

## 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 PHA'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 PHA. This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA 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 PHA.

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

Part VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated 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 PHA'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 IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

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

The PHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 CFR 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the PHA Board or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

#### OHCD Policy

Expenditures from the UNP Account will be made in accordance with all applicable federal requirements. Expenditures will not exceed \$44,999 per occurrence without the prior approval of OHCD’s Housing Board.

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### 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 PHA to adapt the program to local conditions. This part discusses how the PHA 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).

#### OHCD Policy

Copies of the payment standard and utility allowance schedules are available for review in OHCD's offices 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.

OHCD 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.

Establishing and updating the PHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-1.G.).

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### 16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the PHA 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 FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA 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 PHA 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 FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

##### OHCD Policy

OHCD will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" OHCD will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** OHD 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. OHCD 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:** 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, OHCD will consider increasing the payment standard. In evaluating rent burdens, OHCD will not include families renting a larger unit than their family unit size.

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**Quality of Units Selected:** OHCD 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:** OHCD 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:** OHCD 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:** OHCD 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 January 1<sup>st</sup> of every year unless, based on the proposed FMRs, one or more of the PHA's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, PHA's impacted payment standards will be effective October 1<sup>st</sup> instead of January 1<sup>st</sup>. If the FMR's are published and do not provide adequate time to change the payment standards effective January 1<sup>st</sup> the change will be effective October 1<sup>st</sup>.

If the PHA 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 PHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by PHA at the time the reexamination was originally processed.

### **Exception Payment Standards [982.503(c)]**

The PHA 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.

### **Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]**

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person

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with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

### OHCD 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, OHCD must determine that:

- 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 PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA 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 PHA 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 PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The PHA 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 PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

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

The PHA 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 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.

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

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA 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 PHA 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 PHA 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 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 PHA about establishing utility allowance schedules.

Shared utilities are not permitted. The owner of an assisted unit may not bill HCV participants for master-metered utilities unless the building is equipped with sub-meters that allow the owner to invoice the tenants of a building or complex based on actual consumption and utility rates.

### 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.

#### OHCD Policy

OHCD 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 OHCD will apply this allowance to a family's rent and subsidy calculations.

The air-conditioning allowance shall be applied when the following three criteria are met:

- 1) The participant is responsible for payment of the air conditioning utility as indicated within the HUD 52641 and the HUD;
- 2) Central air-conditioning or a portable air conditioner must be present in the unit; and
- 3) The windows are designed not to open (e.g., high rise) or Reasonable Accommodation has been approved.

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### **Reasonable Accommodation**

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA'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 PHA will approve an allowance for air-conditioning, even if the PHA 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 PHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

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

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

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

Both applicants and participants have the right to appeal certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

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### 16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for, but has not yet been admitted to the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554]. *Federal Register* 60, no. 127 (3 July 1995): 34690].

#### Decisions Subject to Informal Review

The PHA 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 PHA 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.

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

- Discretionary administrative determinations by the PHA;
- General policy issues or class grievances;
- A determination of the family unit size under the PHA subsidy standards;
- A PHA determination not to approve an extension or suspension of a voucher term;
- A PHA determination not to grant approval of the tenancy;
- A PHA determination that the unit is not in compliance with the HQS;
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition.

#### OHCD Policy

OHCD will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the OHCD 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 PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal review of the decision, and how to obtain it.

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### **Scheduling an Informal Review**

#### OHCD Policy

A request for an informal review must be made in writing and delivered to OHCD either in person, fax, e-mail or by first class mail, by the close of the business, no later than 10 business days from the date of the Denial Notice.

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

To be eligible for the Informal Review, the applicant's completed written request for an informal review must be received by OHCD within 10 business days from the OHCD notice date except as noted below:

- If a verbal request from the applicant is received within the 10 business day deadline, the file will be noted with the date and details of the request. The applicant must be advised to submit in a written request by the deadline.

### **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 PHA.

#### OHCD Policy

The applicant will receive a time and date for the informal review within 10 business days of their request for an informal review. The review may be conducted by telephone unless special circumstances warrant an in-person review.

OHCD staff is responsible for conducting the review and making the final decision as to whether assistance should be granted or denied. The OHCD staff member who conducts the review and makes the final decision must not have participated in the decision to deny the applicant.

OHCD staff may present evidence and/or witness testimony used for determining the denial.

The applicant will be given the opportunity to present evidence and/or witness testimony during the Review process. The applicant may designate an attorney or other adult representative to assist them at their own expense.

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

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

#### OHCD Policy

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

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of the 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. OHCD 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, OHCD will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, OHCD will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

OHCD will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal 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 participate in their informal review, the denial of admission will stand and the family will be so notified.

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

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

The PHA is not permitted to terminate a family's assistance until the time allowed for the participant family's head of household to request an informal hearing has elapsed, and any requested hearing has been completed.

#### OHCD Policy

In decisions that are subject to an informal hearing, and pertain to a determination to terminate assistance, OHCD is not permitted to stop HAP (unless a Breach of the HAP Contract by the landlord has occurred) and/or UAP under an outstanding HAP contract until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. If a request for an informal hearing has been received by OHCD within the OHCD required timeframe, HAP and UAP will continue to be paid under the outstanding HAP contract until a Notice of Final Decision (NFD) is issued.

OHCD will not allow family initiated moves during the informal hearing process. At the discretion of OHCD, a family may be granted the ability to move during the informal hearing process if OHCD deems the move to be involuntary. An involuntary move includes, but is not limited to, the following circumstances:

1. Landlord caused abatements where the move process is triggered under Chapter 8;
2. VAWA is triggered under Chapter 16;
3. The landlord opts out of the HAP Contract at the Annual Re-Examination;
4. The foreclosure process is completed and the move process is triggered under Chapter 13; or
5. The landlord has breached the HAP contract and has been removed from the program by HCV Compliance staff.

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

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### Decisions Subject to Informal Hearing

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

- A determination of the participant 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 PHA utility allowance schedule;
- A determination of the participant family unit size under the PHA's subsidy standards;
- A determination to terminate assistance for a participant family because of the participant family's actions or failure to act;
- A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules;
- A determination to terminate a participant 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 to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

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

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

### OHCD Policy

OHCD will offer participants the opportunity for an informal hearing only when required to by the regulations.

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### Informal Hearing Procedures

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

When the PHA makes a decision that is subject to informal hearing procedures, the PHA 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 PHA must notify the family that they may ask for an explanation of the basis of the determination, and 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 PHA'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.

#### OHCD Policy

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

1. The proposed action or decision of OHCD.
2. A brief statement of the reasons for the decision, including the regulatory reference.
3. The date the proposed action will take place.
4. A statement that if the family's right to an explanation of the basis for the decision.
5. A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
6. A deadline for the family to request an informal hearing.
7. To whom the hearing request should be addressed.
8. A copy of OHCD hearing procedures.

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

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

#### OHCD Policy

A request for an informal hearing must be made in writing and delivered to OHCD either in person, by electronic means, or by first class mail, by the close of the business day, no later than 10 business days from the date of the termination notice.

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Within 10 business days of the family's request, OHCD will send written notice to the family, either scheduling the hearing or notifying the family that an extension is granted to schedule a hearing.

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. Request to reschedule a hearing must be made orally or in writing 48 hours prior to the hearing date. At its discretion, the OHCD may request documentation of the "good cause" prior to rescheduling the hearing. The family is only allowed to reschedule the hearing one time.

If the family does not appear within 20 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the OHCD within 24 hours of the scheduled hearing date, excluding weekends and holidays. The OHCD 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 Conferences:*** OHCD staff may need to conduct a pre-hearing conference with a participant prior to an informal hearing to determine whether there is a preponderance of evidence to support the termination. OHCD staff will discuss with the participant the reasons for the termination and the participant's explanation of relevant events and actions. A pre-hearing conference is discretionary.

The pre-hearing conference may be performed via phone or it can be a face-to-face meeting at OHCD's discretion. At the pre-hearing conference, OHCD staff will share with the participant the information, which is causing the potential termination action.

If the matter is resolved with a pre-hearing conference, the termination will be rescinded. If, however, the matter cannot be resolved with a pre-hearing conference, OHCD will proceed with the informal hearing process.

After a decision is made at the pre-hearing conference, or if no pre-hearing conference is held, OHCD must submit the request for an informal hearing to Hearing Officer in a reasonable expeditious manner.

OHCD schedules hearings and notifies all parties. OHCD will schedule an in-person hearing unless circumstances warrant a telephone hearing.

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

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

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

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

#### OHCD Policy

The family and OHCD must provide to the other party copies of any proposed exhibits related to the hearing no later than one week prior to the scheduled hearing date. If the participant wishes any additional documents in OHCD possession, they must submit a FOIA request through the Freedom of Information Act (FOIA) Coordinator.

### ***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.

#### OHCD Policy

OHCD reserves the right to be represented by legal counsel.

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

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

#### OHCD Policy

OHCD provides County staff to adjudicate OHCD informal hearings.

### ***Attendance at an Informal Hearing***

#### OHCD Policy

Hearings may be attended by the OHCD's assigned County Staff, the Petitioner, and the OHCD representative and may include the following additional persons:

- Respondent or Petitioner witnesses;

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- Respondent or Petitioner legal counsel or appointed representative;
- The Head of Household must be present at the hearing regardless if he/she has appointed a representative;
- OHCD representative(s) and any witnesses for OHCD;
- OHCD counsel or other representative;
- Any other person approved by OHCD 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 PHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### OHCD Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. All Hearing will be digitally recorded. If recording is requested will be sent electronically. 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 PHA and the family must be given the opportunity to present evidence and question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### OHCD 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.

1. **Oral evidence:** the testimony of witnesses.
2. **Documentary evidence:** a writing, which is relevant to the case, for example, a letter written to OHCD. Writings include all forms of recorded communication or representation, including letters, words, pictures, and sounds, videotapes, symbols, or combinations thereof.
3. **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.
4. **Real evidence:** A tangible item relating directly to the case.

***Hearsay Evidence:*** 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. Even though

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evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the Hearing Officers decision. [24 CFR 982.555(e)(6)]

If either the OHCD or the family fail 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.

### ***Procedures for Rehearing or Further Hearing***

#### OHCD Policy

The hearing officer may ask the family or OHCD for additional information and/or might adjourn the hearing in order to reconvene later before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the OHCD will take effect and another hearing will not be granted.

### ***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.

#### OHCD Policy

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

- **OHCD Notice to the Family:** The hearing officer will determine if the reasons for OHCD's decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if OHCD and the family were given the opportunity to examine any relevant documents in accordance with OHCD policy.
- **OHCD Evidence to Support the OHCD 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 OHCD's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will conclude if the termination of assistance is for one of the grounds specified in the HUD regulations and OHCD policy. If the grounds for termination are not specified in the regulations or in compliance with OHCD policies, then the decision of OHCD will be overturned.

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The hearing officer will issue a written “Notice of Hearing Decision” to the family and OHCD no later than 10 business days after the hearing. 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 OHCD 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. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

**Order:** The hearing report will include a recommendation to uphold or overturn OHCD’s decision. If it is overturned, the hearing officer will instruct OHCD to change the decision in accordance with the hearing officer’s recommendations. In the case of termination of assistance, the hearing officer will instruct the OHCD to proceed with termination.

***Issuance of Decision [24 CFR 982.555(e)(6)]***

A copy of the hearing must be furnished promptly to the family.

**OHCD Policy**

The hearing officer will either e-mail electronically or mail the “Notice of Hearing Decision” to OHCD and the participant at the same time. A copy of the “Notice of Hearing Decision” will be maintained in the PHA’s file.

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

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

#### OHCD Policy

The Director has the authority to determine that the PHA is not bound by the decision of the hearing officer because the PHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state or local laws.

OHCD Director will either e-mail electronically or mail the "Notice of Hearing Decision" to all parties. A copy of the "Notice of Hearing Decision" will be maintained in the PHA's file.

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### **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 PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of an informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA 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)]**

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 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 PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS 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 PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

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### OHCD Policy

OHCD will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

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

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

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

### OHCD Policy

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

### **Informal Hearing Procedures for Applicants [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 PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

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

The PHA 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.

### ***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 PHA 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.

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### OHCD Policy

The family and OHCD must provide to the other party copies of any documents related to the hearing no later than one week prior to the scheduled hearing date.

OHCD must be given an opportunity to examine before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the hearing appointment notice will automatically include a statement to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant or the participant's legal counsel must make the documents available no later than 5 business days prior to the scheduled hearing date.

If the family is being represented by legal counsel, OHCD shall be advised of the name and contact information of said legal counsel no later than 5 business days prior to the hearing. Upon receipt of said contact information all communication related to the hearing shall be between OHCD and the family's legal counsel.

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 PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

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

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

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties.

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

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

### OHCD Policy

OHCD will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

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