

## Chapter 14

### PROGRAM INTEGRITY

#### INTRODUCTION

LMHA is committed to ensuring that subsidy funds made available to LMHA are spent in accordance with HUD requirements.

This chapter covers HUD and LMHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents LMHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures LMHA must and may take when errors or program abuse are found.

HOTMA REVISION DE MINIMIS PROS

## PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

### 14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

#### LMHA Policy

LMHA anticipates that the vast majority of families, owners, and LMHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure LMHA’s HCV program is administered effectively and according to the highest ethical and legal standards, LMHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

LMHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

LMHA will provide each applicant and participant with a copy of “Is Fraud Worth It?” (HUD-1141-OIG) which explains the types of actions a family must avoid and the penalties for program abuse.

LMHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, LMHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

LMHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key LMHA forms and form letters that request information from a family or owner.

LMHA staff will be required to review and explain the contents of all HUD- and LMHA-required forms prior to requesting family member signatures.

LMHA will provide each LMHA employee with the necessary training on program rules and the organization’s standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

## **14-1.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, LMHA will use a variety of activities to detect errors and program abuse.

### **Quality Control and Analysis of Data**

Under the Section 8 Management Assessment Program (SEMAP), HUD requires LMHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

#### LMHA Policy

In addition to the SEMAP quality control requirements, LMHA will employ a variety of methods to detect errors and program abuse, **which include the following:**

- LMHA routinely will use available sources of up-front income verification, including HUD's EIV system, to compare with family-provided information.
- At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.
- LMHA will compare family-reported income and expenditures to detect possible unreported income.

### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all LMHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of LMHA activities and notifies LMHA of errors and potential cases of program abuse.

#### LMHA Policy

LMHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of LMHA's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

#### LMHA Policy

LMHA will encourage staff, program participants, and the public to report possible program abuse.

## 14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

### When LMHA Will Investigate

#### LMHA Policy

LMHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for LMHA to investigate, the allegation must contain at least one independently verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

LMHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

### Consent to Release of Information [24 CFR 982.516]

LMHA may investigate possible instances of error or abuse using all available LMHA and public records. If necessary, LMHA will require HCV families to give consent to the release of additional information.

### Analysis and Findings

#### LMHA Policy

LMHA will base its evaluation on a preponderance of the evidence collected during its investigation.

*Preponderance of the evidence* is defined as evidence which is greater or more convincing than the evidence which is offered in opposition to it; that is, evidence that ~~as a whole~~ shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation LMHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed LMHA, and (3) what corrective measures or penalties will be assessed.

### Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether LMHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

#### LMHA Policy

In the case of family-caused errors or program abuse, LMHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, LMHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

## **Notice and Appeals**

### LMHA Policy

LMHA will inform the relevant party in writing of its findings and remedies within 20 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which LMHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable.

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS**

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, LMHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

### LMHA Policy

Increases in the family share will be implemented only after the family has received 30-day notice. Any decreases in family share will become effective the first of the month following the discovery of the error.

#### **Reimbursement**

Whether the family or owner is required to reimburse LMHA or LMHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances

in which the family knowingly allows LMHA to use incorrect information provided by a third party.

#### **Family Reimbursement to LMHA [HCV GB pp. 22-12 to 22-13]**

##### LMHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. LMHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, LMHA will terminate the family's assistance in accordance with the policies in Chapter 12.

#### **PHA Reimbursement to Family [HCV GB p. 22-12]**

##### LMHA Policy

LMHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

#### **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to LMHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

##### LMHA Policy

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by LMHA for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to LMHA Board of Commissioners, employees, contractors, or other LMHA representatives
- Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to LMHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g. income, family composition) Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- Admission of program abuse by an adult family member

- LMHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

### **Penalties for Program Abuse**

In the case of program abuse caused by a family LMHA may, at its discretion, impose any of the following remedies.

- LMHA may require the family to repay excess subsidy amounts paid by LMHA, as described earlier in this section.
- LMHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- LMHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- LMHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

### **14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

#### **Owner Reimbursement to LMHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to LMHA any excess subsidy received. LMHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, LMHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

#### LMHA Policy

In cases where the owner has received excess subsidy, LMHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

## **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- Make any false statement to LMHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

### LMHA Policy

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by LMHA
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to unassisted tenants at no extra charge
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit
- Knowingly accepting incorrect or excess housing assistance payments
- Offering bribes or illegal gratuities to LMHA Board of Commissioners, employees, contractors, or other LMHA representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to LMHA
- Residing in the unit with an assisted family

## **Remedies and Penalties**

When LMHA determines that the owner has committed program abuse, LMHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any LMHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.



## 14-II.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of LMHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a LMHA staff member that additional standards of conduct in LMHA personnel policy.

Incorrect subsidy determinations by LMHA staff include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

### De Minimis Errors [24 CFR 5.609(c)(4); PIH Notice 2023-27]

PHA's must implement a policy to credit or repay a family if the family was overcharged tenant rent because of the PHA's error in income determination, regardless of the dollar amount of the error (including de minimis errors). The credit or repayment must be retroactive to the effective date of the action the error was made. Families will not be required to repay the PHA in instances where the PHA miscalculated income resulting in a family being undercharged rent.

A de minimis error is an error where LMHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

#### LMHA Policy

LMHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income.

If LMHA makes a calculation error at admission to the program or at an annual reexamination, an interim reexamination will be conducted, if necessary, to correct the error, but the family will not be charged retroactively.

### Repayment to LMHA

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by LMHA staff [HCV GB. 22-12]:

#### LMHA Policy

Families will not be required to repay LMHA in instances where LMHA miscalculated income resulting in a family being undercharged for rent. Once LMHA becomes aware of the error and upon revised certification, the family will be provided with a 30-day notice of the increase to their rent portion.

LMHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff caused error, staff program abuse, or a de minimis error.

The family is responsible for reporting all household income/composition changes and reviewing LMHA's determination of household income, assets and expenses used in the

calculation of rent, and for bringing any errors or omissions to LMHA's attention in writing within thirty (30) calendar days of receipt of the approved certification or rent change notice.

~~Upon discovery of error, LMHA will reimburse a participant/family for any underpayment of subsidy resulting from error on the part of a staff person.~~

### **LMHA Reimbursement to Family or Owner**

LMHA must reimburse a family for any subsidy underpayment, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from LMHA's administrative fee reserves [HCV GB p. 22-12].

### **Prohibited Activities**

#### LMHA Policy

Any of the following will be considered evidence of program abuse by LMHA staff:

- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to LMHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of LMHA activities, policies, or practices
- Misappropriating or misusing HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

### **14-I.E. CRIMINAL PROSECUTION**

#### LMHA Policy

When LMHA determines that program abuse by an owner, family, or LMHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, LMHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the

federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

#### **14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES**

LMHA may retain a portion of program fraud losses that LMHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

LMHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits LMHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that LMHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of LMHA related to the collection, these costs must be deducted from the amount retained by LMHA.