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. SMHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred.

**E. SAFETY AND SECURITY OF TENANTS**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe. The tenant is encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at [https:// www.victimsofcrime.org/our-programs/stalking-resource-center](https://www.victimsofcrime.org/our-programs/stalking-resource-center).

Other local Sources

Police Department

Local Domestic Violence Advocate Groups