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CHAPTER 22 PROGRAM INTEGRITY

22.1 CHAPTER OVERVIEW

PHAs maintain their credibility with applicant and participant families, owners, HUD, and the larger community by enforcing program requirements. When families, owners, or PHA employees fail to adhere to program requirements, the PHA must take appropriate action. The action that is appropriate depends on the particular case of circumstances.

PHAs should address program errors, omissions, fraud, or abuse through both *prevention* and *detection*. Preventive measures are the most effective way to deter widespread program irregularities. This chapter first discusses the important differences between program errors and omissions and fraud and abuse. It also identifies various ways PHAs can prevent and detect errors and abuses, and discusses corrective action methods.

22.2 DISTINGUISHING BETWEEN ERRORS OR OMISSIONS AND FRAUD AND ABUSE

This chapter uses the terms “error” and “omission” to identify situations in which a family or owner does not comply with program requirements or staff members incorrectly apply program rules. An error or omission may be intentional or unintentional. Some will affect family payment and subsidy amounts; others will not. It is important that PHAs carefully analyze the unique circumstances of the case to determine how to best handle the situation. Errors or omissions that affect the family’s payment, subsidy amount or the regular flow of housing assistance payments should be a high priority.

“Fraud” and “abuse” mean a single act or pattern of actions made with the intent to deceive or mislead, constituting a false statement, omission, or concealment of a substantive fact. Fraud and abuse result in the payment of housing choice voucher program funds in violation of program requirements. It often occurs when families or owners intentionally fail to report required information or report incorrect information to obtain benefits to which they are not entitled. Fraud is a legal term that involves taking legal action to pursue a remedy of the situation, such as terminating program assistance.

It is important that PHA staff recognize the differences between unintentional and intentional misreporting. Particularly in cases of intentional misreporting, PHA staff must be able to evaluate the special circumstances and seriousness of the case to determine whether it is a case of fraud. PHAs must also establish policies and procedures for fair and consistent treatment of cases of intentional misreporting, abuse, and fraud. A policy that clearly defines circumstances under which a family or owner would be terminated from the program, but also allows the PHA to consider mitigating circumstances before terminating, is best.

ERRORS AND OMISSIONS VS. FRAUD AND ABUSE

Errors/Omissions	Fraud/Abuse
<i>By the Family</i>	
<ul style="list-style-type: none"> • Failure to report required information due to lack of understanding, such as omitting a particular asset or failing to report a source of income. • Incorrect reporting, such as reporting the income source but incorrectly stating the amount of income. • Failure to report changes as required, such as failure to notify the PHA of a change in family composition or income. 	<ul style="list-style-type: none"> • Intentionally misrepresenting income, assets, and allowances. • Intentionally misrepresenting family composition. • Initiating and participating in bribes or other illegal activities.
<i>By the Owner</i>	
<ul style="list-style-type: none"> • Collecting housing assistance payments for an unoccupied unit, when the owner is not aware that the assisted family has vacated. • Errors in specifying responsibilities for utility payments. 	<ul style="list-style-type: none"> • Collecting extra or “side” payments in excess of the family share of rent or requiring the family to perform extraordinary services in lieu of payments. • Charging families for utilities that are the owner’s responsibility. • Collecting housing assistance payments for units not occupied by program participants. • Bribing PHA employees to certify a substandard unit as passing HQS. • Other HQS violations involving misrepresentation and deceit.
<i>By the PHA</i>	
<ul style="list-style-type: none"> • Unintentionally miscalculating subsidy/rent. • Unintentionally determining eligible families as ineligible and vice versa. • Unintentionally approving rents that are not reasonable. • Misinterpreting documentation or information provided by a third party. • Forgetting to inform the participant of a reporting requirement or to collect all required information during an interview. • Unknowingly failing to apply program rules and procedures properly. • Late processing. 	<ul style="list-style-type: none"> • Willful passing of units not meeting HQS and/or local standards. • Accepting kickbacks from owners, managers, or families to permit participation or to allow rents in excess of the rent reasonableness limitation. • Intentionally calculating total tenant payment or housing assistance payments incorrectly. • Intentionally making incorrect determinations of family eligibility, including certifying as eligible otherwise ineligible applicants, coaching applicants to falsify documents, or changing an applicant’s position on the waiting list.

22.3 PREVENTING AND DETECTING ERRORS, OMISSIONS, FRAUD, AND ABUSE

PHAs are ultimately responsible for ensuring that the right people receive the right amount of subsidy, and they must maintain a high degree of accuracy in administering the housing choice voucher program. Nonetheless, errors, omissions, fraud, and abuse will occur, and PHAs must have preventive measures in place so that any irregularity can be quickly detected and resolved as efficiently, professionally, and fairly as possible. Because preventive measures are the most effective way to deter widespread program irregularities, they should be an integral part of daily operations.

When determining which techniques to use to prevent and/or detect errors, PHAs should take into account the cost-effectiveness of the approach, specifically, whether the cost to implement the prevention/detection technique will be offset by the savings to be realized. “Savings” might include actual dollar amounts recovered (either for the PHA or on behalf of the family or owner), an estimate of erroneous payments saved, or any benefits realized in program efficiency, effectiveness, and integrity. A second consideration is whether the technique allows for the identification of errors before or after the PHA makes housing assistance payments to the owner. Errors in favor of the family or owner that go undetected present an added hardship for families and owners who may have limited means to make repayments. They also translate into increased collection costs and losses for the PHA. Detecting an error, omission, fraud or abuse later in the process is always more costly.

Eleven techniques or approaches to preventing and detecting errors, omissions, fraud, and abuse are discussed below.

Verification by PHA Staff

PHAs must independently verify all factors affecting a family’s eligibility and payment including:

- Preference status;
- Citizenship status (special verification requirements);
- Annual income;
- Value of assets;
- Expenses related to allowances; and
- Other factors that affect the determination of adjusted income, such as full-time student status.

Three methods of verification are acceptable if the file is properly documented. The most acceptable form, which should always be pursued to the utmost extent, is third party verification from a reliable source. Third party verification should be either written or oral. Written verification should not be hand carried by the family. If several attempts have been made and third party verification is not possible, the PHA may rely on review of documents but must document the file to record why third party verification has not been obtained. When reviewing

documents is not possible, the PHA may require that the family sign a certification or notarized statement. For more information regarding verification requirements, see Chapter 5.

HUD Computer Matching Income Verification

Through its computer matching verification program, HUD uses Federal tax return data received from the Social Security Administration and the Internal Revenue Service (IRS) to identify potential income discrepancies (i.e. income that housing choice voucher families did not report as required when applying for initial or continued rental assistance.) The program also involves initiating administrative or legal actions to resolve income discrepancies and recapture any excess rental assistance assisted families may have received. HUD's Real Estate Assessment Center is responsible for HUD's computer matching program.

HUD is implementing its computer-matching program nationwide in an effort to detect and deter program abuses so that resources may be used to serve the most needy families. Implementation is as follows:

- HUD identifies potential income discrepancies by comparing the income reported by families and submitted by the PHA to HUD through MTCS with Federal tax data provided by the IRS and the Social Security Administration;
- If HUD identifies a potentially significant income discrepancy, HUD generates and sends a letter to the family describing the potential discrepancy. The letter requires the participant to disclose the income data shown in the letter to the PHA;
- HUD forwards the PHA a list of all families who received a letter;
- When the family discloses its income data, the PHA initiates a thorough review and takes necessary action to resolve the discrepancies; and
- HUD tracks PHA efforts to resolve the potential discrepancies.

PHAs should make a prudent effort to obtain full repayment of excess rental assistance through repayment agreements.

HUD's authority to use Federal tax return data from the Internal Revenue Service (IRS) is limited by statute to disclosure of any discrepancies to the assisted family only. HUD can only provide the PHA with a list of housing choice voucher participants to whom it has sent an income discrepancy letter but cannot disclose the Federal tax return data to the PHA. Households that receive such a letter must "promptly disclose" the letter or other notice from HUD to the PHA. No specific timeframe is specified, but HUD suggests that the family be given 30 days from the date of receipt to respond.

HUD's income matching provisions apply only to families that currently receive housing choice voucher assistance. If they have the resources to do so PHAs may, but are not required to, pursue abuses by former program participants.

POSITIVE OR FALSE POSITIVE?

It is likely that some discrepancies that HUD's Computer Matching Program identifies will not involve any intentional wrongdoing on the family's part. For example, the discrepancy may be the result of an error on the PHA's part, or the differences in income reported might be the result of the application of earned income disregards. PHA staff must be informed of the range of circumstances that might generate a false positive. Staff should also be trained to respond sensitively to families who find themselves in a situation where they have received a letter but have not done anything wrong.

Establish Quality Control Procedures

Elements of a Good Quality Control System

A good quality control system will ensure that staff's daily decisions about tenant eligibility, tenant rent, rent reasonableness, housing assistance payments, and housing quality conform to program requirements and are based on accurate information. A good quality control system is implemented regularly. Depending upon the size of the program, general program performance, and staff capabilities and experience, quality control may occur quarterly, monthly or on a more frequent basis.

Information obtained during quality control reviews should not only help identify individual errors or omissions, but it should also be collected on an aggregate basis so that the PHA can determine error rates by category and the extent and causes of errors. This level of detail allows the PHA to initiate actions necessary to prevent the recurrence of problems identified.

A good quality control system also contains procedures for taking corrective action on errors or omissions identified. For example, the staff member responsible for making the error should always be responsible for correcting the error. Staff should be provided with deadlines for correcting the errors and corrections should be reviewed for accuracy and thoroughness.

When overall error rates exceed the acceptable level, management must determine the cause of the errors and identify whether changes in operating policies and procedures need to be made to resolve the problem.

ESTABLISHING A QUALITY CONTROL SYSTEM
PHA CONSIDERATIONS

1. Who will be responsible for implementing and operating the system?
2. What information should be collected and reviewed?
3. With what frequency will the reviews occur?
4. What should be done with the information?
5. What action should be taken to correct deficiencies?
6. What preventive actions can help avoid problems in the future?

Quality Control Procedures

Quality control may take many different forms. Quality control may be in the form of routine checks, including manual and automated, that are typically built into a PHA's program management system. For example, some PHAs require that a supervisor review all new admissions and recertification transactions prior to final data entry into the PHA's computer system. Other PHAs only review the work of new employees. Quality control also occurs when managers generate and analyze standardized reports that enable them to check for internal consistency, completeness of processing, and accuracy of calculations. Another form of quality control is a thorough review of a sample of files representing different transaction types. This review occurs after staff members finish processing the file (e.g. after completion of a recertification.)

Regardless of the approach taken, quality control should include a review of the following functional areas to detect and prevent recurring errors, omissions, fraud or abuse:

- **Admissions and occupancy functions**: The objective of the review is to determine that the file is complete; meaning that all information, particularly income, assets, and allowances, have been properly verified; unit size is appropriate; and the subsidy, rent, and utility allowance/reimbursement calculations are correct. The review should determine if the information in the file is consistent with the family information reported in MTCS. If any of the file entries are incomplete, unverifiable, or incorrect, the quality control supervisor should record the specific error, preferably by using a standard file review form. The standardized forms can then be compiled and tabulated to summarize the results of all tenant file reviews.
- **Rent reasonableness function**: The objective of the review is to determine whether the rent approved by the PHA was determined to be reasonable in accordance with HUD regulations and PHA rent reasonableness procedures. This review protects against owners receiving more rent than they would if they rented their units in the private rental market. The reviewer should determine that each file documents that all steps in the rent reasonableness procedure have been completed and that the data provided supports the conclusions drawn.
- **Housing Assistance Payments processing function**: The objective of this review is to first determine whether the housing assistance payment to the owner is correct, based on the payment standard and family contribution. Second, this review ensures that the payment being made to the owner matches the amount shown on the PHA's HAP register. Third, it also confirms that any change in rent resulting from a recertification or interim change is properly reflected in the HAP to owner. Fourth, it protects against payments being made on a HAP contract that has been terminated. Finally, this review protects against payments for a unit that has failed HQS and where the owner has yet to correct the deficiency.
- **Inspection function**: The objective of this review is to examine the quality of the original PHA inspector's work and the accuracy of the inspector's determination regarding whether or not the unit complied with HQS and/or local housing code. This review prevents owners from receiving program subsidy under the program for substandard units.

Quality Control Samples

At a minimum, PHAs should select a sample (tenant files, new admissions, housing units, inspection files, etc.) that adheres to the minimum sample size requirements outlined in the regulations for the Section 8 Management Assessment Program (SEMAP). If the sample is to be drawn monthly, the files drawn should be limited to those representing transactions completed during the past month. Similarly, if the sample is drawn quarterly, it should be limited to transactions completed during the past three months. Samples should include the work of all staff responsible for the processing function being reviewed. The sample should also include a representative sample of the various transactions that may occur.

The table below identifies the sample size required based on the “universe” or the whole under consideration. The universe for selections from the waiting list will be the total number of applicants selected within the period under review. The universe for HQS enforcement will be the total number of units that failed HQS during the period.

NUMBER OF FILES/RECORDS TO BE SAMPLED	
UNIVERSE	NUMBER OF FILES/RECORDS TO BE SAMPLE
50 or fewer	5
51-600	5 plus 1 for each increment of 50 (or part of 50) over 50
601-200	16 plus 1 for each increment of 100 (or part of 100)
Over 2000	30 plus 1 for each increment of 200 (or part of 200) over 2000

Provide Adequate Training to Staff and Monitor Performance

Staff training on the objectives, rules and regulations governing the housing choice voucher program, and PHA discretionary policies and procedures significantly reduces the likelihood of errors and omissions. Training is not only important for new and inexperienced staff but for experienced staff as well. Changes in program requirements occur on a regular basis. Without training, staff may be processing cases according to rules and regulation that are no longer in effect. Training helps to avoid a common problem whereby new staff receives informal training by coworkers who may or may not be properly following program rules and internal policies and procedures. Training staff as a group helps to promote consistency and standardization of processing. In addition, it helps staff to understand how their work responsibilities relate to others’ work and the overall goals of the PHA. Sending staff out to off-site workshops with staff from other PHAs provides an opportunity to gather information and ideas and perspective from individuals doing similar work. Both approaches to training staff have value.

Formalize Administrative Procedures and Monitor Staff Compliance

The PHA’s administrative plan and written operating procedures are also vehicles for preventing errors and omissions. When staff have access to up-to-date, detailed written procedures, they are more likely to respond appropriately when a question or problem arises, thereby avoiding opportunities for errors. Procedures should clearly describe individual staff roles and

responsibilities. In order to provide better guidance to front-line staff, procedures should clearly define program terms and items that may be interpreted differently. The more simplified the policy or procedure, the less opportunity for error.

PHA management must also ensure that PHA policies and procedures are consistently applied by both staff and management. There should be a formal procedure for revising the procedures when the need arises.

Improve Quality of PHA Communications with Families and Owners

“Communications” includes both standard forms used by the PHA to obtain information from families and owners and information provided to families and owners about the program. When a PHA communicates well to owners and families, families and owners are less likely to commit errors, fraud, or abuse because they have a much better understanding of program requirements and the PHA’s expectations of them.

Obtaining Information from Families

The quality and thoroughness of the process for obtaining eligibility information from families is a critical factor in error prevention. For example:

- Face-to-face eligibility and recertification interviews that are conducted by trained staff in a private setting may increase the ability of the PHA staff person to collect information from the family that is both accurate and comprehensive.
- Well-designed forms also help staff to collect all required information. Some PHAs have designed recertification and admission forms that require very specific and detailed information, including the recording of negative responses from families about income and assets to avoid inadvertently forgetting to ask these key questions. Some forms include questions to ensure that enough information is obtained to be able to annualize the income.
- Many PHAs require staff to complete the admission and recertification forms while the family is present to reduce the likelihood of tenant error due to misreading, misinterpreting, or simply not understanding the question being asked.

Providing Information to Families and Owners

Too often forms and certifications that the family must sign at application, admission, and recertification are hastily read or explained, putting the family members at risk of signing an important document which they do not fully understand. PHA staff should always highlight the key contents of a document before obtaining signatures on the form. Likewise, staff should consider a detailed review of the contents of the HAP contract with the owner, particularly those who are new to the program. Staff should be aware of potential language barriers and attempt to accommodate the family or owner.

Participants must be given a copy of any documents they have signed. These documents are part of the contractual agreement with the participant and may be used if it becomes necessary to take legal action based on the participant's violation of a program requirement. However, any case against a participant will be weakened if the family has not been offered copies of the documents it has signed.

Through participant and owner briefings, the admission and recertification processes, annual HQS inspections, and other oral or written communication, the PHA must regularly ensure that it fully informs families and owners about program requirements and PHA expectations. This means that staff must be fully informed of these requirements and obligations.

PHAs that are committed to preventing program abuse *regularly* inform or remind families of requirements and obligations. Opportunities for informing families include: at the time of application, at briefing and issuance, during the housing search and leasing process, at the inspection phase, and during annual or interim recertifications. At a minimum, the PHA must discuss the following with the family:

- Legal requirement to fully disclose income, assets, and family composition;
- Prohibition of making illegal side payments to the owner;
- Requirement to report interim changes in family composition; and
- PHA right to terminate assistance due to misrepresentation by the family.

At a minimum, the PHA is responsible for explaining to owners their legal responsibility to adhere to the program requirements as contained in the HAP contract. Most PHAs go over these requirements with the owner at the time of HAP contract execution. However, it is important to regularly send a message to owners regarding the PHA's commitment to prevent and eliminate program abuse. These messages can and should be sent using various mediums. For example, PHAs can use landlord fairs, special owner workshops or training, a newsletter or marketing pieces in a landlord newsletter, and special mailings to reinforce the PHA's intent to maintain program integrity and pursue owners that fail to comply with program requirements.

At a minimum, the PHA must discuss program responsibilities and prohibitions against abusing the program with employees when they are hired. In addition, the PHA should use messages it sends to families and owners regarding the PHA's intent to eliminate abuse to educate and inform employees.

Review Family History Prior to Interim or Annual Recertification

Another approach to preventing and detecting family errors and omissions is to carefully review the information reported at the most recent prior examination before meeting with the client for an interim or annual recertification. This procedure helps the staff person conducting the interview to determine whether the differences being reported are due to legitimate changes or intentional or unintentional misreporting.

Identify and Monitor “At Risk” Families

Some families, due to a lack of stable income or frequent changes in family composition, may be more at risk of (intentionally or unintentionally) misrepresenting income or family composition. By identifying who these families are and instituting procedures to monitor their cases, the PHA may prevent or more quickly detect and stop program abuse. One possibility is to require that these families be reexamined more frequently than annually. In cases where doubt exists, the PHA may attempt to verify family composition in connection with the annual or a special HQS inspection. By identifying and monitoring “at-risk” or “error-prone” cases, the PHA uses selective action techniques to target administrative resources where they will have the greatest payoff.

Conduct Special Marketing to Promote PHA’s Intent to Eliminate Program Abuse

Some PHAs deliver reform messages through various media channels as a means to educate landlords, families, and the larger community on their commitment to preventing and eliminating program abuse. Actions include sending a letter to participating families emphasizing HUD’s and the PHA’s intent to eliminate program abuse, hanging posters in the PHA waiting room and other public areas, conducting public services announcements, and speaking at public and neighborhood association meetings and to various advocacy groups.

Rotate Staff Assignments and Caseloads

By rotating staff assignments and caseloads, managers can foster uniform and consistent interpretation of program requirements and prevent the possibility of program abuse. For example, if an employee is giving special treatment to a family or owner, this situation can be detected if the employee’s caseload is taken over by another staff member. Rotating caseloads also helps to identify and resolve inconsistencies regarding how cases are being processed and how rules are interpreted.

Careful Design of Participant Interim Reporting Requirements

PHAs have discretion in designing interim recertification requirements that minimize family reporting burdens and reduce opportunities for error, both on the part of the family and the PHA. HUD rules require interim reporting of changes in household composition only. In developing an interim reporting policy, the PHA should also strive for simplicity. A family will easily remember if it is required to report all changes or no changes; any qualifications to the message will decrease the prospects for compliance.

22.4 ESTABLISHING A PROCESS FOR HANDLING CLAIMS OF POTENTIAL ABUSE

Claims and concerns regarding potential fraud and abuse can come from PHA staff, participants, owners, or members of the local community. For example, a PHA housing specialist may receive a credit report showing that a family has two jobs, when the family identified income

from only one job on its application. The PHA may receive an anonymous phone call reporting that someone is illegally living in a unit.

A PHA should establish a process whereby these accusations, claims, and concerns about potential abuse are documented and responded to as efficiently as possible by qualified staff. It is important that the process is standardized, clear, and consistently followed. Without a consistent, standardized process, PHAs are vulnerable to accusations of unfair treatment. At a minimum, the PHA should provide all participating families, owners and PHA employees with written instructions identifying PHA staff to contact if program abuse is suspected.

When a PHA has reason to believe that a family, owner, or PHA employee may have abused the program, immediate action is required to gather more information regarding the validity of the concern or claim and, if valid, the nature and extent of the abuse. The PHA should collect as much information as possible about the case so that a fair and informed decision can be made. The PHA may confront the family, owner or employee with any information it has and discuss the facts. It may also interview and obtain any additional information from other parties involved. Other parties may include PHA staff, representatives from another local agency (police, welfare agency), and other third parties, such as the person reporting the abuse, landlord, tenant, or employer.

The PHA should summarize the actions taken and the findings and recommendations of its assessment in writing. The summary should include the following:

- Name and address of the subject(s);
- Synopsis of the alleged abuse or fraudulent activity which specifies the sources;
- Name and address of known witnesses or persons having knowledge of the allegations;
- Known or suspected period during which the alleged offense occurred;
- Known or suspected monetary loss;
- Determination, based on the evidence, as to whether the subject is abusing or has abused the program and is receiving or received a benefit to which he or she is not entitled;
- Corrective action to be taken to remedy the situation.

22.5 CORRECTIVE ACTION: ERRORS AND OMISSIONS

The PHA must take immediate action to correct the family payment and subsidy amount and, in some cases, to move the family to a new unit. An amendment to the lease and HAP contract must reflect any changes to family payment and subsidy. An amendment can be in the form of a notice to the participant and owner. Unless the owner requires a new lease, execution of a new HAP contract and lease is not required.

When Family Payment Is Incorrectly Established Too High

When the family payment is incorrectly set too high, the family pays more for rent and utilities than it should under the program. As a result, the amount the PHA pays to the owner in the form of a housing assistance payment is too low.

In cases where the error or omission is the fault of the PHA, the PHA must immediately refund the total amount due to the family. Such reimbursement would come from the PHA's administrative fee reserves. If the family owed the landlord rent, the PHA, depending upon the circumstances, may choose to pay the amount due or a portion thereof directly to the owner on behalf of the family.

In cases where the error or omission is clearly the fault of the family, the PHA should not reimburse the family. Instead, the PHA would process the change immediately and provide notice to the landlord and family of the effective date of the change. Changes in the amount of family payment and housing assistance payment should become effective the month following the discovery.

When Family Payment Is Incorrectly Set Too Low

When the family payment is incorrectly set too low, the family is receiving more subsidy than it is entitled to under the program. As a result, the PHA is paying too much to the owner in the form of a housing assistance payment.

In cases where the error or omission is the fault of the PHA, the family and owner are not responsible for repayment. The PHA must give the family and owner reasonable notice of the increase in family payment and corresponding decrease in housing assistance payment. HUD does expect, however, the PHA to repay HUD the amount of overpaid subsidy due to PHA error or omission. The amount owed must be paid out of administrative fee reserves.

In cases where the error or omission is clearly the fault of the family, the family must repay the PHA within a reasonable period of time. If the amount owed is not repaid, the PHA may terminate the family's assistance. The PHA must process the change immediately and inform the landlord and family of the effective date of the change. Increases in the amount of family payment resulting from a family error or omission become effective retroactively to the time of the reporting error.

Errors Affecting the Size of the Family's Unit

In cases where a PHA error leads the family to receive subsidy for a larger unit than the size unit for which it is entitled, the PHA should immediately encourage the family to move to a smaller unit. The PHA is obligated to try to find the family reasonable, alternative housing. If the family refuses to move after the PHA identifies reasonable alternatives, the PHA must recalculate the family's subsidy based on the payment standard for the bedroom size for which it qualifies. The PHA must give reasonable notice to the family and owner of any change in payment. The PHA must process the payment change at the next annual reexamination, if not sooner.

In cases where misrepresentation by the family leads the family to receive subsidy for a larger unit than the size unit for which it is entitled, the family must repay the PHA or sign a repayment agreement to pay any amount owed. If the amount owed is not repaid, the PHA may terminate the family's assistance. If the PHA decides not to terminate the family's assistance, the PHA

must immediately adjust the subsidy according to the payment standard for the appropriate bedroom size and provide the family and owner reasonable notice of the change. The family is not required to move but if the family is unable to pay the new amount, it must give appropriate notice to the owner and PHA and move to a smaller unit.

In cases where PHA error leads the family to receive subsidy for a unit that is smaller than the size unit for which it is entitled, the PHA must immediately notify the family and owner of the problem and issue the family a voucher for the appropriate bedroom size. The PHA is obligated to try to find the family reasonable, alternative housing. If the family does not locate another unit within this time frame, the PHA must terminate assistance for the family if the unit does not meet the HQS requirements.

Errors That Require the Owner to Repay HAP Amounts

The PHA may discover that the owner is not entitled to the full amount of housing assistance payments it paid to the owner. For example, the PHA may mistakenly pay the owner the full monthly housing assistance payment twice in one month because of a record keeping or other error. Another example would be if the owner accepted a HAP payment for a unit that was not occupied by a housing choice voucher participant, i.e. the family vacated the unit with or without the knowledge of the owner. In both of these instances, the owner owes the PHA the portion of the housing assistance payment to which the owner is not entitled.

In most instances, the PHA will reclaim the amount due by withholding payment due for the subsequent month or months until the debt is paid, occasionally, if the debt is large and not the result of willful abuse, the PHA may make an agreement with the owner for payment in installments over a period of time.

Documenting and Collecting Overpayments and Underpayments

Money owed to the PHA by the family because of overpayments on its behalf may be collected by requiring a lump-sum payment of the entire amount or by entering into a repayment agreement. A repayment agreement is a formal document prepared by the PHA and signed by the family, in which the family acknowledges a debt and the amount owed. The agreement specifies how the amount owed is to be repaid, including the specific time period(s) when payment is due. The PHA, at its discretion, may offer a family the opportunity to enter into a repayment agreement to pay amounts owed to the PHA, and may prescribe the terms of the agreement. Although the PHA always has the option of requiring payment of the entire amount due, if the PHA offers a repayment agreement, the terms may not require prohibitive payments that would force the family to leave the program.

The PHA must maintain full and complete documentation of all debt. A suggested approach for determining and documenting overpayments and underpayments follows:

- Record the data used and steps taken to calculate the incorrect payment;
- Record the real data that should have been used and recalculate the payment;
- Conduct third party verification of new data;

- Compare the recalculated/correct payment to the actual benefits paid;
- Record action taken.

22.6 CORRECTIVE ACTION: FRAUD AND ABUSE

If as a result of its assessment the PHA determines that the family, owner, or PHA employee has abused the program, the PHA must take immediate actions to remedy the situation. The PHA may at any time deny program assistance to an applicant or terminate program assistance for a participant if any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program. The PHA's actions will vary, depending upon the extent and nature of the abuse. The PHA must determine that a preponderance of evidence demonstrates that the action taken by the family, owner, or employee was willful and intentional, in order to terminate assistance on the basis of fraud or abuse.

PHA Administrative Remedies

Possible Remedies for Abuse by the Family

If the family is ineligible for housing choice voucher program assistance, the PHA must terminate the family's assistance. See Chapter 15.

If the PHA paid too much subsidy on the family's behalf because of discrepancies in information furnished by the family *and if the PHA has sufficient evidence that the family intentionally misrepresented its circumstances*, the PHA must pursue debt collection and may terminate assistance.

If the family executes but then breaches an agreement with the PHA to pay amounts owed, the PHA may terminate assistance for the family.

The PHA has the discretion to consider all of the circumstances in each case when determining whether or not to deny or terminate assistance because of action or failure to act by members of the family. The PHA should consider the seriousness of the case, any special circumstances surrounding the case, the extent of participation or culpability of individual family members, any mitigating circumstances such as those related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

As a condition of continued assistance for other family members, the PHA may impose a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance. If the family includes a person with disabilities, the PHA decision concerning such action is subject to reasonable accommodation considerations.

Before taking action against a family for any perceived abuse related to the amount of assistance paid, the PHA should carefully review documentation and calculations in the file and ensure there are no file errors that may later complicate the PHA's charge of abuse.

Possible Remedies for Abuse by Owners

The PHA may immediately abate payment and subsequently terminate the HAP contract. When this occurs, the PHA must issue the family a new housing choice voucher and assist the family to locate another unit.

If the owner was collecting side payments, the PHA must notify the owner to immediately cease collecting these payments and require repayment to the family through the PHA of the full amount illegally collected. The PHA must determine if the owner also collected side payments from other participants and follow-up to require payment. The amount can be repaid by offsetting the amount due against future housing assistance payments. The PHA may, at its discretion, terminate the affected HAP contract immediately, even if the owner has repaid amounts due the family; but it must cancel the HAP contract if the owner fails to repay the family.

If the owner's unit contains HQS violations and the owner fails to correct the deficiencies cited by the PHA within the time allotted, the PHA must immediately abate payment and subsequently terminate the contract. However, the PHA should not terminate the HAP contract until the family moves or has been given reasonable time to find another unit. See Chapter 10.

If the owner has allegedly discriminated against the housing choice voucher family, the PHA must provide assistance to the family, as follows:

- The PHA must inform the family of its rights under federal, state, and local law, including the right to file a formal complaint under one or more of these laws.
- If the family wishes to file a complaint under Title VIII of the Civil Rights Act of 1968, the PHA must assist the family in completing form HUD-903, Discrimination Complaint, or refer the Family to the local fair housing organization or HUD Field Office of Fair Housing and Equal Opportunity.

If the PHA determines that the owner has committed a very serious program abuse or more than one of the offenses described above, the PHA may restrict the owner from future participation in the program for a reasonable period of time commensurate with the offense's seriousness.

Possible Remedies for Abuse by Employees

If the PHA determines that any employee has abused the program, it must take whatever action is appropriate under its personnel policies and law. Actions may include putting the employee on probation, giving the employee a poor performance evaluation, requiring the employee to take leave without pay, terminating the employee, and/or filing a criminal complaint.

HUD will consider a pattern of substantial administrative deficiencies on the part of the PHA a substantial default under the ACC, and will take appropriate action against the PHA in such cases.

Referrals for Prosecution of Purposeful Misreporting

If the PHA has reason to believe (preponderance of evidence) that the participant's or owner's abuse of the program was willful or intentional, the PHA may refer the cases to the appropriate HUD Special Agent In Charge (SAC) for investigation and possible criminal prosecution. The PHA may also pursue remedies under state or local law, with an information copy to the appropriate RIGI. Cases sent to RIGI for investigation should contain, at a minimum, the following information:

- Name and address of subject(s);
- Synopsis of alleged abuse, violation, intentional misrepresentation, or fraudulent activity, including the source of the information;
- Identity and address of known witnesses or persons having knowledge of the allegation(s);
- Known or suspected period during which alleged offense(s) occurred;
- Known or suspected monetary loss;
- Findings of the PHA or any corrective or administrative actions or sanctions taken by the PHA; and
- Indication of whether the matter has been referred to or considered by local prosecution or law enforcement agencies.

If the Justice Department or appropriate local or state agency declines prosecution, the PHA may pursue remedies through civil court.

The PHA must obtain HUD approval before initiating litigation in which it is requesting HUD assistance or participation.

22.7 RECOVERY OF PROGRAM FUNDS

Where the PHA is the principal party initiating or sustaining an action to recover amounts from tenants or owners that are due as a result of fraud and abuse, the PHA may retain a portion of the amount of housing choice voucher program funds it recovers.

Applicability

To be eligible to retain housing choice voucher program tenant and owner fraud recoveries, the PHA must be the principal party initiating or sustaining an action to recover the amounts. In addition the fraud recoveries must be obtained through one of the following:

- Litigation brought by the PHA, including settlement of a lawsuit, on or after October 8, 1986;

- Court-ordered restitution pursuant to a criminal proceeding obtained on or after October 8, 1986; or
- Administrative repayment agreement with the family or owner signed on or after October 28, 1992. The repayment agreement must be made in accordance with the PHA's housing choice voucher program informal hearing requirements.

PHAs are not eligible to retain fraud recoveries in cases of owner fraud in units owned or controlled by the PHA. Nor are PHAs eligible to retain fraud recoveries in cases where incorrect payments were made or benefits received because of the PHA's calculation errors instead of willful fraudulent activities.

PHA Retention of Proceeds

The PHA may retain the greater of:

- Fifty percent of the amount it actually collects from a judgment, litigation, or an administrative repayment agreement; or
- Reasonable and necessary costs that the PHA incurs related to the collection from a judgment, litigation or an administrative repayment agreement. Reasonable and necessary costs include the costs of the investigation, legal fees, and collection agency fees.

If HUD incurs costs on behalf of the PHA in obtaining the judgement, HUD must deduct these costs from the amount the PHA will retain.

The PHA must use the amount of the recovery proceeds it is authorized to retain in support of the housing choice voucher program in which the fraud occurred. The remaining balance of the recovery proceeds must be applied as directed by HUD. To permit HUD to audit the amounts retained, the PHA must maintain all records HUD requires, including:

- Recovered amounts;
- Nature of the judgment or repayment agreement; and
- Amount of legal fees and expenses incurred in obtaining the judgment or repayment agreement and recovery.

22.8 PHA STAFFING AND RESOURCE CONSIDERATIONS

PHA activities related to preventing, detecting, and resolving cases of program abuse by families, owners, and PHA staff should occur on an on-going basis. Therefore, adequate staffing and resources must be dedicated to these activities. PHAs can take a number of approaches to ensure that sufficient staff and dollar resources are dedicated to preventing errors and controlling fraud and abuse. The PHA may wish to contract with other agencies for the delivery of on-going

information and service functions. If an outside agency is contracted, the PHA must provide sufficient monitoring since it is ultimately responsible under the ACC for program compliance. All expenditures from handling complaints, program errors, and program abuse must be paid out of the PHA's ongoing administrative fee.

When determining the level of staff and dollar resources to dedicate to maintaining program integrity, the PHA should carefully analyze the extent to which errors, omissions, fraud and abuse are present. Staffing a sophisticated investigations unit, for example, may not be appropriate for a small PHA that has received very few complaints from landlords, participants, applicants, and the community regarding how the program is administered. Some PHAs have established a "processing threshold" whereby minor errors resulting in small overpayments by the PHA are not processed if it is determined that the cost of contacting families and owners and processing the errors is more expensive than the amount that can be recaptured.

APPROACHES TO HANDLING CLAIMS OF POTENTIAL ABUSE

- Establish a **Complaint Hotline**. Some PHAs establish a toll-free dedicated line that owners, participants, employees, and residents of the community can call during any hour of the day to report a claim of potential abuse. Some PHAs accept anonymous phone calls; other require that the caller identify him/herself.
- Create a **Fraud or Investigations Unit**. Such a unit might be responsible for responding to and investigating claims, making determination regarding the nature and seriousness of the abuse, identifying the appropriate course of action, coordinating related informal hearings or reviews, following up with legal staff, preparing repayment agreements and monitoring repayment, and establishing policies and procedures related to fraud prevention and detection.
- Hire **Ombudsman**. Among its many roles and responsibilities, the ombudsman might take the lead responsibility for responding to landlord, participant, applicant, and community complaints and claims of program abuse, ensuring that each case is handled fairly, consistently, and efficiently, and promoting to the general public the positive actions the PHA is taking to ensure program integrity.