

**TENANT SELECTION PLAN (TSP)**  
**FOR THE**  
**PARKSIDE AND KARABIS APARTMENTS**  
**PROJECT-BASED RENTAL ASSISTANCE (PBRA) PROGRAM**

January 1, 2017

Revision Date	Revision Date
September 1, 2017	
September 1, 2019	
December 1, 2019	
October 1, 2020	
February 1, 2022	
November 1, 2023	
February 1, 2024	

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## INTRODUCTION

The Community Development Authority (CDA) has prepared this Tenant Selection Plan in accordance with multifamily housing regulations for Section 8 New Construction subsidized housing. The CDA's Tenant Selection Plan establishes a set of policies which are consistently applied to all residents and applicants regarding tenant selection and ongoing occupancy. The plan is designed to promote fairness and uniformity in tenant selection and to promote efficiencies in the process used by the CDA in its operations of the covered developments. The procedures contained in this Tenant Selection Plan have been established in compliance with the Department of Housing and Urban Development (HUD) Handbook 4350.3, as amended, and all other applicable statutes and regulations.

## DEVELOPMENT DESCRIPTION AND DESIGNATION

The CDA owns and manages both *Parkside Apartments* and *Karabis Apartments* as part of the CDA's "Triangle" site of low-income rental housing, which is located along South Park Street in Madison, Wisconsin. Parkside and Karabis are both Section 8 New Construction (project-based) multifamily housing developments.

*Parkside Apartments* is one development featuring:

- *Parkside Highrise Apartments* is an eight-story building consisting of 82 one-bedroom apartments and one (1) two-bedroom apartment. All 83 apartment units are designated by HUD to serve low-income elderly families or families who have at least one household member who is a person with disabilities.
- *Parkside Townhouse Apartments* consist of eight (8) two-bedroom apartment townhomes and four (4) three-bedroom apartment townhomes for low-income families. The Parkside Townhouse units are not designated as housing exclusively for any particular family type or special needs population (i.e. elderly or disabled).

*Karabis Apartments* is a one-story building consisting of two (2) one-bedroom, 16 two-bedroom apartments, and two (2) three-bedroom apartments. All apartment units at the Karabis Apartments are barrier-free and have accessible features. Project eligibility at the Karabis Apartments is limited to a specific population of disabled families or persons with disabilities, who have mobility impairments requiring the need for the accessible features of the units.

## Modification of Tenant Selection Plan

This Tenant Selection Plan will be reviewed and/or updated at least once annually or when there is a change in HUD regulations to ensure that it reflects current operating practices, program priorities, and HUD requirements. For this reason, the current Tenant Selection Plan in place at the CDA will always be dated.

This Tenant Selection Plan will be made available for public viewing on the CDA's website and at the CDA's application office and property site office during regular hours of operation.

## Chapter 1

### NONDISCRIMINATION

#### 1-A. OVERVIEW

Federal laws require O/As to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The O/A will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register February 3, 2012
- The Violence against Women Act (VAWA)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

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

## **1-B. NONDISCRIMINATION**

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as O/A policies, can prohibit discrimination against additional classes of people.

The O/A shall not discriminate because of race, color, sex, religion, familial status, age, disability, or national origin (called “protected classes”).

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

The O/A will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12; Executive Order 13988].

### CDA Policy

The CDA does not identify any additional protected classes.

The O/A will not use any of these factors to:

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

## **1-C. POLICIES RELATED TO PERSONS WITH DISABILITIES**

The O/A must ensure that persons with disabilities have full access to the O/A's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the PBRA program [24 CFR Part 8].

### CDA Policy

The CDA will ask all applicants and resident families if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the O/A, by including the following language:

*“If you or any member of your family need an interpreter, materials in alternate formats, or if you require a reasonable accommodation due to a disability to apply for, receive, or continue to receive this service, activity, or program, please contact the CDA.”*

The CDA's phone number and email address will be provided for requests for accommodation for persons with disabilities.

## **1-D. REASONABLE ACCOMMODATION**

A *reasonable accommodation* is a change, exception, or adjustment to a policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since policies and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

## **1-E. REQUEST FOR AN ACCOMMODATION**

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the O/A treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to the O/A's programs and services.

If the need for the accommodation is not readily apparent or known to the O/A, the family must explain the relationship between the requested accommodation and the disability.

### O/A Policy

The CDA will encourage the family to make its request in writing using a reasonable accommodation request form. However, the CDA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

## 1-F. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities can be found at 24 CFR Parts 8.3 and 100.201. The definition of a *person with a disability* for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of *disability*, which is used for waiting list preferences and income allowances.

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

If a person's disability is obvious or otherwise known to the O/A, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the O/A, the O/A must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- The O/A must request only information that is necessary to evaluate the disability-related need for the accommodation. The O/A may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

## **1-G. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]**

The O/A must approve a request for an accommodation if the following three conditions are met:

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

Requests for accommodations must be assessed on a case-by-case basis. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the overall size of the O/A's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the O/A may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the O/A may verify the need for the requested accommodation.

### CDA Policy

After a request for an accommodation is presented, the CDA will respond, in writing, within 10 business days.

If the CDA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the CDA's decision.

If the CDA denies a request for an accommodation because it is not reasonable, the CDA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the PBRA program and without imposing an undue financial and administrative burden.

If the CDA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the CDA will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal the O/A's decision.

## **1-H. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS [24 CFR 8.6]**

HUD regulations require the O/A to take reasonable steps to ensure that persons with disabilities related to hearing and vision have reasonable access to the O/A's programs and services [24 CFR 8.6].

### CDA Policy

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

## Chapter 2

### THE APPLICATION PROCESS

#### 2-A. USE OF ELECTRONIC SIGNATURES [Notice H 2020-04]

HUD allows but does not require O/As to use electronic signatures (e-signatures) in compliance with Notice H 2020-04 and federal, state, and local laws. Owners adopting policies on the use of electronic signatures must provide applicants and tenants the option use “wet” signatures (i.e., original signatures) and paper documents upon request.

##### CDA Policy

The CDA will accept and use electronic signatures (e-signatures) during the application process, the leasing process, and the annual and interim recertification process, as described in this section and in compliance with Notice H 2020-04 and any applicable federal, state, and local laws.

In lieu of electronic signatures, tenants have the option to sign any required documents or forms on paper with a “wet” signature if they so request.

References to original signatures throughout this policy may be interpreted and implemented through electronic means.

The owner will ensure appropriate data security for both the record being signed and the signature.

#### 2-B. TRANSMISSION OF FORMS, NOTICES, AND DOCUMENTS [Notice H 2020-04]

HUD allows but does not require O/As to communicate electronically with applicants and tenants and/or provide documents and notices electronically when state and local law permits and in accordance with Notice H 2020-04.

If the O/A chooses to use electronic communication procedures, applicants and tenants may also choose to communicate electronically with the O/A provided their choice is made affirmatively—not assumed with an opt-out procedure. The O/A may designate specific methods as acceptable for electronic transmissions from applicants and tenants.

When state and local law permits, the O/A may also provide documents and notices electronically or make such documents available in electronic format. However, when HUD regulations or notices or state or local law require notices to tenants be sent by first class mail, delivered directly to tenants or their units, or be posted in public spaces, electronic communication does not satisfy this requirement.

Applicants and tenants must have the opportunity to provide their information and documents in paper copy and to receive documents in paper form, including both before they have provided any information or documents electronically or after they have done so and wish to discontinue doing so. If an O/A chooses to provide documents electronically, the O/A should inform applicants or tenants of their option to receive such documents in paper form.

### CDA Policy

In compliance with federal, state, and local laws and HUD regulations, the CDA will securely, electronically transmit HUD-approved and required documents when feasible throughout the application, move-in, and annual and interim recertification process. Tenant and applicants may request paper copies of such documents and may provide information in paper form at any time.

The CDA will inform applicants of their ability to communicate electronically with the CDA and/or receive paper copies of documents via the application.

### **Acknowledgement of Receipt**

If required notices, forms, and brochures are distributed electronically, HUD recommends that O/A request an electronic acknowledgement of receipt. Where HUD does not specifically require applicant or tenant acknowledgement of receipt, the O/A should nonetheless maintain records showing that they provided applicants or tenants with the electronic file or the electronic address used to access the document.

### CDA Policy

Where HUD requires an acknowledgement of receipt for certain documents or forms and the CDA has adopted a policy for electronic documents, the CDA will request an electronic acknowledgement of receipt from the applicant or tenant. For documents provided electronically that do not require an acknowledgement of receipt, the CDA will maintain records showing they provided information electronically.

### **Effective Communication to Persons with Disabilities [24 CFR 8.6; 28 CFR 35.160; 28 CFR 36.303]**

The owner must ensure effective communication with persons with disabilities by ensuring that all notices and communications provided electronically are consistent with applicable fair housing laws and regulations and that electronic communications do not impose any barriers in accessing information, programs, and activities by persons with disabilities.

The owner must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed (e.g., Braille, audio, large type, assistive listening devices, sign language interpreters, accessible websites and other electronic communications). In the event that a person with a disability is unable to use an electronic system or file that meets federal accessibility standards, the O/A must provide reasonable accommodations to afford users an equal opportunity to participate (e.g., in completing and signing documents or submitting documents in paper copy).

## **Effective Communication to Limited English Proficient (LEP) Individuals [Executive Order 13166]**

The owner is responsible for ensuring effective communication of electronic media includes reasonable steps taken to ensure meaningful access for persons with Limited English Proficiency (LEP) across technological platforms. Such formats may include, but are not limited to, multilingual websites and other electronic media.

### **2-C. MARKETING**

The O/A will market available units in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan (Form HUD-935.2A) in order to reach those who are least likely to apply and to attract a broad cross-section of the eligible population without regard to race, color, religion, sex, disability, familial status, gender identity, or national origin.

### **2-D. APPLYING FOR ASSISTANCE [24 CFR 880.603(a); HUD Handbook 4350.3, REV-1, CHG-4, Section 4-14]**

Any family that wishes to reside at the property must apply for admission to the program. Applications must be signed by both the O/A and the applicant. HUD permits the O/A to determine the format and content of the application, as well how such applications will be made available to interested families and how applications will be accepted by the O/A. However, the O/A must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the application.

#### CDA Policy

Depending upon the length of time between the date of application and the availability of housing, the CDA may use a one- or two-step application process.

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

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the CDA will require a pre-application and the family will be required to provide only the information needed to assess project eligibility and to determine the family's placement on the waiting list. When selected from the waiting list, the family will be required to complete a full-application and provide all of the information necessary to establish family eligibility and the amount of rent the family will pay. The CDA will accept full-applications in person or by mail, and not by fax. The CDA will accept full-applications via the internet through its applicant portal system from applicants who create a CDA MyHousing portal account.

Families may initially apply to the CDA through an on-line application system. Access to the CDA's on-line application system will be made available through the CDA's Housing website. When the CDA accepts applications via an on-line system, special provisions will be made to ensure that those who are disabled and cannot utilize a computer can apply. An exception to the online submittal process will be made for disabled families

through an accommodation request. An accommodation request may be made in writing or verbally presented to the CDA's central office. All applications must be complete in order to be accepted by the CDA for processing. The CDA will not accept applications by fax. All adult applicants will be given the opportunity to complete Form HUD-92006, Supplement to Application for Federally Assisted Housing, at the time of application and annually at recertification.

## **2-E. ACCESSIBILITY OF THE APPLICATION PROCESS**

The O/A must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the standard O/A application process.

The O/A must provide reasonable accommodation as needed for persons with disabilities to make the application process fully accessible. The facility where applications are accepted and the application process must be fully accessible, or the O/A must provide an alternate approach that provides equal access to the program.

## Chapter 3

### WAITING LIST PROCEDURES

#### 3-A. PLACEMENT ON THE WAITING LIST

The O/A must review each completed application received and make a preliminary assessment of the family's eligibility. Areas to be reviewed include requirements for income, household size/composition, student status, special status requirements such as age or disability status if needed, and criminal history. Applicants for whom the waiting list is open must be placed on the waiting list unless the O/A determines the family is ineligible.

Placement on the waiting list does not indicate that the family is, in fact, eligible for admission. When the family is selected from the waiting list, the O/A will verify any preferences claimed, if applicable, and determine eligibility and suitability for admission to the program.

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

#### **Ineligible for Placement on the Waiting List**

##### CDA Policy

If the CDA determines from the information provided that a family is ineligible, the family will not be placed on the waiting list. When a family is determined to be ineligible, the CDA will send written notification of the ineligibility determination.

The written notice will specify the reasons for ineligibility and will inform the family of its right to respond to the owner in writing or request a meeting within 10 business days to dispute the rejection. The notice will state that applicants who are persons with disabilities have the right to request a reasonable accommodation.

#### **Eligible for Placement on the Waiting List**

##### CDA Policy

The CDA will send written notification of the preliminary eligibility determination within 10 business days of receiving a completed application. If applicable, the notice will also indicate the waiting list preferences for which the family appears to qualify.

### **3-B. PREFERENCES [HUD Handbook 4350.3, REV-1, CHG-4, Section 4-6; 24 CFR 5.655(c); Notice H 2013-21]**

O/As must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the O/A will use, if any. O/As are permitted, but not required to, establish local preferences as long as they are subordinate to any program-specific preferences. Preferences do not guarantee admission. O/As must inform all applicants about any available preferences and give all applicants the opportunity to show they qualify for available preferences. While HUD rules currently include four types of preferences, Section 8 properties may only implement owner-adopted preferences or state and local preferences. HUD approval is required for any state, local, or residency preferences. Owners may implement owner-adopted preferences outside of those cited in the regulations, such as a preference for homeless families [Notice H 2013-21]. If a homeless preference is adopted, it must be included in this TSP, which must then be submitted to HUD for approval.

#### CDA Policy

When the waiting list is open, the CDA will place eligible applicants on the waiting list based upon their awarded preference(s) and the date and time a complete application is received by the CDA. Preferences are categories for people with priority status and determine how quickly an applicant may move to the top of a waiting list. Claiming a preference does not automatically grant an applicant a preference. Obtaining a preference does not guarantee admission into CDA's housing program. Applicants must meet all qualifications in order to receive assistance, regardless of preference status. Preferences may be claimed at the time of application or at any time prior to admission. The CDA will use the following owner-adopted preferences for the development(s) covered under this tenant selection plan:

#### **Residency Preference**

An applicant receives a *City of Madison* preference when the applicant can provide verification that the head-of-household, spouse, or co-head lives, works, or has been hired to work or is attending school or is participating in training programs in the CDA's jurisdiction (City of Madison, WI).

If an applicant does not live in the City of Madison, but lives within the County of Dane, the applicant will receive a *Dane County* preference when the applicant provides verification that the head of household, spouse, or co-head lives, works, has been hired to work, attends school, or participates in a training program in Dane County, WI.

#### **Elderly/Disabled/Family Preference**

An applicant may receive the *Elderly/Disabled/Family* preference if the head-of-household, spouse, or co-head is 62 years of age or older; or the head-of-household, spouse or co-head meets the HUD definition of disabled; or if the household composition includes any minor children (under the age of 18).

### **3-C. INCOME TARGETING REQUIREMENT [HUD Handbook 4350.3, REV-1, CHG-4, Section 4-25]**

HUD requires O/As with Section 8 units to ensure that during a fiscal year at least 40 percent of the dwelling units assisted under the contract that become available, together with initial certification of in-place families (with the exception of in-place residents at the time of a RAD conversion), be extremely low-income (ELI) families. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher [FR notice 6/25/14]. To ensure this requirement is met, the O/A may skip non-ELI families on the waiting list in order to select an ELI family.

Current households in properties converting to PBRA under RAD are not subject to income targeting provisions at the time of conversion.

#### CDA Policy

The CDA will monitor progress in meeting the ELI requirement throughout the fiscal year. ELI families will be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met.

### **3-D. OPENING AND CLOSING THE WAITING LIST**

Should the wait for one or more bedroom size become excessive (exceeding 12 months), the O/A can, at their discretion, close the waiting list and no longer accept applications.

#### CDA Policy

Should the wait for one or more bedroom size become excessive (exceeding 12 months), the CDA can, at their discretion, close the waiting list and no longer accept applications. Where the CDA has particular preferences or other criteria that require a specific category of family, the CDA may elect to continue to accept applications from these applicants while closing the waiting list to others.

When the waiting list is closed, the CDA will make the public aware of the waiting list closing through the advertising and notification procedures outlined in the HUD-approved Affirmative Fair Housing Marketing Plan (AFHMP) and will state the reasons for closing the waiting list.

When the CDA reopens the waiting list for one or more bedroom sizes, it will again notify the public in the manner outlined in the AFHMP and will state how, when, and where to apply for an apartment and how applications will be added to the waiting list.

### **3-E. UPDATING THE WAITING LIST [HUD Handbook 4350.3, REV-1, CHG-4, Section 4-18]**

Whenever a change is made in the waiting list, an action is taken, or an activity specific to an applicant occurs, a notation must be made on the waiting list.

#### CDA Policy

##### **Reporting Changes**

At the time of initial application, the CDA will advise families in writing that they are responsible for notifying the CDA in writing when their circumstances, mailing address, phone numbers, or other means of contact change.

##### **Purging the Waiting List**

A waiting list or subparts of a waiting list may be updated as needed to ensure that all applicants and applicant information is current and timely.

To update a waiting list, the CDA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that the CDA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list. The family's response must be in writing and may be delivered in person or by mail. Responses must be received by the CDA no later than 10 business days from the date of the CDA letter.

See Removal from Waiting List for CDA's policy regarding the family's failure to respond or the CDA's notice is returned by the post office.

The CDA may allow a grace period after completion of a waiting list purge. Applicants who respond to the CDA during this grace period will be reinstated.

Families who wish to re-apply to the waiting list will have to wait 3 months before doing so, and only if the waiting list is open at that time.

### **Removal from the Waiting List**

The CDA will remove applicants from the waiting list if they have requested that their name be removed. In such cases no informal hearing is required.

Families will be removed from the waiting list if they do not respond to CDA requests for information or if any CDA correspondence is returned by the post office with or without a forwarding address. When the family is removed from the waiting list, no informal hearing will be offered. Such failures to act on the part of the applicant prevent the CDA from making an eligibility determination; therefore, no informal hearing is required. In these cases, families who wish to re-apply to the waiting list will have to wait 3 months before doing so, and only if the waiting list is open at that time.

A CDA supervisor or qualified CDA eligibility staff person may reinstate a family to the waiting list if it is determined that the lack of response was due to CDA error, or due to circumstances beyond the family's control. A determination of reinstatement will require verification.

## **3-F. SELECTION FROM THE WAITING LIST**

Waiting lists will be divided into sub-lists based upon unit size, unit type, and accessibility features needed. By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application, higher preference status, or preceding lottery number. Further, all selections from the waiting list will be made considering income targeting requirements.

### **CDA Policy**

The O/A will select applicants from the waiting list according to the date and time of application, on a first-come, first-served basis.

The CDA must select applicants from a waiting list and offer units in the order required by HUD rules and CDA policies. The CDA's selection methods are impacted in part by project eligibility specification, any selection preferences that the family qualifies for, income-targeting policies and requirements, and CDA screening policies. The availability of units may also affect the order in which families are selected from the waiting list. The CDA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the CDA's tenant selection policies. All families with the Elderly/Disabled/Family preference will have admission preference over *Other Singles*. The CDA will assign housing units in the developments covered under this tenant selection plan in the following priority order:

### **Parkside Development**

#### ***Parkside Highrise Apartments***

- First Priority:** Elderly families, disabled families, or persons with disabilities, who have a head-of-household, spouse, or co-head who lives, works, or attends school within the CDA's jurisdiction (City of Madison, WI).
- Second Priority:** Elderly families, disabled families, or persons with disabilities, who have a head-of-household, spouse, or co-head who lives, works, or attends, school in Dane County, WI.
- Third Priority:** Elderly families, disabled families, or persons with disabilities, who have a head-of-household, spouse, or co-head who does not live, work, or attend school in the CDA's jurisdiction or in Dane County, WI.

***Parkside Townhouse Apartments***

- First Priority:** Families with the Elderly/Disabled/Family preference who have a head-of-household, spouse, or co-head who lives, works, or attends school within the CDA's jurisdiction (City of Madison, WI).
- Second Priority:** Other Singles who live, work, or attend school within the CDA's jurisdiction (City of Madison, WI).
- Third Priority:** Families with the Elderly/Disabled/Family preference who have a head-of-household, spouse, or co-head who lives outside the City of Madison, but who lives, works, or attends school in Dane County, WI.
- Fourth Priority:** Other Singles who live outside of the City of Madison, but who live, work, or attend school in Dane County, WI.
- Fifth Priority:** Families with the Elderly/Disabled/Family preference who have a head-of-household, spouse, or co-head who does not live, work, or attend school in the CDA's jurisdiction or in Dane County, WI.
- Sixth Priority:** Other Singles who do not live in the CDA's jurisdiction and who do not live in Dane County, WI.

**Karabis Development**

- First Priority:** Disabled families or persons with disabilities who have a head-of-household, spouse, or co-head who lives, works, or attends school within the CDA's jurisdiction (City of Madison).
- Second Priority:** Disabled families or persons with disabilities who have a head-of-household, spouse, or co-head who lives outside of the City of Madison, but who lives, works, or attends school in Dane County, WI.

**Third Priority:** Disabled families or persons with disabilities who have a head-of-household, spouse, or co-head who does not live, work, or attend school in the CDA's jurisdiction or in Dane County, WI.

When selecting applicants from the waiting list, the CDA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. The CDA will offer the unit to the highest-ranking applicant who qualifies for that unit size or type, or that requires the accessibility features. By matching unit and family characteristics, it is possible that families that are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application or higher preference status.

### **Notification of Selection**

The CDA will notify the family by first class mail when it is selected from the waiting list. The selection-notice will inform the family of any final application requirements and may include an application interview.

If a notification letter is returned to the CDA, with or without a forwarding address, the family will be removed from the waiting list without further notice. Such failure to act on the part of the applicant prevents the CDA from making an eligibility determination; therefore, no informal hearing will be offered.

### **3-G. APPLICANT INTERVIEW [HUD Handbook 4350.3, REV-1, CHG-4, Section 4-24]**

When an appropriate unit will be available in the near future, the O/A must interview the applicant family to obtain current information about the family's circumstances. All information listed in Chapter 4 of the HUD Handbook 4350.3 must be discussed.

#### CDA Policy

As applicants approach the top of the waiting list, they will be contacted by telephone or email and first class mail to schedule an interview to complete their applicant file.

Applicants who fail to attend their scheduled interview or fail to reply to the letter will have their applications removed from the waiting list, subject to reasonable accommodation for persons with disabilities.

## Chapter 4

### PROJECT ELIGIBILITY

Program eligibility determines whether applicants are eligible for assistance, while project eligibility establishes whether applicants are eligible to reside in the specific project to which they have applied. Project eligibility may be affected by:

- Whether some or all of the units in the project are designated for specific family types
- Project-specific occupancy standards (See Section 4-C)
- Whether some or all of the units in the project are layered with other programs and therefore may have different requirements

#### **4-A. PROJECT-SPECIFIC REQUIREMENTS [HUD Handbook 4350.3, REV-1, CHG-4, Chapter 3, Section 2]**

The O/A is required to define if the property is designated for a special population, such as elderly or disabled.

##### CDA Policy

The multifamily housing developments covered under this tenant selection plan have the following project eligibility specifications or requirements:

##### **Parkside Apartments**

###### *Parkside Highrise Apartments*

Units are reserved for occupancy by an elderly family, a disabled family, or a person with disabilities. The CDA will place applicants eligible for any accessible unit at Parkside Highrise Apartments on the waiting list in accordance with the property's waiting list procedures and in accordance with the occupancy standards for accessible units. The Fair Housing Amendments Act of 1988 prohibits the CDA from discriminating against elderly or disabled families that include children.

###### *Parkside Townhouse Apartments*

Families must meet occupancy standards that take into account the size and number of bedrooms needed based on the number of people in the family. The CDA will place applicants eligible for any accessible unit at Parkside Townhouse Apartments on the waiting list in accordance with the property's waiting list procedures and in accordance with the occupancy standards for accessible units.

##### **Karabis Apartments**

Designated to serve a disabled family or a person with disabilities, where the disabled family member requires the special features of the unit. All units at Karabis Apartments have been made accessible as a result of alterations intended for use by a specific qualified person with a disability or mobility impairment. Verification will be required to

determine project eligibility as these accessible units are limited to persons with mobility impairments.

#### **4-B. INCOME ELIGIBILITY [24 CFR 5.653; HUD Handbook 4350.3, REV-1, CHG-4, Section 3-6, Figure 3-3]**

##### **Income Limits**

HUD is required by law to establish income limits that determine the income eligibility of applicants for HUD's assisted housing programs, including the PBRA program. The income limits are published annually and are based on HUD estimates of the median incomes for families of different sizes in a particular area or county. Income limits are determined by HUD program type.

##### **Types of Low-Income Families**

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

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

*Extremely low-income family.* A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

##### **Using Income Limits for Eligibility**

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income eligible, the household's annual income does not exceed applicable program income limits, a copy of which will be available upon request.

##### **RAD Requirements [Notice H 2019-09]**

Pursuant to RAD statute, at conversion, current households are not subject income eligibility provisions. In order to facilitate the right to return to the assisted property, this also applies to current public housing residents at the converting project that will reside in non-RAD PBRA units placed in a project that contains RAD PBRA units. RAD PBRA properties will use the low-income limit to determine eligibility for new admissions to the property.

#### **4-C. OCCUPANCY STANDARDS [HUD Handbook 4350.3, REV-1, CHG-4, Section 3-23]**

In selecting a family to occupy a particular unit, the O/A may match characteristics of the family with the type of unit available, for example, number of bedrooms [24 CFR 5.655(b)(4)]. HUD does not specify the number of persons who may live in units of various sizes. Although the O/A does determine the size of unit the family qualifies for under the occupancy standards, the O/A does not determine who shares a bedroom/sleeping room. Occupancy standards will be applied in a manner consistent with fair housing requirements. Applicants will be housed in a unit size appropriate for their household.

Live-in aides and foster children and adults are considered members of the household, not the family. While the income and assets of these household members are excluded when determining initial eligibility, all members of the household, including foster children and adults and any live-in aides, are considered for purposes of unit size. HUD defines a foster adult as a member of the household who is 18 years or older and meets the definition of a foster adult under state law. State-level agencies define who is considered a foster adult/child, so the classification may vary from state to state. In general, a foster adult is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

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

In accordance with HUD Handbook 4350.3, REV-1, CHG 4, household members include, but are not limited to the following:

- All full-time family members
- All anticipated children, defined as the following:
  - Children expected to be born to a pregnant woman
  - Children in the process of being adopted by an adult family member
  - Children whose custody is being obtained
  - Foster children who will reside in the unit
  - Children who are temporarily in a foster home who will return to the family
  - Children in joint custody arrangements who are present in the household 50 percent or more of the time
- Children who are away at school and who live at home during recesses
- Live-in aides
- Foster adults living in the unit

##### CDA Policy

Occupancy standards are established by the CDA to ensure that units are occupied by families of the appropriate size. This policy maintains the maximum usefulness of the units, while preserving them from excess wear and tear or underutilization. The CDA will

assign one bedroom for each two persons within the household, except in the following circumstances:

- Persons of the opposite sex (other than spouses, domestic partners, and children under age 5) will not be required to share a bedroom.
- Due to the overall size of CDA’s one-bedroom units, and adult with one child (of any age) in the household may be assigned to a two-bedroom unit.
- Persons of different generations will not be required to share a bedroom. “Generations” is defined as a body of living beings constituting a single step in the line of descent from an ancestor. This step involves a 20-to-30-year span of time between the birth of parents and that of their offspring, and during which the children are born and grow up, become adults, and begin to have children of their own.
- Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide’s family.
- Single person families will be allocated a zero or one bedroom.
- Children expected to be born to a pregnant person and foster children will be included in determining unit size.

The CDA will reference the following standards in determining the appropriate unit bedroom size for a family:

Number of Bedrooms	Number of Persons	
	Minimum	Maximum
0 BR	1	1
1 BR	1	2
2 BR	2	4
3 BR	3	6

The family may only be on the waiting list for one bedroom size at any property. For example, if the family qualifies for both a one- and a two-bedroom waiting list, the family may not be on both lists. Once the family selects a bedroom size, they may not switch to a different bedroom size waiting list unless they experience a qualifying event such as birth, adoption, or court-awarded custody of a child.

*Exceptions to Occupancy Standards*

The CDA will consider granting exceptions to occupancy standards at the family’s request if the CDA determines that the exception is justified by the relationship, age, sex, health or disability of family members, or other personal circumstances. All requests for exceptions to the occupancy standards must be submitted in writing. When evaluating exception requests the CDA will consider the size and configuration of the unit. In no case will CDA grant an exception that is in violation of local housing or occupancy codes, regulations or laws.

Requests from applicants to be placed on the waiting list for a unit size smaller than designated by the occupancy standards will be reviewed on a case-by-case basis. The CDA will have discretion to approve such a request as long as the unit is not overcrowded according to local code, and the family agrees not to request a transfer for a period of two years from the date of admission, unless they have a subsequent change in family size or composition. The CDA will evaluate the relationship and ages of all family members, the overall size of the unit, the need for the smaller size unit, and the waiting lists for the smaller and larger size units. An exception may also be granted for a smaller bedroom size in cases where the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, and the family does not want to transfer to a larger size unit.

To prevent vacancies, the CDA may provide an applicant family with a larger unit than the occupancy standards permit. However, in these cases the family must agree to a suitable, smaller unit when another family qualifies for the larger unit and there is an appropriate size unit available for the family to transfer to.

In the case of a request for a reasonable accommodation, the CDA will encourage the applicant/resident to make the request in writing using a reasonable accommodation request form. However, the CDA will consider the exception request at applicant/resident indicates that an accommodation is needed whether or not a formal written request is submitted.

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

### **RAD Requirements [Notice H 2019-09]**

If at the time of conversion, an eligible family assisted under the HAP contract is occupying a unit that is larger than appropriate because of the family's composition, the family will be permitted to continue to occupy the unit until an appropriate-sized unit becomes available in the project. When an appropriate-sized unit becomes available, the family living in the under-occupied unit must move to the appropriate-sized unit within 30 days.

### **UNIT OFFERS [24 CFR 1.4(b)(2)(ii)]**

The CDA must assign eligible applicants to dwelling units in accordance with a plan that is consistent with civil rights and nondiscrimination. In filling an actual or expected vacancy, the CDA must offer the dwelling unit to an applicant in the appropriate sequence. The CDA will offer the unit until it is accepted. The CDA will maintain a record of units offered, including location, date and circumstances of each offer, each acceptance or rejection, including the reason for the rejection.

Approved applicants will be provided one (1) offer of a unit of suitable size at the development for which they applied for.

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

## ACCESSIBLE UNITS [24 CFR 8.27]

The CDA may not prohibit an eligible family with a member who has a disability from accepting a suitable non-accessible unit if no accessible unit is available when the family reaches the top of the waiting list. If an appropriate-size accessible unit is not available, the CDA may house an applicant needing an accessible unit in a larger accessible unit in order to maximize the use of accessible features. Section 504 requires that the CDA take reasonable, non-discriminatory steps to maximize the use of accessible units by eligible individuals whose disability requires the accessibility features of a particular unit. As part of this requirement, the CDA must assign available accessible units to residents/applicants in the following order:

- When there is a current tenant or qualified applicant with a household member requiring the accessibility features of the unit:
  - a. Current Tenants. The CDA must first offer the unit to an individual with disabilities currently residing in a non-accessible unit in the same development or, who requires the features of the unit;
  - b. Applicants with Disabilities. If no current tenants require the special features of the accessible unit, the CDA must then offer the unit to the next qualified applicant on the waiting list with a family member who needs the features of the accessible unit.

Families requiring an accessible unit may be over-housed in such a unit if there are no resident or applicant families of the appropriate size who also require the accessible features of the unit:

- When neither a current tenant nor a qualified applicant requires the features of the available accessible unit:
  - a. The CDA may offer the unit to another tenant or applicant in a manner consistent with this tenant selection plan and will incorporate into the lease an agreement that the tenant will move to a non-accessible unit of the proper size within the same property when one becomes available. The lease addendum will state that the tenant will pay for the cost of such moves.
  - b. In the case where the members of the tenant household who required the special features of the accessible unit no longer reside in the unit, and where the lease permits, the CDA will require the remaining members of the household to move to a unit without accessibility features (see **Unit Transfer Policy**).

## Chapter 5

### PROGRAM ELIGIBILITY

The O/A is responsible for ensuring that every individual and family admitted to the program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted. The family must provide any information needed by the O/A to confirm eligibility and determine the level of the family's assistance.

In addition to meeting the requirements listed in this section, in order to be eligible:

The unit for which the applicant household is applying will be the household's sole place of residence.

At the time of admission, the applicant may not be receiving rental assistance in another unit unless that assistance will be terminated at the time of admission.

#### **RAD Requirements [Notice H 2019-09]**

Pursuant to RAD statute, at conversion, current households are not subject to rescreening. Consequently, current households will be grandfathered for conditions that occurred prior to conversion, but will be subject to any ongoing eligibility requirements for actions that occur after conversion.

#### **5-A. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [HUD Handbook 4350.3, REV-1, CHG-4, Section 3-12; 24 CFR 5, Subpart E]**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the O/A's Limited English Proficiency (LEP) Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen, or an ineligible noncitizen, and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously assisted occupancy [24 CFR 5.508(g)(5)].

## **Declaration [24 CFR 5.508]**

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

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

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit the O/A to request additional documentation of their status, such as a birth certificate or U.S. passport.

#### CDA Policy

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

### ***Eligible Immigrants***

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

For family members age 62 or older who claim to be eligible immigrants, proof of age is required. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the O/A must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

The O/A will follow all USCIS protocols for verification of eligible immigration status.

### ***Ineligible Noncitizens***

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

## **5-B. SOCIAL SECURITY NUMBERS [24 CFR 5.216; Notice 2023-10]**

The family must provide documentation of a valid Social Security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

The O/A must accept the following documentation as acceptable evidence of the Social Security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

While O/As must attempt to gather third-party verification of SSNs prior to admission as listed above, O/As also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the O/A has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the O/A must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the O/A must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

### CDA Policy

The CDA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the individual's SSN are available.

The O/A may only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, or illegible, or if the document appears to be forged.

For applicant families, if all household members have not disclosed and/or provided verification of SSNs for all household members at the time a unit is available and offered to the household, the next eligible applicant will be offered the available unit. The applicant family that has not disclosed SSNs for all household members must disclose and provide verification of SSNs for all household members within 90 days of the date of they are first offered a unit, during which time, the family may remain on the waiting list. If after 90 days of the first unit offer the applicant has not provided the SSN and verification documentation, the applicant will be determined ineligible and removed from the waiting list.

If an applicant family includes a child under six years of age who joined the household within the six months prior to the date of program admission, an otherwise eligible family may be admitted and must provide documentation of the child's SSN within 90 days. A 90-day extension will be granted if the O/A determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control.

When a resident requests to add a new household member who is at least six years of age, or who is under the age of six and has an SSN, the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The O/A may not add the new household member until such documentation is provided.

When a resident requests to add a new household member who is under the age of six and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the O/A determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period the O/A is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

Social security numbers must be verified only once during continuously assisted occupancy.

Once the individual's verification status is classified as "verified," the O/A may remove and destroy copies of documentation accepted as evidence of Social Security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

#### CDA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, the CDA will not remove copies of documentation accepted as evidence of Social Security numbers.

### **5-C. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612; FR Notice 4/10/06; FR Notice 9/21/16; HUD Handbook 4350.3, REV-1, CHG-4, Section 3-13]**

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving Section 8 assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive Section 8 assistance. If, however, a student in these circumstances is determined independent from their parents based on the Department of Education's definition of an *independent student*, which has been expanded to include "vulnerable youth" as defined below, the income of the student's parents will not be considered in determining the student's eligibility.

The Department of Education's definition of an *independent student* includes an individual who meets one or more of the following criteria:

- The individual is 24 years of age or older by December 31 of the award year
- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence
- The individual is a veteran of the Armed Forces of the United States or is currently serving on active duty in the Armed Forces for other than training purposes
- The individual is a graduate or professional student
- The individual is married
- The individual has legal dependents other than a spouse
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting, by:
  - A local educational agency homeless liaison;
  - The director of a program funded under the Runaway and Homeless Youth Act or a designee of the director;
  - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants) or a designee of the director; or
  - A financial aid administrator
- The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

The law does not apply to students who reside with parents who are applying to receive Section 8 assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

If a student is applying for assistance on their own, apart from their parents, the O/A must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the O/A must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from their parents or the student's parents are income eligible for the program, (3) the "family" with which the student is applying is collectively eligible for the program, (4) is of legal contract age under state law, (5) has established a household separate from parents or legal guardians for at least one year, (6) is not being claimed as a dependent by parents or legal guardians pursuant to IRS regulations, and (7) obtains a certification of the amount of financial assistance provided by parents, signed providing the support.

**5-D. FAMILY CONSENT TO RELEASE OF INFORMATION [HUD Handbook 4350.3, REV-1, CHG-4, Section 5-12; Notice H 2023-10]**

The family must supply any information that the O/A or HUD determines is necessary to the administration of the program and must consent to O/A verification of that information.

All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Consent to Release of Information Forms HUD-9887 and 9887-A at admission.

On or after January 1, 2024, current residents must sign and submit a new Form HUD-9887 and 9887-A at their next interim or annual reexamination. This form will only be signed once.

Another Form HUD-9887 and 9887-A will not be submitted to the O/A except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or the O/A in administrative instructions.

The O/A has the discretion to establish policies around when family members must sign consent forms when they turn 18. O/As must establish these policies stating when family members will be required to sign consent forms at intervals other than at recertification.

CDA Policy

Household members turning 18 years of age between annual recertifications will be notified in writing that they are required to sign the required Consent to the Release of Information Forms HUD-9887 and 9887A within seven days of turning 18 years of age.

The O/A may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the O/A determines the record is needed to establish an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to the O/A to revoke consent.

All adult members must also sign all O/A-created individual verification forms. If any family member who is required to sign a consent form fails to do so, the O/A will deny admission to applicants or terminate the assistance of tenants.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the O/A to access financial records from financial institutions, unless the O/A establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)]. O/As may not process interim or annual reexaminations of income without the family's executed consent forms.

#### CDA Policy

The CDA has established a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in accordance with CDA policy.

In order for a family to revoke their consent, the family must provide written notice to the CDA.

Within 10 business days of the date the family provides written notice, the CDA will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, the CDA will notify their local HUD office.

## Chapter 6

### SCREENING CRITERIA

Screening is the determination that an otherwise eligible household has the ability to pay rent on time and meet the requirements of the lease. O/As are required to establish written screening criteria to prohibit admission of certain individuals and are permitted to establish additional written screening criteria to determine whether applicants will be suitable tenants.

Live-in aides are screened using the same requirements listed for applicants, with the exception of any criteria involving credit or ability to pay rent.

The cost of screening must not be charged to applicants.

#### **RAD Requirements [Notice H 2019-09]**

As stated in Chapter 5, pursuant to RAD statute, at conversion, current households are not subject to rescreening provisions. Current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.

#### **6-A. REQUIRED DENIAL OF ADMISSION [HUD Handbook 4350.3, REV-1, CHG-4, Section 4-7; 24 CFR Part 5, Subpart I]**

HUD requires the O/A to deny assistance in the following cases:

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

##### CDA Policy

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

- The O/A determines that any household member is determined to be currently engaged in the illegal use a controlled substance (e.g., marijuana). A controlled substance is defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

##### CDA Policy

*Currently engaged in* is defined as any use of illegal drugs during the previous twelve months.

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

#### CDA Policy

In determining reasonable cause, the CDA will consider all credible evidence, including but not limited to, any record of convictions or arrests of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. A record of arrests will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity. The CDA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

#### CDA Policy

At the time of application processing, the CDA will screen all applicants and household members for state sex offender registration in all states where the applicant and members of the applicant's household have resided using the Dru Sjodin National Sex Offender Database (<http://www.nsopw.gov>).

If it is determined that a household member is subject to a state lifetime sex offender registration requirement, the household will be denied, or assistance will be terminated, unless the ineligible household member is removed from the household. For applicant households, the ineligible household member must be removed from the application, or the application will be denied.

The CDA will screen all household members for state sex offender registration and criminal history at the time of each resident's annual recertification. Should there be any evidence that any member of the applicant/resident household is subject to a state lifetime sex offender registration program or that any prior records have been falsified or not properly disclosed, or that a criminal history is discovered that violates the above policies in effect at the time of the annual recertification, the resident's lease may be immediately terminated or the family will be given the opportunity to remove the offender from the household.

In the cases listed above, proof that the ineligible member has been removed from the household must be provided to management. This would include (1) executing a new lease without the ineligible household member, or (2) established utility account at another address, or (3) verification of a change in address from the U. S. Postal Service for the ineligible member.

- Any member of the family fails to sign and submit consent forms for obtaining information.
- The family does not meet the restrictions on net assets and real property ownership as required by 24 CFR 5.618.

## **6-B. ASSET LIMITATION [24 CFR 5.618]**

There are two circumstances under which a family is ineligible to receive assistance based on asset ownership.

First, assistance may not be provided to any family if the family's net assets exceed \$100,000 (adjusted annually by HUD).

Second, the family has real property (as defined under state law in which the property is located) that is suitable for occupancy by the family as a residence and the family has:

- A present ownership interest in the real property; and
- A legal right to reside in the real property; and
- The effective legal authority to sell (based on state or local laws of the jurisdiction where the property is located) the real property.

The O/A does not have the discretion not to enforce or provide limited enforcement of the asset limitation at admission. However, the real property restriction does not apply in the following circumstances:

- Any property for which the family is receiving assistance for a manufactured home under 24 CFR 982.620 or under the HCV Homeownership program;
- Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;
- Any family that is offering the property for sale; or
- Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
  - When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the O/A must comply with all the confidentiality requirements under the Violence Against Women Act (VAWA). The O/A must accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.

A property is considered *suitable for occupancy* unless the family demonstrates that it:

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;

### CDA Policy

The CDA defines *not sufficient for the size of the family* as being overcrowded based on the CDA's occupancy standards in Chapter 4 of this policy.

- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the O/A );

#### CDA Policy

In general, the CDA defines *a geographic hardship* to include when a family members' work, school, health care provider, or other necessary service is located an unreasonable distance from the real property or there is a lack of adequate transportation options for the family to access work, school, health care, or other necessary services. The CDA will consider circumstantial details a family faces when determining whether a geographical hardship is present.

- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the state or local laws of the jurisdiction where the property is located.

If a family meets one of the above exceptions, the real property is not automatically excluded from the calculation of net family assets. Unless the real property is specifically excluded from net family assets as described in 24 CFR 5.603, it will be included in net family assets. If the value of that real property brings the net family assets above \$100,000 (as adjusted for inflation), the family is out of compliance with the asset limitation.

#### **Asset Limitation for Residents**

The O/A has discretion with respect to the application of the asset limitation at annual and interim recertification. The O/A may adopt a written policy of total nonenforcement, enforcement, or limited enforcement as well as adopting exception policies.

#### CDA Policy

The CDA has adopted a policy of total nonenforcement of the asset limitation for all residents. The asset limitation only applies to initial eligibility determinations.

## 6-C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

The O/A is responsible for screening family behavior and suitability for tenancy.

### CDA Policy

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

*Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug. The CDA will also consider criminal acts involving drug paraphernalia to be drug-related criminal activity.

*Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

Criminal activity that may threaten the health, safety, or welfare of other tenants

Criminal activity that may threaten the health or safety of O/A staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to:

***Convictions:*** Any conviction for criminal activity listed above and with a disposition date within the past two years.

***Arrests:*** Any arrests for criminal activity listed above with a disposition date within the past two years.

***Police Contacts:*** Any police contact for criminal activity listed above with a disposition date within the past two years.

***Civil Ordinance Violation:*** Any civil ordinance violations for criminal activity listed above with a disposition date within the past two years.

***Evictions:*** Any record of an eviction action resulting in an eviction judgement from public or privately-owned housing as a result of criminal activity listed above within the past two years (See Required Denial of Admission, for mandatory denial based upon an eviction for drug-related criminal activity).

The CDA considers the following criminal activity as egregious and of an extreme nature that would warrant the CDA to consider the criminal activity even if the disposition is more than two years from the date of application:

- Conviction of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing; or
- *Heinous Crimes*; or
- *Gang or Gun Crimes*; or

- *Sex Offenders with Less than Lifetime Registration Requirements:* Any criminal activity that results in any household member's requirement to register as a sex offender under any state sex offender registry for a period of less than lifetime.

If any household member has engaged in criminal activity listed above, or if any household member is currently required to register as a sex offender on any state sex offender registry for a period for less than a lifetime, the CDA will consider all credible evidence including but not limited to convictions or arrests with a disposition date more than two years from the date of the application as permitted by 24 CFR 5.100 and 5.855.

A conviction of criminal activity will be given more weight than an arrest for such activity. In making its decision to deny assistance, the CDA may consider the factors discussed under **Consideration of Circumstances**. Upon consideration of such factors, the CDA may, on a case-by-case basis, decide not to deny assistance at any point during the admissions process, including an informal hearing.

The CDA will deny admission to an applicant family if the CDA determines that the family:

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past three years

- Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past three years which may adversely affect the health, safety, or welfare of other tenants

- Owes rent or other amounts to this or any other O/A or PHA in connection with any assisted housing program

- Has a history of eviction from previous residence(s) for drug-related criminal activity in the last two years

- Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition, or rent

- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program

- Has engaged in or threatened violent or abusive behavior toward CDA personnel

*Abusive or violent behavior towards CDA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

## 6-D. CONSIDERATION OF CIRCUMSTANCES

HUD authorizes the O/A to consider all relevant circumstances when deciding whether to deny admission based on a family's history except in the situations for which denial of admission is mandated.

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

### CDA Policy

The CDA will consider the following facts and circumstances prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents' safety or property

The effects that denial of admission may have on other members of the family who were not involved in the action or failure to act

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

While a record of arrests will not be used as the sole basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the CDA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The CDA may also consider:

Any statements made by witnesses or the applicant not included in the police report

Whether criminal charges were filed

Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

Evidence of criminal conduct, if it indicates a demonstrable risk to safety or property

Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs

In the case of drug or alcohol abuse, the CDA will consider whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.

The CDA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

Further, the CDA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the CDA's policies.

While the CDA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, or stalking, the applicant may inform the CDA in accordance with Chapter 8 of this TSP that their status as a victim is directly related to the grounds for the denial. The CDA will request that the applicant provide enough information to the CDA to allow the CDA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

### **Removal of a Family Member's Name from the Application**

#### CDA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application.

After admission to the program, the family must present evidence of the former family member's current address upon CDA request.

### **Reasonable Accommodation**

#### CDA Policy

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

## **6-E. CREDIT HISTORY**

### CDA Policy

The CDA does not utilize credit reports in its screening process.

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

## 6-F. RENTAL HISTORY

### CDA Policy

In order to determine the suitability of applicants, the CDA will examine applicant history for the past two years.

Any one of the following by any household member listed on the application may result in rejection of the application:

Any history that the applicant has moved out of a residence owing a balance

Any history of being terminated from housing developments covered in this Tenant Selection Plan or any other CDA housing program for lease violations or for violating family obligations. Termination includes vacating without proper notice (also referred to as “skipping”) and mutual agreement of lease termination in lieu of eviction.

Four or more late payments of rent within a 12-month period from a current or previous residence

Any one report that the applicant, or their household members or guests, were destructive to the unit or common areas at a current or previous residence

Any one report that the applicant has or had poor housekeeping habits rising to the level of a health or safety threat from a current or previous residence

Any one report that the applicant caused or was involved in disturbances at a current or previous residence

Any one report that the applicant did not abide by the rules and regulations at a current or previous residence

The CDA will also consider utility company references covering the monthly amount of utilities, late payment, disconnection, return of a utility deposit, and whether the applicant can get utilities turned on in their name.

The CDA will review PHA and landlord references for the past two years. The CDA may obtain records prior to the last 24 months, if needed to obtain a minimum of 24 months of rental history. Except for debts owed to the CDA or any other PHA, the CDA will only consider records within the last five years. The CDA will gather information about current and past performance in meeting rental obligations such as rent payment record, late payment record, whether the PHA/landlord ever began or completed lease termination for non-compliance, and whether utilities were ever disconnected in the unit.

*Utility* is defined as a useful service or resource offered to the public such as electricity, gas, water/sewer, and phone, and used to keep a home or apartment safe and functional. For suitability purposes, the CDA may also consider cable, broadband/internet, and cell phone service as housing related living expenses and may take them into consideration.

PHAs and landlords will be asked if they would rent to the applicant family again.

References from landlords who are related to the applicant family by blood or marriage will be considered insufficient.

If an applicant has no rental payment history, the CDA will check court records of financial judgments. A lack of rental history will not disqualify someone from becoming a resident, but a poor rental history may.

Applicants with no rental payment history will also be asked to provide the CDA with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available. The applicant will also be required to complete a checklist documenting their ability to meet financial obligations.

The CDA will not conduct housekeeping inspections.

## **6-G. EXISTING TENANT SEARCH**

As part of the application review process, HUD requires that the O/A use the EIV system to determine if the applicant or any member of the applicant household is currently receiving HUD assistance. The Existing Tenant Search will indicate if an applicant or any member of the household is currently receiving subsidy at another community. This report will be printed and maintained in the application file in accordance with HUD's recordkeeping requirements.

### CDA Policy

If the EIV Existing Tenant Search reveals that the applicant or a member of the applicant's household is currently receiving HUD rental assistance at another residence, the CDA must follow up first with the resident to discuss the details of their circumstances, and then with the respective O/A or PHA to confirm the individual's program participation status prior to admission.

The CDA will also attempt to coordinate move-out and move-in dates with the resident and the respective O/A or PHA at the other location.

In addition, applicants will be verbally notified that rental assistance will not be provided for the new unit until the day after assistance stops in the current residence, as identified in TRACS.

## **6-H. MISREPRESENTATION OF INFORMATION**

An application will be rejected if during the course of processing it becomes evident that an applicant or any applicant household member has falsified or otherwise misrepresented any facts about their current situation, history, or behavior in a manner that would affect eligibility or applicant selection criteria qualifications, including preferences, income, assets, allowances, or rent. This provision shall not be applied to minor and unintentional mistakes that produce no benefit to the applicant.

## Chapter 7

### UNIT TRANSFER POLICY

#### 7-A. TRANSFER REQUESTS

The O/A is required to develop written unit transfer policies in the TSP that include transfer waiting lists, acceptable reasons for transfers, procedures for filling vacancies, and whether unit transfers take priority over applicants from the property waiting list.

The O/A's transfer policy must be reasonable, must ensure that families are not discriminated against based on race, color, religion, sex, national origin, age, familial status, and disability, and must be applied consistently.

##### CDA Policy

Residents requesting a transfer to another unit will be required to submit a written request for transfer.

In case of a reasonable accommodation transfer, the CDA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the CDA will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

The CDA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family, such as documentation of domestic violence, dating violence, sexual assault, or stalking.

The CDA will respond within 10 business days of the submission of the family's request.

The resident will be housed in the next available appropriately sized vacant unit, when they reach the top of the transfer waiting list. The resident understands that this unit will become their permanent residence.

## 7-B. TYPES OF TRANSFERS

### CDA Policy

The following are the only instances in which a transfer will be approved:

#### **Emergency Transfers**

Maintenance conditions in the resident's unit, building, or at the site that pose an immediate, verifiable threat to the health or safety of the resident or family members that cannot be repaired or abated within 24 hours. Unit is uninhabitable through no fault of the resident (i.e., fire, flood, tornado, etc.), and emergency transfers under VAWA.

#### **Uninhabitable Unit**

If there is no vacant unit available in the case of an uninhabitable unit, the resident will be directed to the Red Cross or other appropriate agencies for temporary housing, then rehoused in their original unit after all repair work has been completed.

If more than one resident is displaced due to a fire, flood, tornado, etc., households will be placed in appropriately sized vacant units in order of initial move-in date. If no vacant units are available, the same procedures will be followed as described above.

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

For a verified incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking. For instances of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the threat may be established through documentation outlined in Chapter 8. In order to request the emergency transfer, the requestor must submit an emergency transfer request form (HUD-5383), although, the CDA may, on a case-by-case basis, waive this requirement and accept a verbal request in order to expedite the transfer process. If the CDA accepts an individual's statement, the CDA will document acceptance of the statement in the individual's file in accordance with Chapter 8 of this TSP.

The CDA will immediately process requests for transfers due to domestic violence, dating violence, sexual assault, stalking, or human trafficking. The CDA will allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. The CDA defines *immediately available* as a vacant unit that is ready for move-in within a reasonable period of time, not to exceed 60 days.

The CDA has adopted an emergency transfer plan, which is included as Exhibit 8-1 to this plan.

These transfers are mandatory.

## **CDA-Required Transfers**

The types of transfers that may be required by the CDA include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, and transfers for demolition, disposition, revitalization, or rehabilitation.

Transfers required by the CDA are mandatory.

### **Transfers to Make an Accessible Unit Available**

When a non-accessible unit becomes available, the CDA will transfer a family living in an accessible unit that does not require the accessible features to an available unit that is not accessible. The CDA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

If a resident is required to transfer to make an accessible unit available, the resident has 30 days after they have been notified that an appropriately sized unit is available for them. If they do not move within that time frame, they are required to pay full market rent in their current unit.

The resident will be responsible for all costs associated with this type of transfer and will be required to pay a new security deposit upon acceptance of the unit.

### **Occupancy Standards Transfers**

The CDA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

The CDA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the CDA's occupancy standards when the CDA determines there is a need for the transfer.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) will only be required to transfer if it is necessary to comply with the approved exception.

If a resident is required to transfer due to a change in household composition, the resident has 30 days after they have been notified that an appropriately sized unit is available for them. If they do not move within that time frame, they are required to pay full market rent in their current unit.

The resident will be responsible for all costs associated with this type of transfer and will be required to pay a new security deposit upon acceptance of the unit.

### **Transfers for Medical Reasons**

The CDA will transfer a family to alleviate verified medical problems.

### **Transfers for Demolition, Disposition, Revitalization, or Rehabilitation**

For households temporarily displaced due to a project involving demolition, disposition, revitalization, or rehabilitation of their current unit, the CDA will

comply with all requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA).

### **RAD Requirements**

For households displaced as a direct result of the CDA planning or implementing resident moves due to a conversion of a public housing project under RAD, the CDA will comply with all requirements in the RAD Civil Rights – Relocation Notice H 2016-17.

### **Transfers Requested by Residents**

The types of requests for transfers from residents that the CDA will consider are limited to requests for transfers to alleviate verified medical problems of a serious or life-threatening nature, VAWA transfers, and reasonable accommodation, including the need for an accessible unit. No other transfer requests will be considered by the CDA.

Should a resident request a unit transfer as a reasonable accommodation, the CDA will pay the cost of the physical move for the resident as long as doing so does not place an undue financial and administrative burden upon the CDA.

## **7-C. TRANSFER LIST**

### CDA Policy

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case-by-case basis. If the emergency cannot be resolved by a temporary accommodation, and the resident requires a permanent transfer, the family will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions, VAWA)
2. High-priority transfers (verified medical condition, and reasonable accommodation)
3. Transfers to alleviate verified medical problems of a serious or life-threatening nature
4. Transfers to make accessible units available
5. Demolition, renovation, etc.
6. Occupancy standards
7. Other CDA-required transfers

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

Transfers will take precedence over waiting list admissions. Existing residents approved to receive Section 8 assistance will also be given priority over external applicants when allocating available Section 8 assistance slots.

## Chapter 8

### THE VIOLENCE AGAINST WOMEN ACT (VAWA)

#### 8-A. OVERVIEW

The Violence against Women Reauthorization Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who are applying for or receiving assistance under the PBRA program. If state or local laws provide greater protection for such victims, those apply in conjunction with VAWA.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA. In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

In addition to definitions of key terms used in VAWA, this chapter contains general VAWA requirements and O/A policies in three areas: notification, documentation, and confidentiality, as well as the O/A's Emergency Transfer Plan required under VAWA.

#### 8-B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that person stands in the position or place of a parent; or
  - Any individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship

- The term *domestic violence* includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
  - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
  - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
  - A person with whom the victim shares a child in common
  - A person who commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
  - Restrict a person's access to money, assets, credit, or financial information
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty.
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

- The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
  - Internet enabled devices
  - Online spaces and platforms
  - Computers
  - Mobile devices
  - Cameras and imaging programs
  - Apps
  - Location tracking devices
  - Communication technologies
  - Any other emerging technologies

#### **8-C. NOTIFICATION [24 CFR 5.2005(a)]**

##### **Notification to Public**

The O/A adopts the following policy to help ensure that all actual and potential beneficiaries of its program are aware of their rights under VAWA.

##### CDA Policy

The CDA will post the following information regarding VAWA on its website. It will also make the information readily available to anyone who requests it.

A copy of form HUD-5380, Notice of Occupancy Rights Under the Violence Against Women Act (Exhibit 8-2)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (Exhibit 8-3)

A copy of the CDA's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 8-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)

Contact information for local victim advocacy groups or service providers

## **Notification to Applicants and Tenants [24 CFR 5.2005(a)]**

The O/A must provide the Notice of Occupancy Rights (HUD-5380) and certification form (HUD-5382) at admission, along with any notice of denial or eviction.

### CDA Policy

The CDA will provide all tenants with information about VAWA at the time of admission and at annual reexamination. The CDA will also include such information in all termination of assistance and termination of tenancy (eviction) notices.

The CDA is not limited to providing VAWA information at the times specified in the above policy.

### CDA Policy

Whenever the CDA has reason to suspect that providing information about VAWA to a tenant or affiliated individual might place a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking at risk, it will attempt to deliver the information by hand directly to the victim, or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the CDA may decide not to send mail regarding VAWA protections to the victim's unit if the CDA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, the CDA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

#### **8-D. VAWA COMPLAINT PROCESSING [Notice FHEO 2023-01]**

A complainant may, not later than one year after an alleged VAWA violation has occurred or terminated, file a complaint with FHEO alleging such violation. If there is a violation that began prior to a year before the complaint is filed, but it continues into the one-year time period, HUD will accept the complaint. FHEO will investigate the complaint if it is timely and FHEO otherwise has jurisdiction. If a complaint is filed more than one year after the alleged violation occurred or terminated, FHEO may, but is not required to, investigate the allegations under the additional authority and procedures described in FHEO 2023-01.

Complaints do not need to allege a violation of the Fair Housing Act for FHEO to accept and investigate the complaint.

##### CDA Policy

Applicants or tenant families who wish to file a VAWA complaint against the CDA may notify the CDA either orally or in writing.

The CDA will advise the family of their right to file a VAWA complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The CDA will inform the family that not later than one year after an alleged VAWA violation has occurred or terminated, applicants and tenants who believe they have been injured by a VAWA violation or will be injured by such a violation that is about to occur may file a VAWA complaint using FHEO's online complaint form via mail, email, or telephone.

The CDA will attempt to remedy complaints made against the CDA and will conduct an investigation into all allegations of discrimination.

The CDA will keep a record of all complaints, investigations, notices, and corrective actions.

## **8-E. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY**

### **Family Breakup**

Except under the following conditions, the O/A has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the O/A must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking, see Section 8-F of this plan.)
- If a court determines the disposition of property between members of the assisted family, the O/A is bound by the court's determination of which family members continue to receive assistance.

#### CDA Policy

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

If a family breaks up into two otherwise eligible families while living on the property, only one of the new families will retain occupancy of the unit.

If a court determines the disposition of property between members of an applicant or resident family, the CDA will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, the CDA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the CDA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including a family member who was forced to leave a HUD-assisted unit as a result of such actual or threatened abuse, and provides documentation in accordance with section 8-F of this TSP; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals.

## **8-F. DOCUMENTATION [24 CFR 5.2007]**

An O/A presented with a claim for initial or continued assistance based on status as a victim or threatened victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The O/A may extend this time period at its discretion. However, in the case of conflicting certifications, the O/A may require documentation within 30 days from the date of the request [24 CFR 5.2007(a)].

The individual may satisfy the O/A's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1. A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation)
2. A federal, state, tribal, territorial, or local police report or court record, or an administrative record
3. Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, stalking, or human trafficking or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider, an attorney, a mental health professional, or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The O/A may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [24 CFR 5.2007(b)(2)].

#### CDA Policy

Any request for documentation of domestic violence, dating violence, sexual assault, stalking or human trafficking, will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The CDA may, at its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, the CDA will consider factors that may contribute to the victim’s inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim’s need to address health or safety issues. Any extension granted by the CDA will be in writing.

Once the victim provides documentation, the CDA will acknowledge receipt of the documentation within 10 business days.

### **Conflicting Documentation [24 CFR 5.2007(b)(2)]**

In cases where the O/A receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the O/A may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The O/A may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the O/A. The O/A must honor any court orders issued to protect the victim or to address the distribution of property. In cases of conflicting information, the O/A may require an applicant or tenant to submit third-party documentation within 30 calendar days of the date of the request for the third-party documentation.

#### CDA Policy

If presented with conflicting certification documents (two or more forms HUD-5382) from members of the same household, the CDA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) and by following any HUD guidance on how such determinations should be made.

If the CDA does not receive third-party documentation within the required timeframe (and any extensions), the CDA will deny VAWA protections and will notify the applicant or tenant in writing of the denial.

The individuals requesting relief under VAWA will have 30 calendar days to submit third-party documentation. The CDA may, at its discretion, extend the deadline for 10 business days. Any extension granted by the CDA will be in writing.

When requesting third-party documents, the CDA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(b)(1)(iv)]**

The O/A has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

#### CDA Policy

If the CDA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the CDA will document acceptance of the statement or evidence in a separate file, away from the resident's file, in a secure place.

### **Failure to Provide Documentation [24 CFR 5.2007(a)(2)]**

In order to deny relief for protection under VAWA, the O/A must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the O/A may allow, the O/A may deny relief for protection under VAWA.

### **8-G. CONFIDENTIALITY [24 CFR 5.2007(c)]**

All information provided to the O/A regarding domestic violence, dating violence, sexual assault, stalking, or human trafficking, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, must be retained in confidence. This means that the O/A (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

#### CDA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the CDA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

## EXHIBIT 8-1: EMERGENCY TRANSFER PLAN

### Community Development Authority of the City of Madison Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Section 8 Project-Based Rental Assistance Program

#### Emergency Transfers

The CDA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),<sup>1</sup> the CDA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.<sup>2</sup> The ability of the CDA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the CDA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the **Section 8 Project-Based Rental Assistance program** is in compliance with VAWA.

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<sup>1</sup> Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking regardless of sex, gender identity, or sexual orientation.

<sup>2</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

## **Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer, if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

## **Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify the CDA's management office and submit a written request for a transfer to **any CDA office**. The CDA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the CDA's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

The CDA may allow for a verbal statement/self-certification in certain circumstances. While the CDA may request in writing that the victim provide documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking, third-party documentation may not be required to qualify the tenant for an emergency transfer.

## **Confidentiality**

The CDA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the CDA written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. Any request for protection under VAWA will be kept in a file separate from the resident/unit file, and any requests made under VAWA will not be noted in the resident/unit file. Requests made under VAWA will not be notated in any shared database systems. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about the CDA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

## **Emergency Transfer Timing and Availability**

The CDA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The CDA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The CDA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the CDA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the CDA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, the CDA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

## **Emergency Transfers: PBRA Program**

If you are a resident and request an emergency transfer as described in this plan, the CDA will attempt to assist you in moving to a safe unit quickly. The CDA will make exceptions as required to policies restricting moves.

At your request, the CDA will refer you to organizations that may be able to further assist you. You may also request an emergency transfer to the following programs for which you are required to apply for assistance:

- Public housing program
- HCV tenant-based program
- HCV project-based assistance

Emergency transfers will not take priority over waiting list admissions for these types of assistance. At your request, the CDA will refer you to organizations that may be able to further assist you.

## **Internal and External Transfer Requests**

The tenant may request an internal transfer within the same single or scattered site property in which the tenant resides or may request an external move to move out of the property in which they reside. The victim may request both an internal transfer and an external move concurrently if an internal safe unit is not immediately available. The CDA will make all reasonable efforts to assist tenants with requesting both internal transfers and external.

The CDA will allow the tenant to make an internal transfer when a safe unit is not immediately available. The owner defines immediately available as a vacant unit, ready for move-in within a reasonable period of time based on local factors. The CDA will ensure that requests for internal emergency transfers under VAWA are given the same priority already provided to other types of emergency transfer requests. The tenant will be offered the first available vacant unit ready for move-in in the same property or in another building that is part of the same scattered-site property in accordance with this plan. The victim will be allowed to assess the availability of the units and the suitability according to the individual circumstances of the household. If the first unit offered is not suitable due to these circumstances, the CDA will continue to make every effort to provide an alternative unit as soon as one is available that meets the criteria for the household. If

an internal transfer is not viable, the CDA will discuss transfer options for external moves with the victim in accordance with this plan.

An external move may be requested when a unit that meets the victim's safety standard is not available at the current property or is not immediately available. If an external move is required, the CDA will, at a minimum, provide the victim with contact information for relevant local service providers, government agencies, and other affordable housing developments in the area.

Note that qualifying for an emergency transfer does not guarantee either continued assistance under the current program or an external move to another covered housing program. Emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. Tenants must still meet the eligibility criteria for the property to which they are moving.

### **Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

You may also contact **Domestic Abuse Intervention Services of Dane County (D.A.I.S.)** at 1-800-747-4045.

For help regarding sexual assault, you may contact the **Madison Rape Crisis Center** at (608) 251-7273

Victims of stalking seeking help may contact the **Dane County District Attorney's Office** (608) 266-4211.

To report a crime of domestic violence, dating violence, sexual assault, or stalking, contact the **Madison Police Department** by dialing 911

**EXHIBIT 8-2: NOTICE OF OCCUPANCY RIGHTS UNDER THE VIOLENCE  
AGAINST WOMEN ACT, FORM HUD-5380**

**The Community Development Authority of the City of Madison**<sup>3</sup>

**Notice of Occupancy Rights under the Violence Against Women Act**<sup>4</sup>

**To all Tenants and Applicants**

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.<sup>5</sup> The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that the project-based rental assistance (PBRA) program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

**Protections for Applicants**

If you otherwise qualify for assistance under the project-based rental assistance (PBRA) program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

**Protections for Tenants**

If you are receiving assistance under the project-based rental assistance (PBRA) program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

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<sup>3</sup> Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

<sup>4</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

<sup>5</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the project-based rental assistance (PBRA) program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

### **Removing the Abuser or Perpetrator from the Household**

The CDA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If the CDA chooses to remove the abuser or perpetrator, the CDA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, the CDA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, the CDA must follow Federal, State, and local eviction procedures. In order to divide a lease, the CDA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

### **Moving to Another Unit**

Upon your request, the CDA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, the CDA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

1. **You are a victim of domestic violence, dating violence, sexual assault, or stalking.**  
If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
2. **You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
3. **You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

the CDA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

The CDA's emergency transfer plan provides further information on emergency transfers, and the CDA must make a copy of its emergency transfer plan available to you if you ask to see it.

## **Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

the CDA can, but is not required to, ask you to provide documentation to “certify” that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from the CDA must be in writing, and the CDA must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. The CDA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to the CDA as documentation. It is your choice which of the following to submit if the CDA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by the CDA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that they believe that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that the CDA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the CDA does not have to provide you with the protections contained in this notice.

If the CDA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), the CDA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, the CDA does not have to provide you with the protections contained in this notice.

### **Confidentiality**

The CDA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

The CDA must not allow any individual administering assistance or other services on behalf of the CDA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

The CDA must not enter your information into any shared database or disclose your information to any other entity or individual. The CDA, however, may disclose the information provided if:

- You give written permission to the CDA to release the information on a time limited basis.
- The CDA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires the CDA or your landlord to release the information.

VAWA does not limit the CDA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

## **Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated**

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, the CDA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if the CDA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If the CDA can demonstrate the above, the CDA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

### **Other Laws**

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

### **Non-Compliance with The Requirements of This Notice**

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with:

**Department of Housing and Urban Development**

**Milwaukee Field Office**

**310 West Wisconsin Avenue, Suite 950**

**Milwaukee, WI 53203-2289**

### **For Additional Information**

You may view a copy of HUD's final VAWA rule at:

<https://portal.hud.gov/hudportal/documents/huddoc?id=5720-F-03VAWAFinRule.pdf>.

Additionally, the O/A must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **Lisa Daniels, CDA Administrative Services Manager, at (608) 267-8709.**

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **Domestic Abuse Intervention Services of Dane County at 1-800-747-4045.**

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **the Madison Rape Crisis Center at (608) 251-7273.**

Victims of stalking seeking help may contact **the Dane County District Attorney's Office (608) 266-4211.**

**Attachment:** Certification form HUD-5382

**EXHIBIT 8-3: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION,  
FORM HUD-5382**

**CERTIFICATION OF  
DOMESTIC VIOLENCE,  
DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

**Use of This Optional Form:** If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

**Submission of Documentation:** The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: \_\_\_\_\_
2. Name of victim: \_\_\_\_\_
3. Your name (if different from victim's): \_\_\_\_\_
4. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_  
\_\_\_\_\_
5. Residence of victim: \_\_\_\_\_
6. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_  
\_\_\_\_\_
7. Relationship of the accused perpetrator to the victim: \_\_\_\_\_
8. Date(s) and times(s) of incident(s) (if known): \_\_\_\_\_  
\_\_\_\_\_
10. Location of incident(s): \_\_\_\_\_

In your own words, briefly describe the incident(s): _____ _____ _____ _____
--

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

**EXHIBIT 8-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383**

**EMERGENCY TRANSFER  
REQUEST FOR CERTAIN  
VICTIMS OF DOMESTIC  
VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

**The requirements you must meet are:**

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.
- (2) You expressly request the emergency transfer.** Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.
- (3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

**Submission of Documentation:** If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER**

1. Name of victim requesting an emergency transfer: \_\_\_\_\_

2. Your name (if different from victim's) \_\_\_\_\_

3. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_  
\_\_\_\_\_

4. Name(s) of other family member(s) who would transfer with the victim: \_\_\_\_\_  
\_\_\_\_\_

5. Address of location from which the victim seeks to transfer: \_\_\_\_\_

6. Address or phone number for contacting the victim: \_\_\_\_\_

7. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_

8. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

9. Date(s), Time(s) and location(s) of incident(s): \_\_\_\_\_  
\_\_\_\_\_

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. \_\_\_\_\_

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.  
\_\_\_\_\_  
\_\_\_\_\_

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: \_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

## Chapter 9

### PROVISIONS REQUIRED UNDER HOTMA

This chapter is applicable upon the CDA's HOTMA compliance date.

#### 9-A. OVERVIEW

On July 29, 2016, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs. The final rule implementing broad changes to income and assets in Sections 102 and 104 of HOTMA was officially published in the *Federal Register* on February 14, 2023. HUD issued notice H 2023-10 to provide guidance to O/As on the implementation of the program changes described in the final rule. The notice required that for certain topic areas, O/As establish policies in the Tenant Selection Plan. This chapter details the O/A's policies in those areas.

#### 9-B. DE MINIMIS ERRORS [24 CFR 5.609(c)(4); Notice H 2023-10]

O/As will not be considered out of compliance solely due to de minimis errors in calculating family income. De minimis errors occur when an O/A's determination of a family's income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (or \$360 in annual adjusted income). O/As will not be issued a finding by HUD or the Contract Administrator for de minimis errors in income calculation. As O/As become aware of the existence of an income calculation error, they are obligated to correct the error(s) retroactive to the effective date of the action the error was made, regardless of the dollar amount associated with the error. O/As must take corrective action to credit or repay a family if the family was overcharged tenant rent, including when O/As make de minimis errors in the income determination. Families will not be required to repay the O/A in instances where the O/A miscalculated income resulting in a family being undercharged for rent. O/As must state in the TSP how they will repay or credit a family the amount they were overcharged as a result of the O/A's de minimis error in income determination.

When the resident overpaid because the resident failed to report in a timely manner, a retroactive rent decrease may not be applied by the grantee prior to the later of the first of the month following:

- The date of the change leading to the interim recertification of family income; or
- The effective date of the family's most recent previous interim or annual recertification (or initial certification if that was the family's last certification).

#### CDA Policy

The CDA will credit any family the amount that the family was overcharged retroactive to the effective date of the action the error was made, regardless of the dollar amount associated with the error, because of the CDA's error, including de minimis errors in income determination.

When the resident overpaid because the resident failed to report in a timely manner, a retroactive rent decrease will not be applied prior to the effective date of the family's most recent previous certification.

**9-C. HARDSHIP EXEMPTIONS FOR HEALTH AND MEDICAL CARE AND REASONABLE ATTENDANT CARE AND AUXILLIARY APPARATUS EXPENSES [24 CFR 5.611(c); Notice H 2023-10]**

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

**Phased-In Relief**

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024. The family must receive phased-in relief if they are determined to be eligible as of January 1, 2024. These families will begin receiving a 24-month phased-in relief at their next annual or interim recertification, whichever occurs first after the date on which the O/A implements phased-in relief.

For these families, the threshold amount is phased-in as follows:

- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.
  - When an eligible family's phased-in relief begins at an interim recertification, the O/A must process another transaction one year later to move the family along to the next phase. The transaction can be either an interim recertification if triggered, or a non-interim recertification transaction.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive phased-in relief.

O/As must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in must continue for families who move to another unit at the same property. When the family is treated as a new admission under a different property/program (e.g., the family moves from one multifamily property to another), unless the O/A has a written policy to continue the phased-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by the O/A.

#### CDA Policy

The CDA will not continue the phased-in relief for families who move and are treated as a new admission at the property. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

#### **General Relief**

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in O/A policy) that would not otherwise trigger an interim recertification.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the phased-in relief category above. HUD requires that O/As develop policies defining what constitutes a hardship for purposes of this exemption.

The O/A must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. O/As must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

#### CDA Policy

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) and that the family's financial hardship is a result of a change in circumstances. The CDA defines a *change in circumstances* as a decrease in income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim recert in accordance with CDA policies.

Examples of circumstances constituting a financial hardship may include the following situations:

The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;

The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or

Other circumstances as determined by the CDA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the CDA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The O/A must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].

#### CDA Policy

The CDA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the family qualifies for an exemption, the CDA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the O/A may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. O/As are not limited to a maximum number of 90-day extensions.

O/As must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. O/As must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

#### CDA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The CDA will extend relief for an additional 90 days if the family demonstrates to the CDA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The CDA will require updated verification based on the family's current circumstances. Additional extensions may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the CDA may terminate the hardship exemption if the CDA determines that the family no longer qualifies for the exemption.

## **9-D. CHILD CARE EXPENSE HARDSHIP EXEMPTION [24 CFR 5.611(d) and Notice H 2023-10]**

A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the O/A's satisfaction that the family is unable to pay their rent because of the loss of the child care expense deduction, and that the child care expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the O/A must recalculate the family's adjusted income and continue the child care deduction.

The O/A must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The O/A must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. O/As must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

### CDA Policy

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. The CDA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the child care expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (child care expenses or health and medical expenses) are more than 40 percent of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the child care expense is still necessary even though the family member is no longer employed or furthering their education. The CDA will consider qualification under this criterion on a case-by case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the CDA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The O/A must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the O/A denies the request, the notice must specifically state the reason for the denial. O/As must provide families 30 days' notice of any increase in rent.

If the O/A approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to the O/A if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption.

#### CDA Policy

The CDA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the family qualifies for an exemption, the CDA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

The O/A may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances and as stated in O/A policies. O/As are not limited to a maximum number of 90-day extensions. O/As must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

O/As must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If the O/A denies the request, the notice must specifically state the reason for the denial.

O/As must notify the family if the hardship exemption is no longer necessary and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

#### CDA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The CDA will extend relief for an additional 90 days if the family demonstrates to the CDA's satisfaction that the family continues to qualify for the hardship exemption. The CDA will require updated verification based on the family's current circumstances. Additional extensions may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the CDA may terminate the hardship exemption if the CDA determines that the family no longer qualifies for the exemption.

## **9-E. SELF-CERTIFICATION OF CERTAIN ASSETS**

### **Net Family Assets [24 CFR 5.603]**

For families with net assets totaling \$50,000 or less (adjusted annually for inflation), the O/A may, but is not required to, accept the family's self-certification that the family's assets do not exceed \$50,000 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b). This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed \$50,000), may generate asset income. The O/A may not calculate or include any imputed income from assets when net family assets total \$50,000 or less (adjusted annually for inflation). O/As must clarify during the self-certification process which assets are included or excluded from net family assets.

For O/As that choose to accept self-certification, the O/A is required to obtain third-party verification of all assets, regardless of the amount, at least once every three years.

O/As who choose not to accept self-certifications of assets must verify all families' assets on an annual basis.

When net family assets have a total value over \$50,000 (adjusted annually for inflation), the O/A may not rely on the family's self-certification. Third-party verification of assets is required. Income from assets in this situation is calculated using the following methods:

- If actual returns can be calculated for an asset, the O/A must include actual income from the asset.
- If actual returns cannot be calculated, the O/A must calculate imputed returns using the HUD-determined passbook rate, which is subject to change annually for inflation. Imputed income is calculated by multiplying the net cash value of the asset, after deducting reasonable costs that would be incurred in disposing of the asset, by the HUD-published passbook rate.
- If the O/A can compute actual income from some but not all assets, the O/A must compute actual returns where possible and use the HUD-determined passbook rate where actual income cannot be calculated.

When verification of assets is required, O/As are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

#### CDA Policy

The CDA will obtain third-party verification of all assets regardless of the amount.

In determining the value of checking or savings accounts, the CDA will use the current balance as reflected on the most recent bank statement.

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, the CDA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

## **Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)]**

The O/A must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation. The O/A may accept a self-certification from the family stating that the family does not have any present ownership in any real property. If the family certifies that they do not have any present ownership interest in real property, the O/A may take that as sufficient to determine the family is not out of compliance with the real property restriction. If the family declares they have present ownership in real property, the O/A must obtain third-party verification of the family's legal right to reside in the property, the effective legal authority to sell the property, and whether the property is suitable for occupancy by the family as a residence.

### CDA Policy

Both at admission and reexam, the CDA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. The CDA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the CDA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the CDA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

## **9-F. INTERIM RECERTIFICATIONS**

### **Interim Decreases [24 CFR 982.516(c)(2) and Notice H 2023-10]**

A family may request an interim determination of family income for any change since the last determination. However, the O/A may decline to conduct an interim recertification if the O/A estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. The O/A may set a lower threshold in the O/A's policy such as performing an interim for any decreases in adjusted income, although HUD prohibits the O/A from setting a dollar-figure threshold.

#### CDA Policy

The CDA will conduct an interim recertification any time the family's adjusted income has decreased by any amount.

However, while the O/A has some discretion, HUD requires that the O/A perform an interim recertification for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last recertification.

In the above circumstances, the O/A must perform an interim recertification for any decrease in adjusted income.

If the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then the O/A must process the removal of the household members as a non-interim recertification transaction without making changes to the family's annual adjusted income.

## **Interim Increases [24 CFR 982.516(c)(3) and Notice H 2023-10]**

O/As must not process interim recertifications for income increases that result in less than a 10 percent increase in annual adjusted income. O/As must conduct an interim recertification of family income when the O/A becomes aware that the family's adjusted income has changed by an amount that the O/A estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- O/As may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same recertification cycle; and
- O/As may choose not to conduct an interim recertification during the last three months of a certification period if a family reports an increase in income within three months of the next annual recertification effective date.

When the family previously received an interim recertification for a decrease to adjusted income during the same annual recertification cycle, an O/A has the discretion whether to consider a subsequent increase in earned income.

### CDA Policy

When a family reports an increase in their earned income between annual recertifications, the CDA will not conduct an interim recertification, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual recertification.

The CDA will process an interim recertification for any increases in unearned income of 10 percent or more in adjusted income.

The CDA will not perform an interim recertification when a family reports an increase in income (whether earned or unearned income) within three months of their annual recertification effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases.

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10 percent increase threshold, at which point the O/A must conduct an interim recertification in accordance with O/A policy.

When the family reports an increase in both earned and unearned income at the same time, the O/A must look at the earned and unearned income changes independently of each other to determine if an interim recertification is performed. The O/A will only conduct an interim recertification when the increase independently meets the 10 percent threshold and all other requirements for performing interim recertifications. For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the O/A may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the O/A would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the O/A would refer to O/A policy to determine whether an interim was required.

## ***Family Reporting***

The O/A must adopt policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition, or other circumstances that may affect the family's subsidy amount or rent portion. Other circumstances may include, but are not limited to, changes in eligible deductions or citizenship status.

O/A policy may require families to report only changes that the family estimates meet the threshold for an interim recertification or the O/A may establish policies requiring that families report all changes in income, household composition, and any other change that may affect the family's adjusted income, and the O/A will subsequently determine if the change requires an interim recertification.

When the O/A determines that an interim recertification is necessary, they must ask the family to report changes in all aspects of adjusted income. For example, if the family is reporting a decrease in adjusted income that is more than 10 percent, but the family also had a change in assets or other changes in circumstances that would result in a change in the family's adjusted income, the change in assets must also be reviewed.

### CDA Policy

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must report all changes in income within 10 business days of the date the change takes effect. The family may notify the CDA either orally or in writing. If the family provides oral notice, the CDA may also require the family to submit the changes in writing.

Within 10 business days of the family reporting the change, the CDA will determine whether the change will require an interim recertification.

If the change will not result in an interim recertification, the CDA will note the information in the tenant file but will not conduct an interim recertification. The CDA will send the family written notification within 10 business days of making this determination informing the family that the CDA will not conduct an interim recertification.

If the change will result in an interim recertification, the CDA will determine the documentation the family will be required to submit based on the type of change reported. The CDA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from the CDA. This time frame may be extended for good cause with CDA approval. The CDA will accept required documentation by mail, email, fax, or in person. The CDA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

Generally, the family will not be required to attend an interview for an interim recertification. However, if the O/A determines that an interview is warranted, the family may be required to attend.

### **Changes Reported Timely**

If the family reports a change in family income, composition, or other circumstances affecting adjusted income timely in accordance with O/A policies:

- For rent increases, the O/A must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim recertification of family income. This means the decrease will be applied retroactively.

### **Changes Not Reported Timely**

If the family failed to report a change in family income, composition, or other circumstances affecting adjusted income timely in accordance with O/A policies:

- For rent increases, the O/A must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim recertification of family income.
- For rent decreases, the O/A must implement the change no later than the first rent period following completion of the interim recertification.

However, the O/A may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the recertification. O/As may choose to establish conditions or requirements for when such a retroactive application would apply. O/As that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim recertification;  
or
- The first of the month following the most recent previous income examination.

In applying a retroactive change in rent as the result of an interim recertification, the O/A must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

#### CDA Policy

In general, when the family fails to report a change in income, family composition, or other circumstances affecting adjusted income timely, and the change would lead to a rent decrease, the CDA will apply the decrease the first of the month following completion of the interim recertification.

However, the CDA will apply the results of the interim recertification retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to CDA management operations. The CDA will decide to apply decreases retroactively on a case-by-case basis.

When the CDA applies the results of interim decreases retroactively, the CDA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with CDA policies.

The CDA will also clearly communicate the effect of the retroactive adjustment to the owner.

**9-G. USE OF OTHER PROGRAMS' INCOME DETERMINATIONS [24 CFR 5.609(c)(3) and Notice H 2023-10]**

O/As may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs (Safe Harbor). O/As are not required to accept or use determinations of income from other federal means-tested forms of assistance. If the O/A adopts a policy to accept this type of verification, the O/A must establish in policy when they will accept Safe Harbor income determinations and from which programs. O/As must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs.

Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);
- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Low-Income Housing Credit (LIHTC) program (26 U.S.C. 42);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);
- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the *Federal Register*.

If the O/A elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family, and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's income, O/As will neither further inquire about a family's net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR 5.618. The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the O/A:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

The only information that O/As are permitted to use to determine income under this method is the total income determination made by the federal means-tested program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information must not be considered by the O/A. O/As are not permitted to mix and match Safe Harbor income determinations and other income verifications.

If the O/A is unable to obtain Safe Harbor documentation or if the family disputes the other program's income determination, the O/A must calculate the family's annual income using traditional methods as outlined in Notice H 2023-10.

If the O/A uses a Safe Harbor determination to determine the family's income, the family is obligated to report changes in income that meet the O/A's reporting requirement and occur after the effective date of the transaction.

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship exemption, must still be capped by the amount earned by any family member who is enabled to work as a result of the expense. O/As are therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

O/A Policy

The CDA will not accept verification from other federal assistance programs. With the exception of when the CDA uses streamlined income determinations at annual reexamination as described below, all income will be verified in accordance with the requirements of HUD's verification hierarchy and CDA policies.

**9-H. STREAMLINED INCOME DETERMINATIONS [24 CFR 960.257(c);  
Notice H 2023-10]**

HUD permits O/As to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained at move-in and every three years thereafter, in the intervening years, the O/A may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or other inflationary adjustment factor. Streamlining policies are optional. The O/A may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the O/A must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources.

When 90 percent or more of a family's unadjusted income is from fixed sources, the O/A may apply the inflationary adjustment factor to the family's fixed income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income are not required to be adjusted and must not be adjusted by a COLA, but O/As may choose to adjust sources of non-fixed income based on third-party verification. O/As have the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years two and three.

When less than 90 percent of a family's unadjusted income consists of fixed income, O/As may apply a COLA to each of the family's sources of fixed income. O/As must determine all other income using standard verification requirements.

#### CDA Policy

When the O/A does not use a Safe Harbor income determination from a federal assistance program to determine the family's annual income as outlined above, then O/A will use a streamlined income determinations where applicable.

Regardless of the percent of a family's unadjusted income from fixed income sources:

The O/A will streamline the annual recertification process by applying the verified COLA/inflationary adjustment factor to fixed-income sources.

The family will be required to sign a self-certification stating that their sources of fixed income have not changed from the previous year.

The O/A will document in the file how the determination that a source of income was fixed was made.

If the family's sources of fixed income have changed from the previous year, the O/A will obtain third-party verification of any new sources of fixed income.

All other income will be verified using third-party verification as applicable.

In the following circumstances, regardless of the percentage of income received from fixed sources, the O/A will obtain third-party verification, as applicable:

Of all assets when net family assets exceed \$50,000;

Of all deductions and allowances from annual income;

If a family member with a fixed source of income is added;

If verification of the COLA or rate of interest is not available;

During move-in and at least once every three years thereafter.

## Chapter 10

### GRIEVANCE PROCEDURES FOR MULTIFAMILY HOUSING RESIDENTS

#### 10-A. OVERVIEW

Residents have the right to disagree with, and appeal, certain decisions of the O/A that may adversely affect them. O/A decisions that may be appealed by residents and the procedure for requesting a review of those decisions are discussed in this section.

#### 10-B. REQUIREMENTS

The grievance procedure for multifamily housing residents will be incorporated by reference in the tenant lease.

Residents and resident organizations will have 30 calendar days from the date they are notified by the CDA of any proposed changes in the grievance procedure to submit written comments to the CDA.

#### 10-C. DEFINITIONS

- **Grievance-** any dispute which a tenant may have with respect to O/A action or failure to act in accordance with the individual tenant's rights, duties, welfare or status.
- **Complainant-** any tenant whose grievance is presented to the O/A or at the project management office
- **Due Process Determination-** a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Elements of Due Process-** an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right for the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by the O/A including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
  - A decision on the merits
- **Hearing Officer-** an impartial person selected by the O/A, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.
- **Tenant-** the adult person (or persons) (other than a live-in-aide)
  - Who resides in the unit, and who executed the lease with the O/A as lessee of the dwelling unit, or, if no such person now resides in the unit,

- Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization-** includes a resident management corporation

#### **10-D. APPLICABILITY**

The grievance procedure is applicable only to individual tenant issues relating to the O/A. It is not applicable to disputes between tenants not involving the O/A. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the O/A.

The CDA is located in a due process state. Therefore, the CDA will exclude from its grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the O/A.
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

#### **10-E. INFORMAL SETTLEMENT OF GRIEVANCE**

The CDA will accept requests for an informal settlement of a grievance either orally or in writing, to the project management office, by the close of business day, no later than 10 business days from the date of the grievable event.

Grievances related to complaints about operational matters that the CDA's Central Office receives will be referred to the property manager responsible for management of the development in which the tenant resides. The CDA will refer grievances involving complaints related to discrimination, harassment, or disability rights to the CDA Housing Operations Director or their designee.

Upon receiving a timely request for an informal settlement of a grievance, the CDA will schedule and hold the meeting, by the close of business day, no later than 10 business days from the date on which the tenant requested an informal settlement.

The informal settlement may be conducted remotely as required by the CDA or may be permitted to be conducted remotely upon request of the tenant.

If a tenant fails to attend the scheduled informal settlement (or informal grievance) meeting, the CDA will reschedule the meeting only if the tenant provides written proof of a verifiable medical emergency.

The CDA will prepare a summary of the informal settlement; one copy will be given to the tenant, and one copy will be retained in the CDA's tenant file.

## **10-F. PROCEDURES TO OBTAIN A HEARING**

### **Requests for Hearing and Failure to Request**

The tenant must submit a written request for a grievance hearing to the CDA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the tenant does not request a hearing, the CDA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the tenant of the right to contest the CDA's action in disposing of the complaint in and appropriate judicial proceeding.

### **Scheduling of Hearings**

Upon receiving a timely request for a grievance hearing, the CDA will schedule and send written notice of the hearing to the tenant.

The CDA will schedule and hold the grievance hearing, by the close of the business day, no later than 10 business days from the date of the tenant's request for a grievance hearing.

If the grievance will be conducted remotely, the CDA will inform the tenant in the notice of hearing of the following items:

- The processes involved in a remote grievance hearing;
- That the CDA will provide technical assistance prior to and during the grievance hearing if needed. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform; and
- That if the tenant or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote grievance hearing, the tenant may inform the CDA and the CDA will allow the tenant to participate in an in-person grievance hearing, as it deems reasonable and appropriate given the totality of circumstances.

If the tenant fails to attend the grievance hearing, the CDA will reschedule the hearing only if the tenant provides written proof of a verifiable medical emergency.

## **10-G. SELECTION OF HEARING OFFICER**

CDA grievance hearings shall be conducted by a single, CDA appointed hearing officer who is neither the person who made or approved the decision nor a subordinate of that person.

If a designated staff member (such as the program manager) was involved in the decision, or is a subordinate of such person, an alternate hearing officer will be selected.

The CDA may select designated staff members who were not involved in the decision under appeal in certain circumstances, such as appeals involving discrimination claims or denials of requests for reasonable accommodations.

The CDA will appoint hearing officers who are persons with experience in conflict resolution, property management, administrative hearings, and/or knowledgeable about the housing program.

The method of designating staff and appointing hearing officers will be presented to the CDA's Resident Advisory Board.

## **10-H. REMOTE HEARINGS**

The CDA will conduct remote hearings in accordance with due process requirements and in compliance with HUD regulations.

The CDA has the sole discretion to require or permit hearings to be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the CDA will conduct a hearing remotely upon the tenant's request as a reasonable accommodation for a person with a disability, if a tenant does not have childcare or transportation that would allow them to attend the hearing, or if the tenant believes an in-person hearing would create an undue health risk. The CDA will consider other reasonable requests for a remote hearing on a case-by-case basis.

### **Discovery of Documents Before the Remote Hearing**

If the hearing will be conducted remotely, the CDA will compile a hearing packet consisting of all documents the CDA intends to produce at the hearing. The CDA will mail copies of the hearing packet to the hearing officer at least three (3) days before the scheduled remote hearing. The original hearing packet will be in the possession of the CDA representative and retained by the CDA.

If the hearing is to be conducted remotely, the CDA will require the tenant to provide any documents directly relevant to the hearing at least 24 hours before the scheduled hearing through the mail or via email. If the CDA Site Office is open to the public, documents may be provided in person to the Site Office. The CDA will scan and email copies of these documents to the hearing officer and the CDA representative the same day they are received.

Documents will be shared electronically whenever possible.

The rights of the tenant and the tenant's representative to review CDA documents directly related to hearing prior to the hearing are outlined below in **"PROCEDURES GOVERNING THE HEARING."**

### **Conducting Hearings Remotely**

In conducting any hearing remotely, the CDA shall ensure due process. The CDA will conduct remote hearings via telephone conferencing call-in or via a video conferencing platform, the CDA will ensure that all tenants, tenant's representatives, advocates, witnesses, CDA representatives, and the hearing officer can adequately access the platform (i.e. hear, be heard, see, and be seen) by providing technical assistance to that extent, if needed, before the hearing. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or a video conferencing platform.

If any tenant, tenant representative, advocate, witness, CDA representative, or the hearing officer is unable to effectively utilize the video conferencing platform, the hearing will be conducted by telephone conferencing call-in. Witnesses may testify by telephone call-in.

Whether the CDA is to conduct the hearing via videoconferencing or telephone call-in, the CDA will provide all parties login information and/or telephone call-in information before the hearing.

## **10-I. PROCEDURES GOVERNING THE HEARING**

### **Rights of Complainant**

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any O/A documents, including records and regulations that are directly relevant to the hearing. The tenant will be allowed a copy of any documents related to the hearing at a charge equal to the current rate published under local general ordinance, MGO 3.70. The family must request discovery of CDA documents no later than 12:00 p.m. on the business day prior to the hearing.
- The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf. Hearings may be attended by the following applicable persons:
  - A CDA representative(s) and any witnesses for CDA
  - The tenant and any witnesses for the tenant
  - The tenant's counsel or other representative
- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

### **Decision without Hearing**

The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another proceeding.

### **Failure to Appear**

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the CDA within 24 hours of the scheduled hearing date, excluding weekends and

holidays. The CDA will reschedule the hearing only if the tenant provides written proof of a verifiable medical emergency.

## **General Procedures**

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

**Oral evidence:** the testimony of witnesses

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

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

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

*Hearsay Evidence* is evidence based not on a witness' personal knowledge. Specifically, it is a statement, other than one made by a witness testifying at a hearing, that is offered to prove the truth of the matter asserted. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If the CDA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine CDA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

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

If the complainant would like the CDA to record the proceedings by audiotape, the request must be made to the CDA by 12:00 p.m. on the business day prior to the hearing.

The CDA will consider an audio tape recording of the proceedings as a transcript.

## **Accommodations of Persons with Disabilities**

The O/A must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

## Limited English Proficiency

The O/A must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

## 10-J. DECISION OF THE HEARING OFFICER

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

**O/A Notice to the Family:** The hearing officer will determine if the reasons for the CDA's decision are factually stated in the notice.

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

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

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

The hearing officer will issue a written decision to the family and the CDA no later than, by the close of the business day, 10 business days after the date of the hearing. The report will contain the following information:

### Hearing information:

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of the CDA representative(s)

Name of family representative (if any)

Names of witnesses (if any)

**Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

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

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

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

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

### **Procedures for Further Hearing**

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 CDA will take effect and another hearing will not be granted.

### **Final Decision**

The CDA Board of Commissioners designates the CDA Executive Director to countermand the decision of a hearing officer when the CDA considers the decision of the hearing officer to be invalid due to the reasons stated above.