

CHAPTER 15

PROGRAM ADMINISTRATION

INTRODUCTION

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

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

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

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

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

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

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

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

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

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

If the AHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the AHA to use funds in

the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires the AHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

Expenditures from the administrative fee or other AHA reserves will be made in accordance with all applicable Federal requirements and the AHA procurement policy. The Board of Commissioners through the AHA budget process must approve all expenditure line items. The Housing Commission must approve contracts in excess of \$50,000. The AHA's Board of Commissioners must approve contracts in excess of \$75,000.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

15-II.A. OVERVIEW

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

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

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

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

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

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

The AHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the AHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the AHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the

AHA is required to establish a payment standard within a “basic range” established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Updating Payment Standards

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

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

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

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

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

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

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

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

Payment standards for new contracts will go into effect when a family moves or at the offer of a new lease. For ongoing contracts, if the payment standard increases, the new payment standard will be effective at the next annual reexamination. If the payment standard decreases, the new payment standard will be implemented at the time of the second annual reexamination after the date the new payment standard is adopted.

Exception Payment Standards [982.503(c)]

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

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

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

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

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

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

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

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

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

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

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

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

15-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

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

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

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

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

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 16 of the *HCV Guidebook* provides detailed guidance to the AHA about establishing utility allowance schedules.

Air Conditioning

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

Due to the negligible number of housing units with air conditioning, the AHA has not included an allowance for air conditioning in its schedule.

Reasonable Accommodation

HCV program regulations require a AHA to approve a utility allowance amount higher than shown on the AHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the AHA will approve an allowance

for air-conditioning, even if the AHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions

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

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

PART III: INFORMAL REVIEWS AND HEARINGS

15-III.A. OVERVIEW

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

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

15-III.B. INFORMAL REVIEWS

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

Decisions Subject to Informal Review

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

- Denying listing on the AHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

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

- Discretionary administrative determinations by the AHA
- General policy issues or class grievances
- A determination of the family unit size under the AHA subsidy standards

- An AHA determination not to grant approval of the tenancy
- An AHA determination that the unit is not in compliance with the HQS
- An AHA determination that the unit is not in accordance with the HQS due to family size or composition

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

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

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

Scheduling an Informal Review

A request for an informal review must be made in writing and delivered to the AHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of the AHA's denial of assistance.

The AHA must schedule and send written notice of the informal review within 14 calendar days of the family's request.

Informal Review Procedures [24 CFR 982.554(b)]

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

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

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

Informal Review Decision [24 CFR 982.554(b)]

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

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

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

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

The validity of the evidence. The AHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are

grounds for denial, and the denial is required by HUD, the AHA will uphold the decision to deny assistance.

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

The AHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 14 calendar days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

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

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

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

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

Decisions Subject to Informal Hearing

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

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the AHA utility allowance schedule
- A determination of the family unit size under the AHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under AHA policy and HUD rules
- A determination to terminate a family's Family Self-Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

The AHA also will offer participants the opportunity for an informal hearing when the AHA determines not to approve an extension of or suspends a voucher term

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

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

Informal Hearing Procedures

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

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

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

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

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

The proposed action or decision of the AHA.

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

The date the proposed action will take place.

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

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

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of the AHA's hearing procedures.

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

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

A request for an informal hearing must be made in writing and delivered to the AHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of the AHA's decision or notice to terminate assistance.

The AHA must schedule and send written notice of the informal hearing to the family within 14 calendar days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict, which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the AHA may request documentation of the "good cause" prior to rescheduling the hearing.

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

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

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

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

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

The family will be allowed to copy any documents related to the hearing at a cost of \$0.10 per page. The family must request discovery of AHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

The AHA must be given an opportunity to examine at the AHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the AHA may request a copy of all documents that the participant intends to present or utilize at the hearing. If requested, the participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

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

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

Recording of the Hearing

All informal hearings will be recorded by audiotape. The AHA will not provide a transcript of an audio taped hearing. The tape will be retained for a period of 90 days from the date of the "Notice of Final Decision" at which time the tape may be destroyed..

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

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

Attendance at the Informal Hearing

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

An AHA representative and any witnesses for the AHA

The participant and any witnesses for the participant

The participant's counsel or other representative

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

Conduct at Hearings

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

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

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

The AHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

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 AHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

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

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

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

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

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

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 AHA will take effect.

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

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family, generally within 14 calendar days.

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

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

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

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

Validity of Grounds for Termination of Assistance (when applicable): The hearing officer will determine if the termination of assistance is for one of the

grounds specified in the HUD regulations and AHA policies. If the grounds for termination are not specified in the regulations or in compliance with AHA policies, then the decision of the AHA will be overturned.

The hearing officer will issue a written decision promptly to the family and the AHA, generally no later than 14 calendar days after the hearing. The report will contain the following information:

Hearing information:

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

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

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

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

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

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

AHA Notice of Final Decision [24 CFR 982.555(f)]

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

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

The AHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in the AHA's file.

Once the "Notice of Final Decision" has been sent, the family's time to obtain a judicial review of that decision through administrative mandamus is limited to 90 days after service of the "Notice of Final Decision."

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

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

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

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

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

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

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

USCIS Appeal Process [24 CFR 5.514(e)]

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

The AHA will notify the family in writing of the results of the USCIS secondary verification within 14 calendar days of receiving the results.

The family must provide the AHA with a copy of the written request for appeal and proof of mailing within 14 calendar days of sending the request to the USCIS.

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

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

The AHA will send written notice to the family of its right to request an informal hearing within 14 calendar days of receiving notice of the USCIS decision regarding the family's immigration status.

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

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

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

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

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

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the AHA pertaining to the family's eligibility status, or in the possession of

the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

The family will be allowed to copy any documents related to the hearing at a cost of \$0.10 per page copy. The family must request discovery of AHA documents no later than 12:00 p.m. on the business day prior to the hearing.

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

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

Representation and Interpretive Services

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

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

Recording of the Hearing

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

The AHA will not provide a transcript of an audio taped hearing.

Hearing Decision

The AHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

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

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

PART IV: OWNER OR FAMILY DEBTS TO THE AHA

15-IV.A. OVERVIEW

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

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

The AHA will enter into repayment agreements with participants in accordance with the policies contained in this part as a means to recover monies owed.

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

- Collection agencies
- Small claims court
- Civil law suit

15-IV.B. REPAYMENT POLICY

Owner Debts to the AHA

Any amount due to the AHA by an owner will be deducted from the next HAP payment by the amount owed. If the amount owed is more than the HAP payment, the balance is due within 30 days.

If the owner is not entitled to future HAP payments, the entire amount owed must be repaid by the owner within 30 days of the AHA determination of the debt.

If the owner refuses to repay the debt, the AHA will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to the AHA

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

The family must be in good standing with the AHA and the debt amount must be \$3,000 or less. To be in good standing, a participant must not have any other outstanding debts related to an existing repayment agreement or be under the termination process for another program violation. If the amount owed is greater than \$3,000 a repayment agreement may only be entered into with the Executive Director's approval. If such an agreement is not approved, then the participant's assistance will be terminated.

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

Repayment Agreement [24 CFR 792.103]

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

Repayment Agreement Guidelines

Down Payment Requirement

Prior to the execution of a repayment agreement, the owner or family must pay 10 percent of the balance owed to the AHA.

Payment Thresholds

The debt amount must be \$3,000 or less. If the amount owed is greater than \$3,000 a repayment agreement may only be entered into with the Executive Director's approval. If such an agreement is not approved, then the participant's assistance will be terminated.

Amounts between \$2,001 to \$3,000 must be repaid within 36 months.

Amounts between \$901 and \$2,000 must be repaid within 24 months.

Amounts between \$451 and \$900 must be repaid within 12 months.

Amounts under \$450 must be repaid within 6 months.

All repayment agreements will require a minimum monthly payment of at least \$25.

Execution of the Agreement

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

Due Dates

All payments are due by the close of business on the 1st business day of the month.

Non-Payment

A late or partial payment is considered a missed payment. The AHA will issue a notice of termination to participants who miss more than one monthly installment under the payment agreement within a 12-month period, the balance of the debt must be paid in full or the participant family will be terminated from the HCV program. The Executive Director must approve any exceptions to these guidelines.

Families, whose assistance is terminated, have the opportunity to request an informal hearing.

No Offer of Repayment Agreement

The AHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family.

PART V: RECORD KEEPING

15-V.A. OVERVIEW

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

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

15-V.B. RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least three years thereafter, the AHA must keep:

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

In addition, the AHA must keep the following records for at least three years:

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

The AHA will retain any documents relating to the family's participation in the Housing Choice Voucher Program, including, but not limited to, written notice from the owner of serious or repeated lease violations, police reports, neighbor complaints or other third party information. These documents will be retained in the file for the term of the family's participation in the program, and for at least three years thereafter.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 15-III.D., Retention of Documents.

15-V.C. RECORDS MANAGEMENT

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

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

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

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

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

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

Upfront Income Verification (UIV) Records

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

Prior to utilizing HUD's EIV system, the AHA will adopt and implement EIV security procedures required by HUD.

Criminal Records

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

The AHA must establish and implement a system of records management that ensures that any criminal record received by the AHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the AHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

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

Medical/Disability Records

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

PART VI: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

15-VI.A. OVERVIEW

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

15-VI.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

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

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

15-VI.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least quarterly, the AHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the AHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the AHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the AHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the AHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the AHA is not providing such a report.