

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

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

Part I: Administrative Fee Reserve. This part describes the IHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

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

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a IHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record keeping. This part outlines the privacy rights of applicants and participants and record retention policies the IHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the IHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the IHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

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

The IHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover IHA administrative expenses, the IHA may use these funds for other housing purposes permitted by Federal, State and local law.

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Pursuant to 24 CFR 982.155, PHAs maintain a single administrative fee reserve account for the Housing Choice Voucher (HCV) program. IHA must credit to the Administrative Fee Reserve the total of: (1) the amount by which program administrative fees (paid by HUD for the IHA fiscal year) exceed IHA program administrative expenses for the fiscal year; plus (2) interest earned on the administrative fee reserve. These reserves are referred to as unrestricted net position (UNP) accounts.

Beginning with the Federal Fiscal Year (FFY) 2004 Appropriations Act, use of administrative fee reserves is restricted to activities related to the provision of Section 8 tenant-based assistance, including related development activities. Accordingly, administrative fee reserves from FFY 2004 and subsequent funding periods (referred to as “post-2003” funds) are restricted to HCV activities even though under GAAP it is an “unrestricted” net position. Administrative fee reserves remaining from funding periods prior to the FFY 2004 Appropriations Act (referred to as “pre- 2004” funds) are restricted in use pursuant to 24 CFR 982.155(b)(1). Provisions for post-2003 and pre-2004 are discussed in PIH 2010-7.

This policy does not apply to PHA’s approved for fungibility under a Moving to Work (MTW) agreement or under an agreement for Section 901 Disaster Assistance.

#### **Use of Administrative Fees**

The HCV program regulations at 24 CFR 982.152 provide that IHA administrative fees may only be used to cover costs incurred to perform IHA administrative responsibilities for the program in accordance with HUD regulations and requirements. **During the IHA’s current fiscal year, any administrative fees received in that IHA fiscal year may only be used for this purpose.** When the IHA fiscal year ends, the amount by which the program administrative fees paid by HUD for the IHA fiscal year exceed the IHA program administrative expenses for the fiscal year become administrative fee reserves. The eligible uses of the IHA Administrative Fee Reserve are restricted as set forth below.

Note that if the IHA lacks administrative fee reserves and needs to temporarily supplement the administrative fee provided by HUD with non-Federal, non-restricted funds in order to cover eligible HCV program administrative expenses, the IHA may use subsequent administrative fees to reimburse the source of the non-Federal, non-restricted funding used as the temporary bridge to cover the HCV program administrative expenses. However, HCV administrative fees may never be loaned to another program in order to cover ineligible expenses, regardless of whether the IHA intends to reimburse the HCV program at a later date.

**Pre-2004 Administrative Fee Reserves:** Any administrative fees funded prior to the FFY 2004 Appropriations Act remain subject to the regulatory requirements at 24 CFR 982.155(b)(1), which states:

- *The PHA must use funds in the administrative fee reserve to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses (to the end of the last expiring funding increment under the consolidated ACC), **the PHA***

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**may use these funds for other housing purposes permitted by State and local law. However, HUD may prohibit use of the funds for certain purposes.**

Due to the restrictions imposed by the FFY 2004 and subsequent appropriations, the use of administrative fee reserves for “other housing purposes permitted by State and local law” only applies to pre-2004 administrative fee reserves.

### **Post-2003 Administrative Fee Reserves**

Administrative fees funded from the FFY 2004 Appropriations Acts and subsequent appropriations require that administrative fee reserves provided from these appropriations shall only be used for activities related to the HCV Program, including related development activities. Examples of related development activities could include: unit modifications to HCV units to provide accessibility features or project-based voucher development costs. Any post-2003 administrative fees moved into the administrative fee reserve account at year end may not be used for “other housing purposes permitted by state and local law.”

As provided in 24 CFR 982.155 b(3), if the IHA has not adequately administered HCV requirements, HUD may prohibit use of funds in the administrative fee reserve, and may direct the IHA to use funds in the reserve to improve administration of the HCV program or to reimburse ineligible expenses. Post 2003 administrative fee reserves may not be used for Low-Rent Public Housing (PH) development activities or PH maintenance; may not cover PH funding shortfalls nor be loaned to other IHA programs.

### **General Depository Agreement**

Consistent with the Consolidated Annual Contributions Contract (CACC) IHA must deposit all program funds in accordance with the terms of a General Depository Agreement. The General Depository Agreement Form HUD-51999 is executed between the IHA and the depository. The IHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.

The agreement with the depository institution must provide that if required under a written notice from HUD to the depository: (1) The depository must not permit any withdrawal of deposited funds by the IHA unless withdrawals by the IHA are expressly authorized by written notice from HUD to the depository. (2) The depository must permit withdrawals of deposited funds by HUD. If approved by HUD, the IHA may deposit under the depository agreement monies received or held by the IHA in connection with any contract between the IHA and HUD.

### **Reporting Requirements**

HUD requires IHA to report any unused Administrative Fees as Unrestricted Net Position (equity) in the Financial Assessment Subsystem (FASS) under account 512.4 Unrestricted Net Position, the associated assets net of related liabilities (111 Cash; 131 Investments) should be reported on the Financial Data Schedule as unrestricted. Previously, there was no requirement for IHA to segregate unrestricted net assets as pre-2004 and post-2003. As noted earlier, the IHA may use pre-2004 administrative fees *for other housing purposes permitted by State and local law*; while

post-2003 fees are limited to HCV- related purposes. As a result, this separation requires reconciliation to ensure the proper accounting and use of administrative fees.

In order to track these reserves annually, beginning with the reporting period ending December 31, 2009, IHA must report post-2003 administrative fee reserves separately from pre-2004.

IHA must describe the reconciliation in the comments link showing balances from 2003 and previous years administrative fee reserves separately from amounts held as 2004 and subsequent years administrative fee reserves. This schedule must tie to the balances reflected in FDS Line 512.4 Unrestricted Net Position, for the HCVP.

### **Use of HAP Funds**

HAP funding, which includes restricted net position (RNP), may only be used for eligible HAP needs of rent, family self-sufficient escrow payments or utility reimbursements. **HAP shall not under any circumstances be used for any other purpose, such as to cover administrative expenses or be loaned, advanced or transferred (referred to as operating transfers due to/due from) to other component units or other programs such as Low Rent Public Housing.** Use of HAP for any purpose other than eligible HAP needs is violation of law, and such illegal uses or transfers will result in sanctions and possible breach of the ACC.

In instances where IHA is found to have misappropriated HAP funds by using the funds for any purpose other than valid HAP expenses for units up to the baseline, HUD will require the immediate return of the funds of the HAP. HUD may take action against IHA or any party that has used HAP funds for non-HAP purposes.

Requirements for accounting controls and cash management dictate separate accounting of HCV from public housing funds to avoid co-mingling or improper use of program funds.

### **Sanctions**

Improper use of HAP, RNP funds, administrative fees or administrative fee reserves is a non-compliance action that may be subject to administrative sanctions, possible breach of the ACC or other authorized corrective action.

If the IHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the IHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes. HUD requires the IHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

### **IHA Policy**

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will not exceed \$35,000 per occurrence without the prior approval of the IHA's Board of Commissioners.

## PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

### 16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the IHA to adapt the program to local conditions. This part discusses how the IHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

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

#### IHA Policy

Copies of the payment standard and utility allowance schedules are available for review in the IHA's Administrative office during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

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

### 16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7, PIH 2009-44, PIH 2018-01]

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

The IHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the IHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the IHA may establish a single payment standard amount for the whole FMR area or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the IHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

## Updating Payment Standards

When HUD updates its FMR, the IHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the IHA to make further adjustments if it determines that rent burdens for assisted families in the IHA's jurisdiction are unacceptably high 24 CFR 982.503(g)].

### IHA Policy

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

**Funding Availability:** The IHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The IHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** The rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the IHA will consider increasing the payment standard. In evaluating rent burdens, the IHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** The IHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** The IHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** The IHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** The IHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on the 1<sup>st</sup> day of the next month after the Final FMRs are published by HUD.

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(i.e. If the IHA has already processed reexaminations that will be effective on or after October 1<sup>st</sup>, and the effective date of the payment standards is October 1<sup>st</sup>, the IHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by the IHA at the time the reexamination was originally processed).

### **Exception Payment Standards [982.503(c), PIH 2018-01]**

The IHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

#### IHA Policy

IHA will approve a **HOLD HARMLESS – no reduction in subsidy** for any decrease in payment standards that the housing authority makes effective as long as the voucher family continues to receive voucher assistance in that unit. This means that the higher payment standard that the family was approved for and is no longer available will require the family to not have a decrease in their payment standard % as long as they remain in the unit that the higher payment standard was applied. If the voucher participant moves to another unit, then the payment standard would automatically change to the lower, approved payment standard of IHA at the time of the change in unit.

### **Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii)]**

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

When needed as a reasonable accommodation, the IHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The IHA may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

#### IHA Policy

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

Through third-party verification, the IHA determines that the family is eligible for the reasonable accommodation request;

There is a shortage of affordable units that would be appropriate for the family;

The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

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

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

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

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

### **Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]**

The IHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve the establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

### **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

The IHA-established utility allowance schedule is used in determining family share and IHA subsidy. The IHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the IHA must use normal patterns of consumption for the community as a whole, and current utility rates.



The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the IHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of the tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the IHA about establishing utility allowance schedules.

Section 242 of the 2014 Appropriations Act and HUD streamlining limits the utility allowance payment for tenant-based vouchers to the family unit size for which the voucher is issued, irrespective of the size of the unit rented by the family, with an exemption for families with a person with disabilities.

Under section 242 and streamlining, the utility allowance for a family shall be the lower of:

- (1) The utility allowance amount for the family unit size; or
- (2) The utility allowance amount for the unit size of the unit rented by the family.

However, upon the request of a family that includes a person with disabilities, the IHA must approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation in accordance with HUD's regulations in 24 CFR part 8 to make the program accessible to and usable by the family member with a disability.

### **Air Conditioning**

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

#### IHA Policy

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

### **Reasonable Accommodation**

HCV program regulations require IHA to approve a utility allowance amount higher than shown on the IHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the IHA will approve an allowance for air-conditioning, even if the IHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

The IHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of ten (10) percent or more in any utility rate since the last time the allowance for that utility was revised.

The IHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

### **PHA Actions to Reduce HCV Program Cost**

Some of the actions noted below relate to program compliance issues (e.g., ensuring rents are reasonable, incomes are verified correctly, and utility allowances are accurate). Although IHA must comply with such requirements, regardless of whether the IHA is experiencing financial difficulties, PHAs may take within the context of program requirements to better manage HAP expenses.

Cost-savings measures are optional and have varying degrees of impact on applicant and participant families. The impact of each action should be considered prior to implementation. If an action adversely impacts program participants, particularly a family's rent burden, then the IHA should take all other actions having no impact or less impact on families first, including the use of administrative fee reserves to pay for HAP expenses.

The following is a non-exclusive list of IHA cost savings actions.

#### **a. Family Income Matching/Verification and Other Anti-Fraud Efforts**

PHAs should accelerate efforts concerning income matching and income verification. PHAs could notify families that enforcement action could be taken where underreporting of income is discovered.

#### **b. Ensuring Reasonable Rents**

**IHA** does not have to wait until the HAP contract anniversary date to review owner rents and reduce them if warranted. The IHA must determine whether the rent to the owners a reasonable rent in comparison to renting or other comparable unassisted units in accordance with the regulation at 24 CFR 982.507(b) and the HAP contract. The IHA should ensure that owner rents do not exceed amounts charged for unassisted units in the same building or complex. The initial rent and all rent increases must comply with any State or local rent control limits. Further, any owner leasing promotions for unassisted tenants (e.g., the initial two months of occupancy are "rent free") must be taken into consideration in determining rent reasonableness.

In accordance with the HAP contract, the IHA must provide written notice to owners before reducing unreasonable rents. Rents may be reduced as early as the first of the following month. If the rent to the owner is not reasonable as most recently determined by the IHA, the owner must reduce the rent to a reasonable amount or the HAP contract must be terminated. In such cases, the family will be issued a housing choice voucher to find a new unit. (Movers, like new participants, are subject to the IHA's current payment and occupancy standards.)

Even if an owner's rent is reasonable, IHA could request owners to voluntarily agree to a temporary rent reduction or defer rent increases to help the IHA avoid the termination of HAP contracts due to shortfalls in HCV funding. It is the owner's option to agree to such measures.

**c. Ensuring Accurate Utility Allowances**

The IHA may always review its utility allowances more than annually to determine if they are too high. Changes in utility allowances may be implemented immediately, but not later than the next regularly scheduled reexamination of family income.

**d. Portability Absorption**

An initial PHA may request that a receiving PHA absorb portable families for which the initial PHA is being billed. This may include the receiving PHA retroactively absorbing families for which the initial PHA was already billed and made payments. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption. Both the receiving PHA and initial PHAs must agree to this arrangement. This provision provides an exception to Section 10 of Notice PIH 2008-43 on HCV Portability and Corrective Actions. (Section 10 provides that the receiving PHA may not retroactively absorb families for which the receiving PHA was previously billing for any time period that commences before ten (10) business days from the time the receiving PHA notifies the initial PHA of the absorption.)

**e. Portability and Moves within the PHA Jurisdiction**

The HCV program regulations at 24 CFR 982.314(e)(1) provide that the IHA may deny a family permission to move if the IHA does not have sufficient funding for continued assistance. Denial of requests to move under this regulation may cover both portability moves to a higher cost area as well as moves within the IHA jurisdiction to higher cost units.

In order to deny a move, the IHA must determine and demonstrate that based on the current funding available, it has insufficient funds to pay for higher subsidy amounts without having to terminate assistance of current program participants during the current CY. In projecting whether there is sufficient funding available for the remainder of the CY, the IHA may use reasonable estimates to factor in conditions such as pending rent increases and attrition rates for families leaving the program. If this insufficient funding condition exists, the IHA does not need a regulatory waiver from HUD to deny a request to move.

In determining if the IHA has sufficient funding available to approve a move, the IHA **must** take into consideration its available budget authority (including any available RNP).

IHA may only deny a move where the requested move is voluntary (i.e., the family elects to move but is not required to move because of unaddressed Housing Quality Standards (HQS) violations, owner re-occupancy of the unit, etc.). IHA may not deny a move under 24 CFR 982.314(e)(1) if the move would reduce the family's subsidy cost to the IHA (e.g., a family wishing to move under portability to a lower-cost area). IHA may not deny a move to a higher-cost area or unit as a cost-savings measure in order to admit additional families from its waiting list into the HCV program, regardless of whether the IHA has unit months available to do so.

A higher cost area is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or more generous subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA). In the case of portability moves, the IHA needs to contact the receiving PHA before denying the motion to confirm that the receiving PHA (a) will not absorb the family and (b) that the HAP costs would be higher. If the receiving PHA is willing to absorb the family, there are no grounds to deny the portability move under 24 CFR 982.314(e) (1).

#### **f. Interim Reexaminations**

IHA could require families to report all increases in income between reexaminations and conduct more frequent interim income reviews for families reporting no income. The effective date of an annual or interim reexamination of family income is dependent upon IHA policies.

#### **g. Minimum Rent**

The IHA may increase the minimum rent to \$50. The effective date for the increased minimum rent is dependent upon IHA policy. IHA could institute a policy for increases in family contribution to be effective immediately, rather than at the next annual reexamination.

#### **h. Voucher Issuance**

The IHA may stop issuing turnover vouchers and consider pulling back outstanding vouchers for applicants searching for housing that have not yet resulted in an executed HAP contract.

### **i. Subsidy Standards**

The IHA may revise subsidy standards that exceed minimum HUD requirements to reduce bedroom size eligibility in accordance with 24 CFR 982.402. Subsidy standards must be consistent with the HQS space requirements in 24 CFR 982.401(d). PHAs are reminded that under 24 CFR 982.401(d)(2)(ii), a dwelling unit must have at least one bedroom or living sleeping area for every two person.

If a family leases a unit larger than the unit size on the voucher, the IHA must ensure that the payment standard used to calculate the tenant share is based on the lower of the voucher unit size for which the family is eligible or the actual unit size leased. If the family size is reduced after admission, the IHA must ensure that the correct payment standard is used in calculating the family rent portion. An “empty nester” single individual (or any household with similarly reduced member size) living in a 3-bedroom unit should have a 0- or 1-bedroom payment standard, not a 3-bedroom payment standard. If the unit size for which the family is eligible changes during the term of the HAP contract, the new unit size is applicable at the first regular reexamination following the change in accordance with 24 CFR 982.505(c)(5).

### **j. Payment Standards**

IHA may opt to lower payment standards for all or some unit sizes. In the tenant-based HCV program, a lower payment standard applies immediately to all new admissions, all movers, and families remaining in their units with a new HAP contract (e.g., when the owner offers or requires a new lease). **For some HCV participants**, decreased payment standard amounts are not applied until the second regular reexamination after the payment standard is lowered (see 24 CFR 982.505(c)(3)). The delayed applicability of a lower payment standard is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request a regulatory waiver for a good cause so that reduced payment standards may be applied sooner than provided by regulation.

**If IHA has an approved waiver for a higher payment standard for a period of time, then the housing authority will also adopt the *HOLD HARMLESS – No Reduction in Subsidy* rule from HUDs PIH 2018-01. This allows IHA to continue to use the existing higher payment standard for the family’s subsidy calculation for as long as the family continues to receive voucher assistance in that unit and does not change units. Once the family changes units, then the payment standard would automatically lower to the current, approved payment standard that the housing authority has effective at the time of the move.**

IHA waiver requests should, at a minimum, include the calculation used to arrive at the projected shortfall in funding and cost-savings measures the IHA has already taken or will take in the future.

IHA requests for approval of payment standards below 90 percent of the fair market rent (FMR) for any unit size may be approved by HUD field offices. However, 24 CFR 982.503(d) states that HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. This is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request that HUD Headquarters waive this requirement for good cause, such as the inability of a PHA to avoid terminating the HAP contracts of current participants or withdrawing vouchers from families searching for housing without the proposed reduction in payment standards. Waiver requests should include an analysis by the IHA on the impact the reduction in payment standards below the basic range will have on a family's opportunity to lease units throughout the IHA's jurisdiction.

In determining whether to approve IHA requests for payment standard waivers of 24 CFR 982.503(d) or 982.505(c)(3), HUD will review and take into consideration the IHA's current rent burden and the impact of the proposed change on the IHA's participants. In addition, as a condition of the waiver approval, HUD may require the IHA to raise payment standards and apply the new payment standard amounts immediately at such time that the IHA receives additional funding.

#### **Termination of Assistance Due to Insufficient Funding**

The regulation at 24 CFR 982.454 provides that IHA may terminate HAP contracts, in accordance with HUD requirements, if the IHA determines that funding under the CACC, or Consolidated Annual Contributions Contract, is insufficient to support continued assistance for families in the program.

In determining if funding under the CACC is insufficient to support continued assistance for families in the program, the IHA **must** take into consideration its available budget authority (which includes unspent prior year HAP funds in the IHA's RNP account).

Before terminating HAP contracts on the basis of insufficient funding, the IHA must ensure that it has carefully considered all cost-savings measures and the impact such terminations will likely have on program applicants and participants. In addition, the PHA is encouraged to utilize alternative sources of unrestricted non-Federal funding that may be available to prevent the termination of rental assistance. **The IHA must notify the HUD field office and its financial analyst at the Financial Management Center (FMC) prior to termination actions due to insufficient funding.**

IHA termination policies due to insufficient funding must be included in the administrative plan. Such policies should describe how the IHA will determine which HAP contracts will be terminated. Any IHA policies with respect to the resumption of assistance for the impacted families must also be included in the administrative plan. In setting such policies, the IHA should be mindful of its obligation to affirmatively further fair housing pursuant to 24 CFR 982.53(c) and 24 CFR 903.7 (o).

### **Reasonable Accommodations**

Notwithstanding IHA's adoption of policies noted above to deny portability or moves within IHA's jurisdiction or revision of payment or subsidy standards, reasonable accommodation requests for a person's disability must still be evaluated in accordance with HUD's Section 504 implementing regulations at 24 CFR part 8. Such requests must be granted when an accommodation may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling, unless it would impose an undue financial and administrative burden on the IHA or fundamentally alter the nature of the IHA's operations.

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

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

IHA are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

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

- Denying listing on the IHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures
- For victims of domestic violence covered by VAWA

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

- Discretionary administrative determinations by the IHA
- General policy issues or class grievances
- A determination of the family unit size under the IHA subsidy standards
- The IHA determination not to grant approval of the tenancy
- The IHA determination that the unit is not in compliance with the HQS
- The IHA determination that the unit is not in accordance with the HQS due to family size or composition

#### IHA Policy

The IHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the IHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

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

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



## **Scheduling an Informal Review**

### IHA Policy

A request for an informal review must be made in writing and delivered to the IHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the IHA's denial of assistance.

The IHA must schedule and send written notice of the informal review within 10 business days of the family's request.

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

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

The applicant must be provided an opportunity to present written or oral objections to the decision of the IHA.

The person conducting the review will make a recommendation to the IHA, but the IHA is responsible for making the final decision as to whether assistance should be granted or denied.

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

The IHA must notify the applicant of the IHA's final decision, including a brief statement of the reasons for the final decision.

### IHA Policy

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

Whether or not the grounds for denial were stated factually in the Notice.

The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. The IHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the IHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, the IHA will consider the recommendation of the person conducting the informal review in making the final decision on whether to deny assistance.

The IHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within ten (10) business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

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

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

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

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

#### **Decisions Subject to Informal Hearing**

Circumstances for which the IHA must give a participant's family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the IHA utility allowance schedule
- A determination of the family unit size under the IHA's subsidy standards
- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the IHA's subsidy standards, or the IHA determination to deny the family's request for an exception from the standards
- A determination to terminate assistance for a participant's family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under IHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]
- A determination that the family is an ineligible student under the student rule provisions
- A determination that the family is not protected under the VAWA requirements.

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

- Discretionary administrative determinations by the IHA

- 
- General policy issues or class grievances
  - Establishment of the IHA schedule of utility allowances for families in the program
  - A IHA determination not to approve an extension or suspension of a voucher term
  - A IHA determination not to approve a unit or tenancy
  - A IHA determination that a unit selected by the applicant is not in compliance with the HQS
  - A IHA determination that the unit is not in accordance with HQS because of family size
  - A determination by the IHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

#### IHA Policy

The IHA will only offer participants the opportunity for an informal hearing when required by the regulations.

#### **Informal Hearing Procedures**

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

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

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

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

#### IHA Policy

In cases where the IHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of the IHA.

A brief statement of the reasons for the decision including the regulatory reference.

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for the IHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

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To whom the hearing request should be addressed.

A copy of the IHA's hearing procedures

That persons with disabilities have the right to request a reasonable accommodation.

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

When an informal hearing is required, the IHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### IHA Policy

A request for an informal hearing must be made in writing and delivered to the IHA either in person or by first class mail, by the close of the business day, no later than ten (10) business days from the date of the IHA's decision or notice to terminate assistance.

The IHA must schedule and send written notice of the informal hearing to the family within ten (10) business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the IHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the IHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The IHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

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

Participants and the IHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any IHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the IHA does not make the document available for examination on request of the family, the IHA may not rely on the document at the hearing.

The IHA hearing procedures provide that the IHA must be given the opportunity to examine at the IHA offices before the hearing, any family documents that are directly relevant to the hearing. The IHA must be allowed to copy any such document at the IHA's expense. If the family does not make the document available for examination on request of the IHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

#### IHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.10 per page. The family must request the discovery of IHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

The IHA must be given an opportunity to examine at the IHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the IHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 24 hours before the scheduled hearing date. If these documents are not provided by the participant to IHA 24 hours prior to the Review or Hearing, then those documents cannot be brought forward during or after the hearing and be used as evidence in the process.

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

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

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

Informal hearings will be conducted by either contracted independent and impartial third parties designated by the IHA who are experienced in conducting the Informal Review or Hearing process for public housing authority programs and designated IHA staff who are not the person or subordinate to the person making the initial decision.

#### IHA Policy

The IHA has designated the following to serve as hearing officers:

IHA has contracted with an Independent Third-Party that is designated to handle all Informal Reviews and Informal Hearings. The Independent Third-Party is experienced and knowledgeable of all program requirements. If the independent third party is unavailable, IHA has designated staff that can handle the Informal Reviews and Informal Hearings on a case-by-case status.

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

#### IHA Policy

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

The IHA representative(s) and any witnesses for the IHA;

The participant and any witnesses for the participant

The participant's counsel or other representatives;

Any other person approved by the IHA as a reasonable accommodation for a person with a disability

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the IHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### IHA Policy

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

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

The IHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings, except the participant's evidence that was not submitted 24 hours in advance of the Review and/or Hearing.

#### IHA Policy

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

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** writing which is relevant to the case, for example, a letter written to the IHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Evidence, including hearsay, is generally admissible.

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

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

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

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

### **IHA Policy**

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

**IHA Notice to the Family:** The hearing officer will determine if the reasons for the IHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if the IHA and the family were given the opportunity to examine any relevant documents in accordance with IHA policy.

**IHA Evidence to Support the IHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the IHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and IHA policies. If the grounds for termination are not specified in the regulations or in compliance with IHA policies, then the decision of the IHA will be overturned.

The hearing officer will issue a written decision to the family and the IHA no later than ten (10) business days after the hearing. The decision will be sent via first-class regular mail. The report will contain the following information:

#### **Hearing information:**

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the IHA representative; and
- Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *The preponderance of the evidence* is defined as evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole, shows that the fact sought to be proved is more probable than not. A preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the IHA's decision.

**Order:** The hearing report will include a statement of whether the IHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the IHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the IHA to restore the participant's program status.

### ***Procedures for Hearing Extension***

#### **IHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the IHA will take effect and another hearing will not be granted. The decision of the hearing officer is final and no further hearings can be requested.

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

The IHA is not bound by the decision of the hearing officer for matters in which the IHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

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

#### **IHA Policy**

The IHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail. A copy of the "Notice of Final Decision" will be maintained in the IHA's file.

The IHA is not bound by hearing decisions:

- Concerning matters in which the IHA is not required to provide an opportunity for a hearing;



- Contrary to HUD regulations or requirements;
- Contrary to Federal, State, or local laws;
- That exceed the authority of the person conducting the hearing.

The IHA shall send a letter to the participant if it determines the IHA is NOT bound by the Hearing Officer's determination within 10 business days. The letter shall include the IHA's reasons for the decision.

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

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

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

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

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

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for the preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the IHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

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

When the IHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the IHA must notify the family of the results of the USCIS verification. The family will have thirty (30) calendar days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the IHA with a copy of the written request for appeal and the proof of mailing.

#### IHA Policy

The IHA will notify the family in the writing of the results of the USCIS secondary verification within ten (10) business days of receiving the results.

The family must provide the IHA with a copy of the written request for appeal and proof of mailing within ten (10) business days of sending the request to the USCIS.

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

The USCIS will notify the family, with a copy to the IHA, of its decision. When the USCIS notifies the IHA of the decision, the IHA must notify the family of its right to request an informal hearing.

#### IHA Policy

The IHA will send written notice to the family of its right to request an informal hearing within ten (10) business days of receiving notice of the USCIS decision regarding the family's immigration status.

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

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the IHA provide a hearing. The request for a hearing must be made either within thirty (30) calendar days of receipt of the IHA notice of denial, or within thirty (30) calendar days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

#### ***Informal Hearing Officer***

The IHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

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### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the family's eligibility status or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

### **IHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.10 per page. The family must request the discovery of IHA documents no later than 12:00 p.m. on the business day prior to the hearing.

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

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

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

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

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the IHA.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The IHA may, but is not required to provide a transcript of the hearing.

### **IHA Policy**

The family has a right, upon approval of all parties, to record and maintain that recording of the Informal Review or Hearing but the recording ***cannot*** be placed on any Social Media outlets without the written consent of all parties involved.

### ***Hearing Decision***

The IHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within ten (10) business days of the date of the informal hearing. The decision must state the basis for the decision.

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

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the IHA provide a hearing. The request for a hearing must be made either within thirty (30) calendar days of receipt of the IHA notice of termination or within thirty (30) calendar days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

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

The IHA must retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family, or provided to the IHA as part of the USCIS appeal or the IHA informal hearing process:

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

## **PART IV: OWNER OR FAMILY DEBTS TO THE IHA**

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

IHA is required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the IHA [24 CFR 982.54]. This part describes the IHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

#### IHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the IHA holds the owner or participant liable to return any overpayments to the IHA.

The IHA may enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. A repayment agreement may be executed depending on the type of fraud and the amount of monies owed to IHA.

When an owner or participant refuses to repay monies owed to the IHA, the IHA will utilize other available collection alternatives including, but not limited to, the following:

Collection agencies  
Small claims court  
Civil lawsuit  
State income tax set-off program  
Office of the Inspector General  
Office of the Attorney General

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

### **Owner Debts to the IHA**

#### IHA Policy

Any amount due to the IHA by an owner must be repaid by the owner within thirty (30) calendar days of the IHA determination of the debt.

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

If the owner is not entitled to future HAP payments the IHA may offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the IHA will sanction the owner from future participation in the program and pursue other modes of collection.

### **Family Debts to the IHA**

#### IHA Policy

Any amount due to the IHA by an HCV participant must be repaid by the family. If the family is unable to repay the debt within thirty (30) calendar days, the IHA may offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the IHA will terminate the assistance upon notification to the family and pursue other modes of collection.

### **Repayment Agreement [24 CFR 792.103]**

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

## Repayment Agreement Guidelines

### *Payment Thresholds*

#### IHA Policy

At the IHA discretion, IHA may choose to enter into a Repayment Agreement, the maximum amount of a Repayment Agreement is \$2,399. Amounts above the \$2,400 may result in prosecution.

If the IHA enters into a Repayment Agreement, the Repayment Agreement will be set up as follows:

<b>Total Amount of Payment Agreement</b>	<b>Maximum Term</b>
<b>\$1-100</b>	<b>1 months</b>
<b>\$101-\$500</b>	<b>6 Months</b>
<b>\$501-\$1,000</b>	<b>12 Months</b>
<b>\$1,001 - \$2,399</b>	<b>24 Months</b>
<b>\$2,400 and over</b>	<b>No Repayment Agreement (Automatic Termination of Assistance) (Potential Prosecution)</b>

### *Execution of the Agreement*

#### IHA Policy

The head of household and spouse/co head (if applicable) and IHA must sign the repayment agreement.

### *Due Dates*

#### IHA Policy

All payments are due by the close of business on the 15<sup>th</sup> day of the month. If the 15<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 15<sup>th</sup>.

### *Non-Payment*

#### IHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the HA, the IHA will send the family a delinquency notice giving the family notice that payment must be paid before the next due date.

If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the IHA will terminate assistance upon written notification to the family.

If a family receives two (2) delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the IHA will terminate assistance upon written notification to the family.

### *No Offer of Repayment Agreement*

#### IHA Policy

The IHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or if the amounts owed by the family or owner exceed the Federal or State threshold for criminal prosecution. *Note: If a family has entered into a previous repayment agreement, the IHA will continue housing assistance if the family pays the balance within 30 days of notification of the retroactive rent assessment, as long as the balance is \$2,399 or less. If the family continues the cycle of non-reporting of income and requires retroactive charges to the family, which causes additional repayment agreements, IHA may terminate assistance for the family upon the history of non-reporting.*

**If the family refuses to sign a Repayment Agreement for changes it was required to report and didn't, it will be considered fraud.** In this case, the IHA would terminate assistance for fraud, as long as the amount was verified. The IHA may also consider local prosecution and if the amount is \$2,400 or over. Any amount, of \$10,000 or over, will automatically be forwarded to the Office of the Inspector General - HUD.

If the family's assistance is terminated and repayment has not been made, the money will be considered to be owed and the IHA may take action to collect the amounts owed.

The IHA shall enter into the HUD database if any family has violated the conditions of the program and the IHA has issued an EOP on the family. Any balance owed will be entered into the database (EIV)

### **ACTION PROCEDURES FOR VIOLATIONS WHICH HAVE BEEN DOCUMENTED**

**Once a program violation has been documented, the IHA will propose the most appropriate remedy based on the type and severity of the violation.**

1. **Procedural Non-compliance.** This category applies when the family "fails to" observe a procedure or requirement of the IHA, but does not misrepresent a material fact, and there is no retroactive assistance payments owed by the family.

**Examples of non-compliance violations are:**

Failure to appear at a pre-scheduled appointment; or

Failure to return verification in the time period specified by the IHA.

2. **Procedural Non-compliance - Overpaid Assistance.** When the family owes money to the IHA for failure to report changes in income or assets, the IHA will issue a Notification of Overpayment of Assistance. This Notice will contain the following:
  - A description of the violation and the date(s).
  - Any amounts owed to the IHA.
  - The number of days within which a response must be received.
  - Acknowledgement of the family's right to disagree and to request an informal hearing with instructions for the request of such hearing.
  - (a) **Participant Fails to Comply with IHA's Notice.** If the Participant fails to comply with the IHA's notice, and a family obligation has been violated, the IHA will initiate termination of assistance.
  - (b) **Participant Complies with HA's Notice.** When a family complies with the IHA's notice, the staff person responsible will meet with him/her to discuss and explain the Family Obligation or program rule which was violated. The staff person will complete a Participant Counseling Report, give one copy to the family and retain a copy in the family's file.
3. **Intentional Misrepresentations.** When a participant falsifies, misstates, omits or otherwise misrepresents a material fact that results (or would have resulted) in an overpayment of housing assistance by the IHA, the IHA will evaluate whether or not:
  - The participant had knowledge that his/her actions were wrong, and
  - The participant willfully violated the family obligations or the law.

**Knowledge that the action or inaction was wrong.** This will be evaluated by determining if the participant was made aware of program requirements and prohibitions. The participant's signature on various certifications, briefing certificates, Personal Declaration, and Things You Should Know is adequate to establish knowledge of wrong-doing.

**The participant willfully violated the law.** Any of the following circumstances will be considered adequate to demonstrate willful intent:



- (a) An admission by the participant of the misrepresentation.
- (b) Repetition of the misrepresentation.
- (c) Use of a false name or Social Security Number.
- (d) Omission of material facts known to the participant (e.g. failure to report employment).
- (e) Admissions of the illegal action or omission by the participant to others.
- (f) Falsification, forgery or altering of documents.
- (g) Uttering and certifying to statements at an interim (re)determination that are later independently verified to be false.

**4. Dispositions of Cases Involving Misrepresentations.** In all cases of misrepresentations involving efforts to recover monies owed, the IHA may pursue, depending upon its evaluation of the criteria stated above, one or more of the following actions:

- (a) **Criminal Prosecution:** If the IHA has established criminal intent, and the case meets the criteria for prosecution, the IHA will:

Refer the case to the local State or District Attorney, notify HUD's OIG, and terminate rental assistance.

- (b) **Administrative Remedies:** The IHA will:

Terminate assistance and demand payment of restitution in full, or if full restitution would place undue hardship on the family, the IHA may;

Terminate assistance and execute an administrative repayment agreement in accordance with the IHA's Repayment Policy.

Continue assistance and execute an administrative repayment agreement if the amount of overpayment does not exceed IHA's threshold.

**5.** If the violation is determined to be intentional and involves an amount above the threshold or more being owed to the Agency by the tenant, the tenant's program assistance and participation will be terminated by a 30-day notice to the tenant.

To prevent the matter from being turned over to the proper legal authorities, full restitution of the entire amount owed the Agency must be paid to the agency by the family's termination date. If the amount owed the Agency exceeds IHA's threshold the matter may be referred to the local State or District Attorney/or HUD's OIG.

If the matter is determined to be intentional but the amount owed the Agency is less than IHA's threshold, the Agency may allow a Repayment Agreement.

A case conference for serious violations and misrepresentations will be held. The tenant will be given an opportunity to present any documents, information or mitigating circumstances they wish. The conference will also be a time for the IHA to consider any special circumstances related to the case that might affect its outcome.

The IHA's threshold is \$2,400.

- 6. Notification to Participant of Proposed Action.** The IHA will notify the family of the proposed action no later than ten (10) business days after the case conference by first class mail.

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

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

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

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

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

IHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by IHA board resolution and signed by the IHA executive director. If the IHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHA with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHA annually if the PHA elects to have its performance assessed on an annual basis; or is designated as "troubled" [24 CFR 985.105].

Failure of IHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

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

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

### **HUD Verification Method**

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

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

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

The table below lists each of the SEMAP indicators contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b> <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percentage of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.</li></ul>

**Indicator 2: Rent reasonableness**

**Maximum Score: 20**

- This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to the owner is reasonable based on current rents for comparable unassisted units
- Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to the owner is reasonable, according to the PHA's quality control sample.

**Indicator 3: Determination of adjusted income**

**Maximum Score: 20**

- This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, use the appropriate utility allowances for the unit leased in determining the gross rent.
- Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.

**Indicator 4: Utility allowance schedule**

**Maximum Score: 5**

- This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.

- Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.

**Indicator 5: HQS quality control inspections**

**Maximum Score: 5**

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to the PHA's certification.

**Indicator 6: HQS enforcement**

**Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.

**Indicator 7: Expanding housing opportunities**

**Maximum Points: 5**

- Only applies to PHA with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.

**Indicator 8: FMR limit and payment standards**

**Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that is within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

**Indicator 9: Annual reexaminations**

**Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent

<p>to owner.</p> <ul style="list-style-type: none"> <li>• Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.</li> </ul>
<p><b>Indicator 11: Pre-contract HQS inspections</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.</li> <li>• Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.</li> </ul>
<p><b>Indicator 12: Annual HQS inspections</b>  <b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA inspects each unit under contract at least annually.</li> <li>• Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.</li> </ul>
<p><b>Indicator 13: Lease-up</b>  <b>Maximum Points: 20 points</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year.</li> <li>• Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA’s last year-end operating statement that is recorded in HUD’s accounting system.</li> </ul>
<p><b>Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances</b>  <b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHA with mandatory FSS programs.</li> <li>• This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.</li> <li>• Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.</li> </ul>
<p><b>Success Rate of Voucher Holders</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHA that have received approval to establish success rate payment standard amounts, and isn’t effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.</li> <li>• This indicator shows whether voucher holders were successful in leasing units with voucher assistance.</li> <li>• Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.</li> </ul>

**De-Concentration Bonus**

**Indicator Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50<sup>th</sup> percentile.
- Additional points are available to PHA that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

**PART VI: RECORD KEEPING**

**16-VI.A. OVERVIEW**

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

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

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

During the term of each assisted lease, and for at least five (5) years thereafter, the IHA must keep:

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

In addition, the IHA must keep the following records for at least five (5) years:

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

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

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

IHA must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### IHA Policy

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

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

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

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

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

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

IHA that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (EIV) System PHA Security Procedures*.

### IHA Policy

The IHA has adopted and implemented EIV security procedures as required by HUD.

### **Criminal Records**

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

The IHA must establish and implement a system of records management that ensures that any criminal record received by the IHA from a law enforcement agency is maintained



confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the IHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The IHA must establish and implement a system of records management that ensures that any sex offender registration information received by the IHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the IHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a IHA other than under 24 CFR 5.905.

### **Medical/Disability Records**

IHA is not permitted to inquire about the nature or extent of a person's disability. The IHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the IHA receives a verification document that provides such information, the IHA should not place this information in the tenant file. The IHA should destroy the document.

### **Specific 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 third-party business partners, such as IHA, who is required to maintain such systems of records by HUD.

- a) IHA should 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 application. 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 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.
  - (3) **When using the U.S. postal service to deliver information with sensitive PII, double-wrap the documents (e.g., use two envelopes – one inside the other) and mark only the inside envelope as confidential with the statement —To Be Opened By Addressee Only.**
- vi) Records Management, Retention and Disposition

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- (1) Follow records management laws, regulations, and policies applicable within your jurisdiction.
  - (2) Ensure all IHA locations and all entities acting on behalf of the IHA 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.

IHA will promptly report all suspected compromises of sensitive PII related to HUD programs and projects to HUD's National Help Desk at 1-888-297-8689.

## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL (PIH 2017-13)**

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

Childhood lead poisoning has serious negative consequences on childhood growth and development. The U.S. Centers for Disease Control and Prevention (CDC) has consistently affirmed that deteriorated lead-based paint and lead-contaminated dust are the most hazardous sources of lead exposure in children. Lead-based paint can be found in homes built before 1978, with an increased prevalence in very old homes with original painted windows, doors, and trim.

In 2012, the CDC lowered its reference level for lead in the blood of children under age 6 to 5 micrograms of lead per deciliter of blood, and provided guidance for health departments and medical professionals at [www.cdc.gov/nceh/lead/acclpp/cdc\\_response\\_lead\\_exposure\\_recs.pdf](http://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf). On January 13, 2017, HUD amended the LSHR to align it with CDC's updated guidance. Consistent with CDC's guidance, HUD is now using the reference level of 5 micrograms per deciliter to identify children with an EBLL. This new level is the blood lead level of the highest 2.5 percent of U.S. children ages 1 to 5 years. CDC may revise this level in the future, and if so, HUD will update its EBLL as used under the LSHR, via the notice and comment process, as provided by the definition of EBLL in the amendment (24 CFR 35.110). However, if a state or local government establishes more protective standards in response to lead

in children's blood, LSHR's section 35.150 directs PHAs to follow those standards.

### **Key Definitions for Guidance**

**Assisted Units** – the Lead Safe Housing Rule covers federally-assisted and federally-owned “target” housing, which includes units assisted under Sections 8 and 9 of the United States Housing Act of 1937, as amended.<sup>3</sup>

**Designated Party** – for purposes of this Notice, the housing agency or the property owner, as indicated in the applicable section, is responsible for complying with applicable requirements.

**Elevated Blood-Lead Level (EBLL)** - elevated blood lead level means a confirmed concentration of lead in whole blood of a child under age 6 equal to or greater than the concentration in the most recent guidance by the U.S. Centers for Disease Control and Prevention (CDC) on recommending that an environmental intervention be conducted. This is based from the PIH Notice 2017-13, which provides an alignment of HUD programs with the CDC's recommendation. A confirmed concentration is one that is measured by a venous (from a vein) blood draw, and not a finger prick/quick capillary screening test.

**Environmental Investigation** – a risk assessment with additional questions for the family regarding other sources of lead exposure (e.g., water, pottery, daycare settings), and testing of other potential sources of lead exposure in accordance with Chapter 16, Investigation And Treatment Of Dwellings That House Children With Elevated Blood Lead Levels, of [HUD's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing](#) (current edition) (the *HUD Guidelines*). Notes: Chapter 16 of the *HUD Guidelines* includes a detailed description of the differences between an environmental investigation and a risk assessment. Testing includes, at a minimum, house dust, paint/coatings that are not intact or subject to friction, and bare soil, especially in play areas. Testing of drinking water is done in certain circumstances, based on the family questionnaire, discussion with the child's case manager, and additional information, such as knowledge that the community drinking water is known to be at risk; the family's home is served by a private well; history suggests contamination; or no other sources of lead can be found.

**Expected to Reside** – actual knowledge that a child will reside in a 0-bedroom dwelling unit or in a dwelling unit reserved or designated for the elderly and/or persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that child will reside in the dwelling unit. Notes: The condition of “actual knowledge” differs from the potential for a child under age 6 to reside there sometime in the future; the potential does not create an expectation under the LSHR. While a resident woman being known to be pregnant creates actual knowledge, an expectation is also created when a child under age 6 or a pregnant woman is otherwise known to be moving into the unit, such as by the woman or another person having signed a lease or other rental agreement for the child and/or woman (as applicable) to move in.

**Index Unit** – the unit where a child with an elevated blood lead level resides.

**Multi-unit Property** - a residential property containing two or more dwelling units. For the purposes of the LSHR, all buildings with assisted units or servicing those buildings (e.g., garages, toolsheds, etc.) associated with the property are covered by the requirements.

**Other Covered Units** - federally-assisted units where a child under age 6 resides or is expected to reside in a multiunit property that has an index unit. The child's age is considered as of the date the Environmental Investigation in the index unit and associated common areas is completed.

**Target Housing** - any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless a child of less than 6 years of age resides or is expected to reside in such housing). In the case of jurisdictions which banned the sale

or use of lead-based paint prior to 1978, HUD may designate an earlier date. Note: The Consolidated Appropriations Act, 2017 revised the definition of target housing to include any 0-bedroom dwelling in which a child who is less than 6 years of age resides or is expected to reside. This guidance reflects that change.

## 16-VII.B. HCV PROGRAM GUIDANCE

For Housing Choice Voucher (HCV) units, when a child under 6 is identified with an EBLL, the IHA or the owner, as described below, must take certain steps. For the HCV program, the regulations identify the IHA as the designated party for ensuring compliance with all the regulations. This includes the same steps as for public housing, except that the owner is responsible for some of the steps, and the IHA, other steps. In addition, for several steps, as described below, the IHA may wish to collaborate with the owner to expedite implementation.

### **The Owner is responsible for:**

- **Initial notification of a confirmed case to HUD:** Notifying the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes of the case – that is, the child’s address – within five (5) business days. The IHA may wish to collaborate with the owner on this notification process, such as by agreeing with the owner to be notified of the case by the owner and to forward the notification to the two HUD offices.
- **Initial notification of the public health department, when necessary:** When the owner is notified of the case by any medical health care professional other than the public health department, the owner shall notify the public health department of the name and address of the child within five (5) business days. The IHA may wish to collaborate with the owner on this notification process, such as by agreeing with the owner to inform the public health department.
- **Verification of the case, when necessary:** When the owner receives information from a person who is not a medical health care provider that a case may have occurred, the owner should immediately convey the information to the IHA so the IHA may notify the public health department, if the IHA has indicated, or indicates at this time, that it wishes to collaborate with the owner on implementation of the rule, as described below.
- **Control of lead-based paint hazards:** Completing the reduction of lead-based paint hazards in the index unit and common areas servicing that unit that were identified by the environmental investigation conducted by the IHA within thirty (30) calendar days, using a certified lead-based paint abatement firm or certified lead renovation firm. Work shall include occupant protection, and clearance of the unit and common areas servicing that unit by an independent certified risk assessor or a trained dust sampling technician working under the risk assessor in accordance with section 35.1340.
- **Notification to other residents:** As already required by the LSHR, in a multiunit property, the owner must notify all residents of lead evaluation and hazard control activities.
- **Ongoing maintenance:** Maintaining covered housing without deteriorated paint if there is child under 6 in the family in accordance with sections 35.1220 and 35.1355(a).

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**The IHA is responsible for:**

- **Verification of the case, when notification is not from a medical health care provider:** The IHA may wish to collaborate with the owner on this verification of an EBLL case, such as by agreeing with the owner to receive the information about the possible case. The IHA shall immediately verify the information with the public health department or other medical health care provider.  
**Environmental Investigation:** Conducting an environmental investigation of the child's unit and the common areas servicing that unit in accordance with Chapter 16 of the HUD *Guidelines*, as described in section 6 below. If lead-based paint hazards are found in the child's unit (the index unit) in a multiunit property, additional notification and risk assessments to be conducted in other covered units with a child under age 6 and the common areas servicing those units.
- **Monitoring of owner's compliance with LSHR:** Monitoring the owner's compliance with the LSHR in accordance with the Housing Assistance Payments (HAP) contract between the IHA and the owner. IHA can perform oversight of this in conjunction with periodic Housing Quality Standards (HQS) inspections, but not at a frequency less than annually if there was deteriorated paint or known lead-based paint hazards identified in the child's unit or common areas servicing that unit. This includes such actions as monitoring the owner's:
  - Notifying HUD of a confirmed case;
  - Notifying the public health department when any other medical health care professional notified the owner of the case;
  - Verifying the case when the owner receives information from a person who is not a medical health care provider that a case may have occurred;
  - Ensuring that any required lead hazard control (including passing clearance) is complete;
  - Ensuring that residents of other units in a multiunit property were notified of lead evaluation and hazard control activities; and
  - Ensuring that ongoing maintenance of paint is conducted in accordance with sections 35.1220 and 35.1355(a).
- **Control:** Ensuring the owner completes and clears the control of lead-based paint hazards identified in the Environmental Investigation of the index unit and the common areas servicing that unit. If lead-based paint hazards are found in the index unit in a multiunit property, and the risk assessments in other covered units with a child under age 6 and the common areas servicing those units identified lead-based paint hazards, control those lead-based paint hazards as described in section 9 below.

The IHA may wish to collaborate with the owner on the response, including providing the names of qualified and certified lead hazard control contractors, providing for the clearance examination, and ensuring notification to other residents in a multi-unit property.

The following table summarizes the responsibilities of IHA and HCV rental property owners for compliance when a child in the HCV program is identified with an EBLL.

Activity	Responsible Entity	
	IHA	HCV Owner
Initial notification of confirmed case to HUD	*	√
Verification, when necessary	√	*
Initial notification of confirmed case to public health department, when necessary	*	√
Environmental Investigation	√	
Lead Hazard Control		√
Clearance after work completed	*	√
Notification to other residents		√
Ongoing LBP Maintenance		√
Monitoring of owner's compliance with LSHR and HQS	√	

\* The IHA may wish to collaborate with the owner on implementing this process, as described above.

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

**16-VII.C. REPORTING REQUIREMENT [24 CFR 35.1225(e)]**

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

IHA Policy

The IHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

**16-VII.D. DATA COLLECTION, SHARING, AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, the IHA must provide an updated list of their HCV property target housing addresses to the health department so that the health department may evaluate whether they have information about incidences of EBLL cases in assisted housing.



If the health department does not want, or is unable, to receive this data, the IHA should document this for HUD compliance reviews. IHA should also attempt quarterly to obtain the names and addresses of children under age 6 with an EBLL that live in their owned or managed housing from the health department. If a match occurs, the IHA shall comply with all requirements of the LSHR and this guidance.

If a health department agrees to share EBLL information, the IHA must ensure that this information is protected and maintained as confidential, and is used only for the public health protection of children and their families from lead exposure.

### IHA Policy

The IHA will provide a listing to the health department in a quarterly basis. Should the health public health department state they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis, the housing authority will confirm that statement in writing and not providing such a quarterly updated unit report.

## **16-VI.E RESPONDING TO EBLLS, ENVIRONMENTAL INVESTIGATIONS AND LEAD HAZARD CONTROL**

### **Verification:**

The first step IHA or owner, as applicable, based on the type of assistance, or the IHA on behalf of the owner, if they have decided to collaborate in that way, must take when learning of a child with an EBLL from a parent, guardian, or other person or entity that is not a medical health care provider is to verify the results, and determine whether it is a confirmed EBLL. In accordance with Chapter 16 of the HUD *Guidelines*, a confirmed EBLL is one measured through a venous (i.e., from a vein) blood draw, or two capillary blood specimens, drawn within 12 weeks of each other, both with elevated lead concentration. If the parent or guardian suspects that a child under 6 has an EBLL based on a single finger print, they should see a medical health care provider to obtain confirmation.

PHAs and owners can verify the report with the local health department or the child's medical health care provider. For the HCV and PBV programs, the owner may wish to collaborate with the PHA to notify the PHA of the EBLL within 5 days so that the PHA can notify the public health department or the child's medical health care provider.

If the parent or guardian provides the PHA or owner, as applicable, with a written EBLL diagnosis from a medical healthcare professional, or the public health department notifies the PHA or owner, as applicable, of the case, no additional verification is needed.

If an EBLL has been reported but not verified, the PHA or owner shall make at least 2 attempts to verify the information with the medical health care provider or health department. If the PHA's verification attempts fail, the PHA must inform the Field Office, which must attempt its own verification and/or inform OLHCHH, which will attempt the verification.

Once an EBLL has been verified, the IHA or owner (for PBV or HCV housing), as applicable, must notify their field office representative and OLHCHH within 5 business days.

Notifications to OLHCHH must be by done via email to [LeadRegulations@hud.gov](mailto:LeadRegulations@hud.gov).

The PHA may wish to collaborate with the owner on this notification process, such as by agreeing with the owner to be notified of the results and then forwarding them to the Field Office and OLHCHH.

In the notification to their field office representative and OLHCHH, the IHA or owner, as applicable, must provide:

- IHA code and name, if the IHA is providing the notification, or Owner's name and address, if the owner is;
- Date of EBLL test result;
- Program (public housing, HCV, project-based vouchers);
- Unit address and, if the housing is in a multi-unit property or development, the development name; and
- Whether the IHA or owner has notified the public health department of the EBLL, or been notified by the health department, and the date of that notification.

Information emailed to HUD should not include the child's name or blood result. This information is considered personally identifiable information (PII), and is also confidential medical information which shall be maintained in accordance with the IHA's policy for private medical information. If the IHA must transmit PII, it shall be done in a secure manner or in an encrypted email. For more information on Privacy Protection Guidelines for PHAs, see [PIH-2015-06](#).

### **Investigation:**

Next, the IHA or owner, as applicable, based on the type of assistance, or the IHA on behalf of the owner, if they have decided to collaborate in that way (see section 5, above), must next ensure that a certified Lead-Based Paint Risk Assessor performs an "environmental investigation," as defined above, in the child's home and any common areas that service the unit.

The environmental investigation must be completed within 15 calendar days after verification or notification by a public health department or other medical health care provider. IHA and owners can find certified lead risk assessment firms through either their state lead licensing agency or EPA's website at [www.epa.gov/lead](http://www.epa.gov/lead).

In some cities and counties, the local public health department will evaluate the child's home for lead-based paint hazards and other possible sources of lead exposure when a child is found with an EBLL. In these instances, the IHA or owner, as applicable, is not required to perform an additional environmental investigation, and can rely on the results of the health department's evaluation.

After receiving the results of an environmental investigation (or an evaluation report from the health department), the PHA must notify their assigned HUD field office contact within 10 business days and the family of the results within 15 calendar days. The notifications must include the date the investigation was completed. If the evaluation was completed in a multiunit property, the IHA must also notify all residents that an evaluation was completed in accordance with

section 35.125. This must be done by letter or notice delivered to each occupied dwelling unit affected by the evaluation, and not by central posting. The LSHR prohibits, for the protection of the privacy of the child and the child’s family or guardians, notice of environmental investigation being posted to any centrally located common area. (See section 35.125(c)(4)(iii).)

**Required Lead-Based Paint Hazard Control**

If lead-based paint hazards are identified by the environmental investigation, the hazards must be addressed within thirty (30) calendar days of receiving the results. This means performing any necessary

lead-based paint hazard control work in the unit and common areas servicing the unit, and conducting a clearance examination on the unit and common areas when the work is complete. The work must be performed by a certified lead abatement or lead renovation firm, with the clearance examination performed by a certified risk assessor or clearance sampling technician as described in section 35.1340.

The party that does the hazard control work and the clearance examination depends on the assistance program:

In the HCV and PBV programs, the owner is responsible for completing the hazard control work and conducting the clearance examination. The PHA may wish to collaborate with the owner on conducting the clearance examination, as described in section 5, above.

The HUD field office must be notified of the lead hazard control work that was completed and the results of the clearance examination within ten (10) business days of passing clearance. The party that does this notification depends on the assistance program:

- In the HCV and PBV programs, the owner is responsible for notifying the HUD field office. The PHA may wish to collaborate with the owner on notifying the HUD field office, as described, above.

The table below summarizes the timelines for environmental investigations, lead hazard control work, clearance, and field office notifications when the PHA learns a child has an EBLL.

<b>Activity</b>	<b>Timeframe</b>
Notify HUD field office and OLHCHH of EBLL case	Within 5 business days after verification of the EBLL
Conduct environmental investigation	Within 15 calendar days after verification of the EBLL
Notify HUD field office of results of environmental investigation	Within 10 business days after receiving the results of the environmental investigation
Complete lead hazard control work and clearance	Within 30 calendar days of receiving the results of the environmental investigation.
Notify HUD field office of results of clearance	Within 10 business days after clearance

### **Index Units**

In a case where the child discovered to have an EBLL lives in a multiunit property, the child's home is considered the "index unit" under the new regulations. As described below, if the index unit is found to contain lead-based paint hazards, additional evaluation is required for other assisted target housing units in the property where children under age 6 reside (known as other "covered units"). Note that a multiunit property can include multiple buildings, and all buildings are covered if they meet the definition of target housing. This requirement already existed for public housing under 35.1130(f). Under this new rule, the requirement has been extended to the HCV and PBV programs.

### **Index Units Recently Tested**

An index unit may not need a full environmental investigation under the following scenarios:

- An environmental investigation was performed by the health department or another party between the time that the child's blood was last sampled and the date that the PHA, designated party or owner (as applicable) was notified of the EBLL. If a risk assessment was performed, a certified risk assessment firm can be brought in to conduct the elements of an environmental investigation that go beyond the requirements of a risk assessment.
  - If a risk assessment was performed on the unit prior to the date that the child's blood was last sampled, the results of the risk assessment cannot be relied on, and a full environmental investigation must be performed.
- If the unit is scheduled for redevelopment or demolition, and the tenants are expected to be relocated within 45 calendar days. In this scenario, the PHA does not have to perform the environmental investigation if the family is relocated within fifteen (15) calendar days.
  - In this scenario, the PHA may not know if the index unit contains lead-based paint hazards. Without test results, the PHA would have to presume all covered units contain lead-based paint hazards.
  - Allowing the family to move from the index unit would not exempt any other covered unit in the property from the need for a risk assessment, unless those units are also scheduled for redevelopment or demolition and relocation is scheduled within 45 days.
- If the PHA chooses to perform an environmental investigation in the index unit anyway, and finds there are no lead-based paint hazards, additional testing or expedited relocation of families in covered units would not be necessary.

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### Other Covered Units of the Property and Common Areas Servicing those Units

If the environmental investigation indicates there are lead-based paint hazards in the index unit or common areas servicing that unit, any other assisted units in the property with a child under age 6 residing (“Other Covered Units”) must receive a risk assessment, as must common areas servicing those units. This includes other assisted units designated as housing for the elderly and/or persons with disabilities where a child under age 6 resides or is expected to reside. The party that conducts the risk assessments depends on the assistance program:

- In the HCV and PBV programs, the owner is responsible for conducting the risk assessments. The PHA may wish to collaborate with the owner on conducting the risk assessments, as described, above.

The risk assessments of the other covered units must be conducted within thirty (30) calendar days of receiving the results of the environmental investigation for a property with 20 other covered units or fewer, and within sixty (60) calendar days for a property with more than 20 other covered units.

While IHA or owner may, for its own strategic reasons, choose to conduct risk assessments on all the other assisted dwelling units with a child under age 6 (or even all the other assisted dwelling units or all the other dwelling units), random sampling of other covered dwelling units to be assessed is permissible in properties with more than 20 covered dwelling units for pre-1960 properties, and more than 10 covered dwelling units for 1960-1977 properties. HUD’s sampling protocol can be found in Table 7.3 of the *Guidelines*, on page 7-38. For example, for a 1925 multiunit property in which there are 47 other covered units (with certain characteristics identified in the table) shows that at least 31 units are to be sampled randomly.

If the evaluation was completed in a multiunit property, all assisted residents must be notified that an evaluation was completed. The party that conducts the resident notification depends on the assistance program:

- In the HCV and PBV programs, the owner is responsible for notifying the assisted residents. The IHA may wish to collaborate with the owner on notifying the assisted residents, as described in section 5, above.

All lead-based paint hazards identified by the risk assessments must be controlled. As under the original LSHR, if a random sampling of units and/or common areas is used in the risk assessment, if lead-based paint hazards were found in that sample, all units and/or common areas represented by the random sampling must have corresponding building components that have lead-based paint hazards in sampled and un-sampled units controlled, because the components in un-sampled units are presumed to have lead-based paint hazards.

The table below summarizes the timelines for risk assessments, lead hazard work, and clearance for other covered dwelling units depending on the number of units in the property.

Activity	If the Property Has 20 or Fewer Other Covered Units	If property Has More than 20 Other Covered Units:
Conduct risk assessment	Within 30 calendar days of receiving the results of the environmental investigation	Within 60 calendar days of receiving the results of the environmental investigation
Complete lead hazard control work and clearance	Within 30 calendar days of receiving the results of the risk assessment	Within 90 calendar days of receiving the results of the risk assessment

### Exemptions for Other Covered Units

A covered dwelling unit *is* exempt from needing a risk assessment under the following scenarios:

- The property has been certified by a State- or EPA-certified lead inspector as lead-based paint free or all lead-based paint has been identified and removed through abatement, and clearance has been achieved. Lead-based paint free means that the housing has been found to be lead-based paint free by a State- or EPA-certified lead inspector in accordance with Chapter 7 of the Guidelines. This exemption would not be applicable to units that have undergone lead abatement through enclosure or encapsulation, because they still contain lead-based paint behind the enclosure or encapsulant.
- The dwelling unit is scheduled for demolition. While units scheduled for redevelopment are generally not exempt, language in the preamble to the Final Rule permits exemption of a dwelling unit for redevelopment where start of construction and completion of tenant relocation is to occur within 45 calendar days (i.e., the sum of the 15-day period for conducting the environmental investigation and the 30-day period for conducting lead hazard control in the unit). In that scenario, the dwelling unit does not need a risk assessment; however, the family must be relocated out of the unit within 15 calendar days.

A covered dwelling unit *may* be exempted from needing a risk assessment if one was recently performed and hazards were already controlled. Specifically:

- The IHA or owner conducted a risk assessment of the covered dwelling unit in question and the common areas servicing that unit, and any necessary interim controls on identified lead-based paint hazards were performed, including passing clearance. The risk assessment and controls must have been performed between the date the child’s blood was last sampled and the date the owner received the notification of the elevated blood lead level; and
- The IHA or owner has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirements under this part throughout the 12 months preceding the date the owner received the environmental investigation report; and

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Certified documentation is provided to the HUD field office to this effect, including copies of the risk assessment and the results, and a copy of the clearance exam. The party that provides this documentation depends on the assistance program:

- In the HCV and PBV programs, the owner is responsible for providing the documentation to the HUD field office. The IHA may wish to collaborate with the owner on providing the documentation, as described in section 5, above.

### **Monitoring and Enforcement**

HUD may request documentation of compliance with the LSHR at any time, for the HCV, PBV, and public housing programs.

### **HCV and PBV Program Compliance**

IHA is responsible for ensuring compliance with the regulations, and, for the HCV programs, funding initial lead evaluations, but the HCV or PBV owner has certain requirements that the IHA must oversee in accordance with their housing assistance payment contract with the owner, including:

- The owner is responsible for promptly notifying the HUD field office and the Office of Lead Hazard Control and Healthy Homes of EBLL cases, although the IHA may wish to collaborate with the owner on this notification, as described in section 5, above.
- The owner is responsible for performing the lead hazard control work, and for incorporating ongoing lead-based paint maintenance activities into regular building operations (see section 35.1355(a)), including conducting a visual assessment for deteriorated paint, dust-lead hazards, bare soil, and the failure of any hazard reduction measures at unit turnover and every twelve months.

The IHA can assist owners in finding certified contractors, or in obtaining training and submitting the documentation to become certified to perform lead hazard control work themselves. See the EPA lead website, [www.epa.gov/lead](http://www.epa.gov/lead). PHAs can also opt to have a certified risk assessor on staff with the IHA becoming a certified risk assessment firm, where required, or available via contract (the IHA does not have to become a certified risk assessment firm). IHA must also ensure units that had lead-based paint hazards identified receive annual and turnover visual assessments to ensure that the interim controls have not failed and that there is no new deteriorated paint. The party that conducts the visual assessments depends on the assistance program:

- In the HCV and PBV programs, the owner is responsible for conducting the visual assessments. The PHA may wish to collaborate with the owner on conducting the visual assessments, as described, above.

If the required evaluation and lead hazard control work is not completed for the index unit or other covered units within the established timeframes, the dwelling unit(s) shall be considered out of compliance with HQS. Enforcement may include suspension, reduction, or termination of housing



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assistance payments (HAP). If the owner does not meet the requirements after enforcement, the unit is not in compliance with HQS, and the IHA must terminate the HAP contract and assist the family in finding a unit that will meet HQS and is lead-safe. A lead safe unit is one that is either built after 1977, or one built before 1978 that has had a risk assessment, control of any lead-based paint hazards identified, and met clearance. IHA should follow the existing regulations at section 982.404 for HQS enforcement of the HCV and PBV programs before the family moves in. (If the owner or IHA, as applicable, is unable to comply with the deadline for lead hazard control work due to weather conditions, the IHA can allow additional time in accordance with section 35.115(a)(12).)

### **Non-Reporting in HCV and PBV**

If a person becomes aware of an EBLL case where the owner or IHA did not report the EBLL to HUD or the public health department when required, the person should report the case to the OLHCHH at [LeadRegulations@hud.gov](mailto:LeadRegulations@hud.gov), and to the Office of the Inspector General via the OIG Hotline at [www.hudoig.gov/hotline](http://www.hudoig.gov/hotline). Under the Whistleblower Protection Act, it is illegal for HUD, PHAs, HCV property owners, and PBV property owners to retaliate against their employees and personal service contractors for disclosing a case to the OIG. See 5 U.S.C. § 2302; 41 U.S.C. § 4712.

### **Preparing for HCV Program**

Preparations for IHA managing HCV housing should include:

- Ensuring that HQS inspectors have completed training in visual assessment for deteriorated paint posted at [www.hud.gov/offices/lead/training/visualassessment/h00101.htm](http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm) and are performing this enhanced visual inspection at initial and periodic inspections in target housing dwelling units when a family has a child under age six. (HQS inspectors who are certified lead risk assessors do not need the visual assessment training above; the subject is covered in their risk assessment course.)
- Determining whether lead evaluations will be performed by trained, certified staff or through a contract. If staff are to be certified, the PHA's obtaining certification as a firm in the discipline(s) in which the staff will be certified.
- Confirming a current contact person at the local or state health department for communication and data sharing.
- Informing residents of target housing of the risks of lead-based paint and encouraging them to have young children tested for lead in their blood. Notify residents of how to promptly report EBLLs to the PHA. This may include written notice in the leasing package, and/or at the next regular reexamination.



Informing and engaging HCV owners about lead safety and their obligations under the LSHR, including the Lead Disclosure Rule. Note that for project-based vouchers (PBV), the rules regarding lead-based paint are different from those applying to tenant-based vouchers. PHAs with project-based vouchers in their HCV programs should ensure that those PBV dwelling units with vouchers for a property valued at over \$5,000 per unit per year have already received a risk assessment and hazard control as outlined in 24 CFR 35, Subpart H, 35.700 et seq.; if the PBV vouchers are for no more than \$5,000 per unit per year, the units should have already received a visual assessment for deteriorated paint and paint stabilization as outlined in 24 CFR 35, Subpart H.

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