

Public Housing Overview



Key Components of Public Housing

- **Number of Units and Characteristics of Families**

- About 1.2 million units
- 31% of households headed by elderly persons; 36% female-headed households with children
- 45% headed by African Americans
- 24% headed by Hispanics/Latinos
- 55% were reported as extremely low income (ELI) in 2010 but no reliable figures are posted for 2011 and average income is \$13,379
- 53% live in public housing for less than 5 years

Information such as the above is available nationally, by state, Public Housing Agency (PHA) and development at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/50058/rcr

- **Ownership**

- Public Housing Authority (PHA) owns Public Housing.
 - Created pursuant to local state enabling legislation.
 - Most are governed by board of commissioners.
 - Exceptions include situations where state law dictates a different result, statewide PHAs if they are a part of the state government. In such situations there may be alternative arrangements.
 - With some exceptions, a tenant or other “program participant” must be on the board. 42 U.S.C.A. § 1437(b); 24 C.F.R. §§ 964.400-964.430.
 - The jurisdiction of the PHA can include entire state, one or more cities, one or more counties, or other geographical area.

- **Who’s Involved and What are Their Roles?**

- HUD (both Headquarters in Washington, D.C. and the local office) and the PHA.
- HUD evaluates the PHA in accordance with the Public Housing Assessment System (PHAS). 24 C.F.R. Part 902, *see also* Part 901; 76 Fed. Reg. 10055 (Feb. 23, 2011) (interim rule).
- PHA is created by local and state enabling legislation
- PHA consults with a Resident Advisory Board (RAB) and develops annual and five-year plans that HUD approves and may review. 42 U.S.C.A. § 1437c-1; 24 C.F.R. Part 903.
- Resident Councils (RC) if they exist must be recognized by the PHA, if the RC complies with 24 C.F.R. §§ 964.105(a), 964.130(b) and 964.135(d)). RCs may be organized by development and/or jurisdiction-wide.

- **How Program Works: Subsidy Mechanism**
 - Subsidies are provided pursuant to an Annual Contributions Contract (ACC) between HUD and a PHA.

- **Key Regulatory Features**
 - Federal statute, regulations and forms.
 - Statute: 42 U.S.C.A. §§ 1437 to 1437e, 1437g to 1437z, 1437z-2 to 1437z-6, 1437aaa-2 to 1437aaa-6.
 - Regulations: 24 C.F.R. Part 5, and 900 *et seq.* (especially Parts 960 and 966).
 - PUBLIC HOUSING OCCUPANCY GUIDEBOOK (June 2003), available at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm>.
 - Annual Contribution Contract, HUD Form 53010 D, E, H, I, etc. (contract between HUD and PHA), available at <http://www.hud.gov/offices/adm/hudclips/>
 - HUD notices and forms, available at <http://www.hud.gov/offices/adm/hudclips/>
 - Locally developed rules, policies and contracts.
 - State enabling statute for PHAs.
 - PHA Plan developed locally and must be available locally. HUD also posts the PHA Plans on the HUD website, http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha; *see also* 24 C.F.R. Part 903; form HUD 50075; HUD, PHA Plan Desk Guide
 - Admission and Continued Occupancy Plan (ACOP) developed locally and must be available locally for review.
 - Tenant lease and grievance procedure is developed locally, but detailed federal regulations must be followed. 24 C.F.R. Part 966.

- **Finding Out Where this Housing is Located in Your Community**
 - For each PHA there is a profile listed on the HUD website which provides basic contact information, the total number of public housing units and the number of developments. See <http://www.hud.gov/offices/pih/systems/pic/haprofiles/>. In the PHA Plan materials (available locally), PHAs may provide a list of the name and address of each PHA development.
 - HUD's Picture of Subsidized Households data set also provides some information for individual public housing sites, <http://www.huduser.org/portal/datasets/assths.html> See also the Resident Characteristics Report, *supra*.

- **Tips for Determining What Kind of Housing is Involved**
 - Owned and managed by the PHA, which receives rent. Get the lease.
 - Age of the building, could have been built any time between the 1930s and the present.

- Tenant is aware that there is a grievance procedure.
- Tenant has income verified and rent recertified annually by the PHA.
- Signage at the development.

Major Applicant and Tenant Issues

• **ADMISSIONS**

- **Waiting list:** how compiled and maintained.
 - PHA may have site-based waiting lists, a central waiting list, or any combination. 42 U.S.C.A. § 1437d(r); 24 C.F.R. § 903.7(b)(2).
 - PHAs typically advertise when the waiting list is open and adopt a process to provide that getting on the on the list is accessible.
 - Waiting list for Public Housing may be combined with Voucher list.
- **Eligibility:**
 - Income: Low income (80% of Area Median Income) and very low income (50% of AMI).
 - Targeting: at least 40% of all new admissions must be families with Extremely Low Income (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(a).
 - The AMI for every jurisdiction is available at <http://huduser.org/datasets/il.html>.
 - Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance (i.e., rent) for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528. See also HUD Guidebook 7465.7G for an explanation of how prorating works for public housing residents.
 - Some housing is not general occupancy and is limited to elderly/disabled families. 42 U.S.C.A. § 1437e.
 - Social Security Number requirements: see PIH Notice 2010-3, extended by PIH Notice 2011-2.
- **Preferences:**

PHAs may adopt local preferences for applicants. The preferences may include preferences for families whose heads are working (which must also include families whose heads are elderly or with disabilities), residency preferences, and preferences for victims of domestic violence and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437d(c)(4); 24 C.F.R. § 960.206. Determination of preferences is available in the PHA Plan process and should be included in the Admissions and Continued Occupancy Policy (ACOP).
- **Screening:**
 - Standards: the information considered for each applicant and the standards adopted by the PHA must be reasonably related to individual attributes of

an applicant. When adverse information is received, the PHA must consider the time, nature, extent and seriousness of the offense. PHA may also consider rehabilitation of an applicant. 24 C.F.R. §§ 960.203(a) and (d).

- Criminal activity: PHAs must screen and reject applicants for certain criminal behavior, including: if any household member has been evicted from federally assisted housing within past 3 years for drug-related criminal activity (except that applicant may demonstrate changed circumstances), if an applicant is currently engaged in illegal use of drugs, if any household member has ever been convicted of methamphetamine production on federally assisted housing premises, and if any member is a registered lifetime sex offender. 24 C.F.R. § 960.204.
- Criminal activity: PHA may also screen for a history of criminal activity involving acts of physical violence to persons or property and for abuse of alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 960.203(c)(3) and 960.204(b).
- Poor tenant history (evictions or termination from housing programs and poor credit history): Local PHA rules controls, provided above standards are followed. Information about past debt to a PHA is accessible to PHAs.
- **Notification and opportunity to contest**
Applicants must be notified of ineligibility and provided an opportunity to contest the determination in an informal hearing. 42 U.S.C.A. § 1437d(c)(3); 24 C.F.R. § 960.208.
- **Admission policy** must be available locally; admission issues are addressed in the PHA Plan. 42 U.S.C.A. § 1437c-1(d)(3). The Admissions and Continued Occupancy Policy have the PHA's complete admission policy.
- **RENTS**
 - **Generally:**
 - HUD has developed an Enterprise Income Verification (EIV) program which uses computer matching with a number of federal agencies to get government income as well as wage income and new-hire data, which helps to minimize errors in tenant income but can also create problems for tenants.
 - Public Housing residents usually pay rent based upon a percentage of their adjusted income or occasionally gross income, paying the higher of 30% of adjusted income or 10% of gross. In a few jurisdictions there is also a "welfare rent." Tenants may pay a minimum rent, and they may opt to pay a flat rent or ceiling rent. 42 U.S.C.A. § 1437a.
 - **Income-based rents**
Most residents pay monthly rent based upon one-twelfth of 30% of adjusted annual income.

- **Annual Income and Exclusions**

Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these include the Earned Income Disregard/Disallowance (EID), income from full-time students who are not head of household, income for foster care, income of live-in aides, deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609; *see also* 42 U.S.C.A. § 1437a(d) (Earned Income Disregard).
- **Adjusted Income after Deductions**
 - The standard mandatory deductions include:
 - \$480 for each dependent,
 - \$400 for each elderly or disabled family,
 - For each elderly or disabled family, unreimbursed medical and reasonable attendant care or auxiliary apparatus that exceeds 3% of annual income,
 - Child care expenses (for children under age 13) that allow a family member to work, and any other locally adopted deductions. 42 U.S.C.A. § 1437a(a)(5); 24 C.F.R. § 5.611.
 - If a resident loses welfare due to sanctions due to fraud or failure to comply with an economic self-sufficiency program, tenant rent will *not* be adjusted and the lost welfare income will be imputed. 42 U.S.C.A. § 1437j(d); 24 C.F.R. § 5.615.
- **Minimum Rent and hardship exemptions**

A PHA may decide to charge no minimum rent, or a minimum rent of up to \$50. Any tenant who is charged a minimum rent is eligible for a hardship exemption if the tenant is threatened with eviction for failure to pay the minimum rent, or there is a reduction in income due to a change in family circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted for nonpayment of rent. The tenant may have to repay the minimum rent with reasonable repayment agreement. 42 U.S.C.A. § 1437a(a)(3); 24 C.F.R. § 5.630.
- **Utility Allowance**

Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (definition of utility allowance). If tenant income is so low that the allowance exceeds the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. Residents are only entitled to the utility reimbursement if their rent is income-based. 24 C.F.R. §§ 5.632 and 960.253(c)(3).

- **Other Rents (Flat Rents, Ceiling Rents)**

Flat rent: every PHA is required to adopt a flat rent based upon the market rent for the unit, taking into account its location, quality and size. The flat rent should be designed to encourage self-sufficiency. A family paying a flat rent may request a financial hardship to switch to an income-based rent. 42 U.S.C.A. § 1437a(2); 24 C.F.R. § 960.253(f).
- **Recertification**
 - Annual recertification required.
 - PHA may decide when and how to require interim rent recertification when tenant income increases (information in PHA's Admissions and Continued Occupancy Policy).
 - Interim recertification required if family reports decrease in income, except for loss of certain welfare income. See above re loss or reduction of TANF benefits. 24 C.F.R. § 960.257.
- **Ability to challenge rent level**
 - Public Housing grievance procedures.
- **GRIEVANCE PROCEDURES**
 - Public housing residents may request a grievance hearing to dispute PHA action or inaction involving tenant lease or PHA policies. Eviction actions involving criminal activity may be exempt from the grievance process. 42 U.S.C.A. § 1437d(k); 24 C.F.R. §§ 966.51–966.57. State and local law may provide greater protections and HUD generally holds that such procedural protections are not preempted.
- **EVICCTIONS**
 - **Notice: length and content**
 - 14 days for nonpayment of rent.
 - 30 days or a shorter state law period for all other situations.
 - Notice must specify the grounds, inform resident of the right to examine PHA documents, of the right to a grievance hearing or an explanation of why it is not available, etc. 42 U.S.C.A. § 1437d(l); 24 C.F.R. § 966.4(l)(3).
 - **Good cause required** for any termination, both at end of term and midterm.
 - **Good cause defined** as:
 - Serious or repeated violation of material terms, including nonpayment of rent and failure to comply with household obligations under the lease.
 - Drug-related criminal activity that occurs *on or off* the premises.
 - Criminal activity that threatens health, safety or right to peaceful enjoyment of other residents or staff.
 - Other good cause.
 - Cause requirements found in 42 U.S.C.A. § 1437d(l); 24 C.F.R. § 966.4(l).

Project-Based Section 8 Overview



Key Components of the Project-Based Section 8 Program

- **Number of Units:**
 - Project-Based Section 8: approximately 1.3 million units remaining
- **How Program Works: Subsidy Mechanism**
 - Project-Based Section 8: rental assistance contract providing subsidy to cover the difference between HUD-approved rents and tenant contribution
- **Ownership:** Mostly private, profit-motivated or limited-dividend; some nonprofits
- **Who's Involved?**
 - HUD is usual regulator as party to Section 8 Housing Assistance Payments (HAP) contract, but HUD has contracted out role of "Contract Administrator" for many properties
- **Key Regulatory Features** (Program Contract(s), Regulations, Handbooks and Notices, Lease)
 - Project-Based Section 8: HAP Contract; 24 CFR Parts 880 through 886; HUD Handbook 4350.3 REV-1, CHG-3 (June 2009); new HUD Model Lease (Hbk 4350.3, App. 4 Form HUD-90105a, Dec. 2007)
- **Finding Out Where this Housing Is Located in Your Community (national, state, local info); Knowing Its Characteristics (occupancy and bedroom sizes)**
 - Find HUD Project-Based Section 8 in your State, City or County at National Housing Trust's web site (Excel or PDF): http://www.nhtinc.org/housing_data.php
 - Project-Based Section 8: HUD data at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfdata
- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type (PHA involved?); Age of Housing; Ask Manager

Major Applicant and Tenant Issues

- **Admissions**
 - **Waiting list:** how compiled and maintained: 24 C.F.R. §880.603; HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-13 to 4-25.
 - **Eligibility**
 - Project-based Section 8 (24 C.F.R. §5.653):
 - Income: less than 80% of area median income (AMI), 42 U.S.C. §1437f(a) and (c)(4); but HUD rules further limit admissions to applicants less than 50% of AMI, unless HUD grants an exception, HUD Handbook 4350.3 REV-1, CHG-3, Ch.3.

- Targeting: at least 40% of units becoming available in any year must be leased to tenants with incomes below 30% of AMI, and 75% or 85% of units becoming available must be leased to tenants with incomes below 50% of AMI, and “skipping” over lower-income applicants to reach higher income is prohibited, 42 U.S.C. §1437n(c);
- Immigration status, 24 C.F.R. §5.500 *et seq.* Family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. § 5.500–5.528 (2010).
- **Preferences:** some properties have elderly preference; preferences OK for working families; can use PHA-established local preferences.
- **Screening:** 24 C.F.R. Part 5; HUD Handbook 4350.3 REV-1, CHG-3, ¶¶ 4-7 & 4-8
 - Criminal activity
 - Poor tenant history
 - Poor rent paying history or bad credit
- **Procedural Protections:** Written tenant selection plan and info re: preferences must be available; owner required to provide written rejection notice, offering 14-day response, meeting, and written decision within 5 days, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-4 (plan) and ¶ 4-9 (procedures).
- **Rents**
 - **Income-based rents**
 - 30% of adj. income for rent
 - **Annual Income and Exclusions** 24 C.F.R. § 5.609
 - No Earned Income Disregard
 - Foster care
 - Lump sums
 - One-time additions
 - **Adjusted Income after Deductions**, 24 C.F.R. § 5.611
 - Typical Deductions: \$480 per dependent; \$400 for elderly or disabled family; minors’ earned income; unreimbursed medical expenses for elderly or disabled family; unreimbursed attendant care or apparatus expenses to enable disabled family member to be employed; child care expenses necessary for employment or education
 - **Recertification:** Project-based Section 8: 24 C.F.R. §§ 5.657 & 5.659, HUD Handbook 4350.3 REV-1, Ch. 7. Recertification at least annually; interims on tenant request.

- **Minimum Rent and hardship exemptions**, 24 C.F.R. § 5.630: HUD-set figure of \$25 monthly for project-based Section 8
- **Utility Allowance:** for certain tenant-paid utilities, owner sets “reasonable” amount, credit against 30% of income tenant share
- **Ability to challenge rent level:** request meeting with owner-manager; program administrator
- **Grievance Procedures:** Generally just informal meeting with management prior to final rejection of admission or eviction or termination notice, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 4-9 (admission) and Ch. 8 (terminations).
- **Evictions and Terminations**
 - Good cause required anytime, including at end of lease term: 24 C.F.R. Part 247; HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16; Model Lease (Appendix 4 to Handbook 4350.3).
 - **Notice:** length (state law, or 30 days for non-breach “other good cause”); content (good cause and relevant facts, warnings & opportunity to cure for other good cause, right to meeting and to judicial defense), HUD Handbook 4350.3 REV-1, ¶¶ 8-11 to 8-16, Model Lease, state law; and service, HUD Handbook 4350.3, ¶ 4-22.
 - **Required proof by landlord:** Preponderance of evidence that breach of the lease occurred; for drug-related and criminal activity, arrest or conviction not required
 - **Pre-judicial administrative review?** Tenant has 10 days to request meeting with landlord, HUD Handbook 4350.3 REV-1, CHG-3, ¶ 8-13, & Model Lease (Appendix 4 to the Handbook).
 - **State law procedural protections not pre-empted:** HUD Handbook 4350.3 REV-1, ¶ 8-12B.

Section 8 Voucher Overview

Key Components of the Section 8 Voucher Program

- **Number of Units and Characteristics of Families:**
 - 2.331 million vouchers nationwide
 - 45% headed by African-Americans; 17% headed by Hispanics/Latinos (may be either African-American or Caucasian); average tenant income \$12,490; 28% are disabled non elderly; 19% are elderly; 47% are female-headed households with children; 45% are extremely low income.
 - Information such as the above is available nationally, by state, or by public housing agency (PHA) at <http://pic.hud.gov/pic/RCRPublic/rcrmain.asp>
 - Information on number of vouchers allocated to a local PHA is stated in the PHA Plan, available locally and is also posted on the HUD website for each PHA.

- **Ownership**

Tenants receive a voucher from a PHA and find a willing landlord. That landlord is typically a private landlord with no other federal assistance. However, it is possible that the landlord does receive other federal assistance, such as tax credits.

- **Parties Involved and Their Roles**

HUD provides the funds, the PHA administers the program locally, and the tenant finds a willing landlord who agrees to accept the voucher. The PHA determines if the unit meets the Housing Quality Standards (HQS), whether the rent charged for the unit is reasonable and if lease contains required addendum.

 - PHAs administer the voucher program.
 - A PHA is created by local and state enabling legislation.
 - Most PHAs are governed by a Board of Commissioners (though there are some exceptions)
 - The jurisdiction of a PHA can be statewide, countywide, citywide or by other geographical or political area.

- **Key Regulatory Features**
 - Federal statute, regulations and forms.
 - Statute: 42 U.S.C.A. § 1437f(o).
 - Regulations: 24 C.F.R. Part 982 (comprehensive regulations for the voucher program).
 - 24 C.F.R. Part 5 (General HUD Program Requirements which may also be applicable to other low income housing programs).
 - HUD, Voucher Program Guidebook, 7420.10G (April 2001), available at <http://www.hud.gov/offices/adm/hudclips/>, and <http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm>
 - HUD Notices and HUD Forms are available at <http://www.hud.gov/offices/adm/hudclips/>

- Form HUD-52641 Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (contract between PHA and the landlord).
- Form HUD-52641-A, Tenancy Addendum, Section 8 Tenant-Based Assistance Housing Choice Voucher Program (08/2009) (lease addendum between the landlord and the voucher participant).
- Locally developed rules, policies and contracts:
 - PHA 5-year and Annual Plan is developed locally and must be available locally. HUD also posts the PHA plans on the HUD web site. http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha; see also 24 C.F.R. Part 903; form HUD 50075; HUD, PHA Plan Desk Guide
 - Section 8 Administrative Plan, 24 C.F.R. § 982.54. This document is sometimes attached to the PHA Annual Plan.
 - In addition to the Lease Addendum mentioned above, the tenant may also sign the landlord's lease.
- **Finding this Housing in Your Community**

A key feature of the voucher program is housing choice and portability of the voucher. A family may use a voucher in any area within the jurisdiction of the initial issuing PHA or in the jurisdiction of another PHA. 24 C.F.R. § 982.353. A PHA may attempt to restrict housing choice and/or portability. But such restrictions are generally illegal, and HUD is making greater efforts to limit the discretion of PHAs. See Notices PIH 2006-32 and PIH 2008-43.
- **Tips for Determining What Kind of Housing Is Involved**
 - Tenant was given a voucher by the PHA.
 - Tenant had to find the unit and a willing landlord.
 - PHA inspects the unit and conducts annual rent recertification.
 - Landlord is most often a private landlord without any other federal assistance.
- **Related Subprograms or Set-Asides for Special Uses**
 - There are many types of voucher programs that are targeted to families with special needs, such as Welfare to Work, Family Unification, Mainstream, Designated Housing, Enhanced Vouchers and VASH (Veteran Affairs Supportive Housing). With the exception of Enhanced Vouchers and VASH, PHAs apply for these special programs by responding to Notice of Funding Availability (NOFA) announcements. The PHA Annual Plan should list the special voucher programs administered by the local PHA.
 - At the local level, the PHA may opt to have a voucher homeownership program, permitting voucher payments to enable a family to purchase a home. 42 U.S.C.A. § 1437f(y); 24 C.F.R. § 982.625 et seq.
 - A PHA may also opt to have a project-based voucher (PBV) program. The voucher is attached to the unit, but tenant may move with a voucher after first year. The owner retains the PBV assistance for the unit. 42 U.S.C.A. § 1437f(o)(13); 24 C.F.R. part 983.

MAJOR APPLICANT AND TENANT ISSUES FOR VOUCHER PROGRAM

● ADMISSIONS

The admission process for a voucher applicant is divided between the PHA and a landlord. The PHA creates a wait list, conducts eligibility review and screens for certain criminal history and may do more extensive screening. The landlord may also screen the voucher tenant. In general, there are no special federal rules governing the landlord regarding the admission of a voucher tenant, except that certain federally assisted landlords may not discriminate against voucher holders and some states or localities have similar nondiscrimination laws.

- **Waiting list**
 - PHA maintains a list of applicants.
 - List for voucher applicants may be combined with public housing lists.
 - How lists are created is determined locally. Lists may be developed through lottery process. For example, 18,000 applicants apply and a wait list of 3,000 is created by lottery.
 - Vouchers may be issued for various bedroom sizes depending on the size and needs of the family.
- **Eligibility**
 - Income: Low Income (80% of Area Median Income (AMI) or very low income (50% of AMI). 42 U.S.C.A. § 1437(o)(4).
 - Targeting: 75% of all new admissions must be families with Extremely Low Incomes (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(b).
 - The AMI for each jurisdiction is available at <http://huduser.org/portal/datasets/il.html>.
 - Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a). If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528.
 - Social Security Number (SSN): Individuals in mixed immigration status families, who are not claiming to qualify for subsidy, are exempt from SSN requirements. PIH Notice 2010-3.
- **Preferences**

PHAs may adopt local preferences for applicants. For example, preferences for families whose head of household and/or other adults are working (which preference also must include families whose head of household is elderly or disabled to avoid discrimination against protected classes), residency preferences, preferences for victims of domestic violence, and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437f(o)(6)(A); 24 C.F.R. § 982.207. Any preferences should be included in the Section 8 Administrative Plan, a supporting document to the PHA Annual Plan. The PHA may have no preferences and accept applicants in the date-order received.

- **Screening**
 - Standards: PHA may not discriminate because members of family are unwed mothers, recipients of welfare or have children born out of wedlock. 24 C.F.R. § 982.202(b)(3).
 - Criminal activity: PHAs must screen and reject applicants for certain criminal behavior including: if any household member has been evicted from federally assisted housing within past 3 years for drug related criminal activity (except that an applicant may demonstrate rehabilitation or changed circumstances), if an applicant is currently engaged in illegal use of drugs, if any household member has ever been convicted of methamphetamine production on the premises of federally assisted housing, and if any member is a registered lifetime sex offender. 24 C.F.R. § 982.553; 42 U.S.C.A. §§ 13,661 (3 yrs. for eviction) 13,663 (sex offender), 1437n(f) (methamphetamine).
 - Criminal activity: PHA may also establish standards which would deny eligibility to an applicant who has engaged in other criminal activity or abused alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 982.553(a)(2) and (3). Not all PHAs conduct the discretionary screening. 42 U.S.C.A. § 1437f(o)(6)(B).
 - Poor tenant history: PHA is not required to screen for this, but local rules may permit this practice.
 - Poor rent-paying history or bad credit: Same as poor tenant history.
 - Local policies are contained in the Section 8 Administrative Plan.
 - Landlord may screen for criminal history, tenant history, credit history, etc.

- **Procedural Protections**
 - Applicants must be notified of the reasons for rejection by the PHA and that they are entitled to an informal review. 24 C.F.R. §§ 982.552 and 982.554; *Baldwin v. Hous. Auth. Camden NJ*, 278 F.Supp.2d 365 (D.N.J. 2003).

- **RENTS**
 - **Generally:**
 - HUD adopted an Enterprise Income Verification (EIV) program which uses computer matching with a number of federal agencies to get government income as well as wage income and new hire data. This reduces errors but often creates problems for residents, due to, for example, changed circumstances or different reporting periods.
 - Rent contributions for voucher residents are a function of their required statutory contribution and the amount by which the actual unit rent exceeds (if at all) the local payment standard (see discussion below). Statutory contributions are based upon a percentage of a tenant's adjusted income or gross income, with tenants generally paying the higher of 30% of adjusted income or 10% of gross. 42 U.S.C.A. § 1437f(o)(2)(A). In a few jurisdictions, there is also a "welfare rent." Tenants may be subject to a minimum rent (see discussion below).

- **Payment Standard**
 - The payment standard is the maximum subsidy that a PHA will pay on behalf of a family. PHAs usually set the payment standard between 90% and 110% of the Fair Market Rent (FMR). Information on the level of payment standard maybe in the PHA Plan. HUD annually publishes the FMRs in the Federal Register. PHAs may seek HUD approval to increase the payment standard to an amount up to and above 120% of the FMR. See e.g., HUD Notices PIH 2005-9, PIH 2009-44 and PIH 2011-28.
 - To accommodate a family with members who are disabled, PHAs may also increase the payment standard within the basic range and/or seek HUD approval of a higher payment standard. 24 C.F.R. § 982.503.

- **Annual Income and Exclusions**
 - Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these exclusions include the Earned Income Disregard/disallowance (EID), which is available only to disabled members of a voucher household; income from full-time students who are not the head of household; income for foster care; income of live-in aides; deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609.

- **Adjusted Income after Deductions**
 - To determine the amount of the tenant's contribution, a PHA determines for each family an adjusted annual income.
 - The standard mandatory deductions include:
 - \$480 for each dependent,
 - \$400 for each elderly or disabled family,
 - For each elderly or disabled family, unreimbursed medical expenses and cost of reasonable attendant care or auxiliary apparatus to allow a family member to work that exceeds 3% of annual income, and
 - Child care expenses (for children under 13) that allow a family member to work. 42 U.S.C.A. § 1437a(a)(5); 24 C.F.R. § 5.611.
 - If a resident loses welfare due to sanctions because of fraud or failure to comply with an economic self-sufficiency program, tenant rent will not be adjusted and the lost welfare income will be imputed for purposes of setting the tenant's contribution for rent. 24 C.F.R. § 5.615; 42 U.S.C.A. § 1437j(d).

- **Minimum Rent and hardship exemptions**

A PHA may decide to charge no minimum rent, or a minimum rent of up to \$50 per month. If a PHA decides to charge a minimum rent, it should be set forth in the PHA's Administrative Plan. Any tenant who pays a minimum rent is eligible for a hardship exemption, if the tenant is threatened with eviction for failure to pay the minimum rent or there is a reduction in income due to a change in family circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted during that period for nonpayment of rent. The tenant

may have to repay the minimum rent with a reasonable repayment agreement. 24 C.F.R. § 5.630; 42 U.S.C.A. § 1437a(a)(3).

- **Utility Allowance**

Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (definition of utility allowance). If tenant income is so low that the allowance is greater than the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. However, the benefit of the utility allowance for voucher recipients is often minimal because rents often are not less than the payment standard. 24 C.F.R. §§ 5.632 and 982.514(b).
- **Recertification**
 - Annual recertification required for all families.
 - PHA decides when, how and if to require interim rent recertification when tenant income increases. 24 C.F.R. §§ 903.7(d), 982.54.54(d)(18).
 - Interim recertification required if family reports decrease in income (exceptions for loss of certain welfare income). 24 C.F.R. § 982.516; 42 U.S.C.A. § 1437f(o)(5).
- **Other rent issues**
 - Tenant rent, including a reasonable utility allowance, *cannot* exceed 40% of income for a new unit or for a unit upon initial participation in the program. 24 C.F.R. § 982.508; 42 U.S.C.A. § 1437f(o)(3).
 - PHAs must review the rent to be charged by the landlord to determine if it is reasonable. If it is not reasonable, the PHA may decline to enter into a Housing Assistance Payments (HAP) contract with the landlord. 42 U.S.C.A. § 1437f(o)(10).
- **INFORMAL HEARING**
 - Tenant may request an informal hearing for certain acts of the PHA, including rent and income determinations and proposed termination of the voucher. 24 C.F.R. § 982.555.
- **EVICCTIONS AND TERMINATIONS**
 - **Notice (content and term)**
 - Midterm evictions: written notice must specify the grounds, at or before commencement of eviction; HUD rule states notice can be satisfied by the judicial complaint, 24 C.F.R. §982.310(e); term of notice set by state law.
 - End-of-term evictions: no federal requirements; state law may require notice of specified length for termination at lease expiration.
 - Copy of eviction notice must be given to the PHA by the landlord and also by the tenant.
 - **Lease Term**
 - PHA may set initial lease term for one year or less. 42 U.S.C.A. § 1437f(o)(7); 24 C.F.R. § 982.309.

- PHA must make voucher payments to landlord until court order of eviction. 24 C.F.R. § 892.311(b).
- **Good cause required at end of lease term?**
 - Not required by statute or regulation.
 - Some leases or local law may require good cause for all terminations of tenancy, even for end-of-term or month-to-month.
 - Because voucher may be combined with other federally subsidized housing, the good cause requirements of those programs may also apply.
- **Good cause required during lease term**
 - 24 C.F.R. § 982.310(a) (serious or repeated violation of lease; violation of applicable laws imposing tenant obligations).
 - Good cause includes drug-related activity *on or near* (on premises if offender is “other person under control”) or criminal activity that threatens health and safety of the premises. 24 C.F.R. §982.310(c).
 - Owner has discretion to consider all circumstances. 24 C.F.R. §982.310(h).
- PHA obligated to make voucher payments on behalf of tenant until evicted. 24 C.F.R. § 982.311(b).
- **State or local law** may impose additional requirements.
- **Required proof by landlord:** preponderance of evidence that breach occurred.
- **Pre-judicial administrative review?** None.
- **Section 8 Voucher terminations**
 - Grounds: eviction for serious lease violation (not just having committed the alleged violation), 24 C.F.R. § 982.552(b)(2) (termination *required*, also for immigration status or failure to submit consent forms); many other grounds *authorized* (e.g., violation of family obligations such as failure to supply required information, not allowing PHA inspection, failing to give PHA notice of move, not using unit as sole residence, committing fraud or drug-related or threatening criminal activity or alcohol abuse; also owing money to PHA, breach of repayment agreement, threatened or actual abusive behavior to PHA staff). 24 C.F.R. § 982.552(c)(1), incorporating family obligations at § 982.551.
 - PHA has discretion to consider all circumstances. § 982.552(c)(2).
 - Notice and hearing protections for voucher termination: 24 C.F.R. § 982.555.

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