

## **Section 19.0 PARTICIPANT PAYMENTS FOR AMOUNTS OWED THE PHA**

LAs assume all day-to-day responsibility for enforcing the requirements of this section and for ensuring that monies are paid directly by the program participant or owner to the bank lockbox. LAs are not permitted to receive funds on behalf of the participants and owners and must notify HCR immediately on any funds received. HCR will guide the LA on the procedure to assure the receipt of the funds and submission of all necessary documentation.

A participant is responsible for reporting all changes in income and household composition to the LA within two weeks of the date of such change. If a participant fails to report these changes an overpayment of Housing Assistance Payments (HAP) may occur. The participant is responsible for repaying any amount overpaid on his/her behalf to the Statewide Section 8 Voucher Program.

In such cases the LA is responsible for making every effort to recoup any overpayment of HAP, and may only proceed to termination of assistance after considering the seriousness of the case, such as:

- whether or not there was a prior similar violation;
- the participant used false names or social security numbers, or
- falsified, forged or altered documents.

The LA may also consider the extent of participation or culpability of individual family members, mitigating circumstances 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 inaction (*see Section 14.01 of this Administrative Plan*). The analysis of all these factors must be documented in writing before proceeding to termination for any first time offender.

Participant obligations of this nature may be satisfied by either paying the full amount due immediately upon request of the LA, or through a repayment agreement approved by the LA.

The length of a repayment agreement cannot exceed 36 months. The specific term will be determined according to the amount owed. If the participant is not current on a repayment agreement, the family will not be issued a voucher to move to a new unit. If the family has a repayment agreement in place and incurs an additional debt to the LA, the additional debt must be paid in full within 30 days.

A participant will be considered in default if they miss two consecutive payments or are behind on more than two payments aggregately. In such circumstances, the family must pay the total outstanding balance or their participation will be terminated.

An applicant owing money may apply to the program and remain on the waiting list until his/her time of selection. If it is determined, based on information in HUD's Enterprise Income Verification (EIV) System that an applicant still owes money to a PHA or a Section 8 landlord when he/she is contacted for selection, assistance may be denied subject to resolution of the reported outstanding debt. Refer to HUD's January 28, 2010 EIV Training Webcast: *Refinement of Income and Rent Rule*, and Form HUD-52675 (Debts Owed to Public Housing).

### **19.01 - Fraud Versus Participant Errors/Omissions**

The guidance in 24 CFR 792 regulations defines fraud, encourages PHAs to pursue instances of it and provides information on PHA compensation for efforts involved in initiating or sustaining an action to recover excess subsidy payments.

Section 792.101 (Purpose) states that the purpose is to cover "tenants and owner fraud and abuse in the operation of the Section 8 housing assistance payments programs." Similarly, Section 792.102 (Applicability) states that "This part applies only to this instances when a tenant or owner committed fraud, and the fraud recoveries are obtained through litigation brought by the PHA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of a PHA administrative grievance procedure pursuant to, or incorporating the requirements of 982.555 of this title. Finally, in 792.103 (Definitions), fraud and abuse are defined as follows: Fraud and abuse means a single act or pattern of actions...that constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead.

In some instances involving excess subsidy, general participant errors and omissions are the leading cause of excess subsidy payments. However, once a determination is made that excess subsidy has been paid, every effort must be made to recover that excess.

### **19.02 Repayment Agreements – General**

A participant's obligation of this nature may be satisfied by either paying the full amount due immediately upon the LA's request or through a repayment agreement approved by the LA. A repayment agreement between the LA and a participant is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to the LA upon default of the agreement.

The repayment agreement must contain the following provisions:

1. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income, or;
2. A change in income cycle (i.e.; weekly to bi-weekly or bi-monthly, and vice versa).

3. The monthly repayment amount is in addition to the family's regular rent contribution.

LAs will **not** enter into additional repayment agreements if:

- the participant already has an agreement in force;
- the LA determines that the family has committed additional program fraud during the term of the repayment agreement.

There is no maximum dollar amount for considering whether or not the LA will enter into a repayment agreement.

Although the LA is authorized to enter into a repayment agreement of up to 36 months, the maximum term should not be automatically granted. Each family should be evaluated on a case-by-case basis. The term of the agreement may range from one (1) to thirty-six (36) months depending on the family's income and the amount owed. Repayment options include lump sum payments, monthly installments, or a combination of both. If a family can document a hardship, the LA should contact their program rep for guidance.

If a participant refuses to enter into a repayment agreement or defaults on an existing agreement, the participant must be terminated from the program and collection/enforcement actions should be pursued. Any remaining debts owed must be promptly entered into the EIV Debts Owed to PHA Module. The LA should contact their Program Representative for further guidance.

### **Repayment Schedule**

**Following is the schedule for repayment amounts and maximum terms.**

Amount Due	Maximum Term
\$600 or Less	6 Months
\$601 - \$1,200	12 Months
\$1,201 - \$1,800	18 Months
\$1,801 - \$2,400	24 Months
\$2,401 – or More	36 Months

### **19.03 - Determining Participant Monthly Repayment Amounts**

When establishing the amount of monthly repayment for a participant, LAs must reasonably consider affordability or the participant's ability to pay the repayment amount plus their normal monthly obligation for rent and utilities may be at risk. Accordingly, LAs must take the following steps:

- From the HUD Form 50058, establish the dollar amount of the participant's "Total Family Share" Total Family Share is the amount of rent the participant pays to the owner (tenant rent) plus any applicable utility allowance.
- Determine the dollar amount of 40% of the participant's monthly adjusted income.

Subtract the Total Family Share amount from the dollar amount for 40% of the participant's monthly adjusted income. The resulting amount can generally be considered as the "affordability" benchmark.

- Based on the above table for Repayment Agreement terms, determine if the dollar amount in (3) would allow the participant to repay the amount due within the maximum term. If not, determine the number of months needed to satisfy the amount due.

Repayment agreement terms may be adjusted to consider affordability up to the overall maximum 36 months allowed in HTFC's repayment policy.

Using these factors, if the repayment agreement cannot be satisfied with the maximum term allowed, the LA may not enter in a repayment agreement and the participant's case will be terminated.

#### **19.04 - Compensation for Executed Repayment Agreements**

Under HUD's established process for collecting fraud-based recoveries, monies recovered are returned to the PHA's HAP account and collection fees are paid out of that same account. Our goal is to continue encouraging LAs to collect excess subsidy and enact a reasonable means of providing compensation for those efforts. To meet that goal, we have decoupled the recoupment of excess subsidy from this process for compensating LAs. Under this process, all repayments collected will remain in the HAP account.

LA compensation will be based on a per-agreement flat fee that will be paid to defray costs of establishing and monitoring each executed repayment agreement. The fee will be paid when all excess subsidy has been collected per the terms, a request for reimbursement is submitted within 90 days from the date of closure of the repayment agreement **and formal authorization has been provided by NYS HCR staff to make the specified fee adjustment**. When the participant completes payment due under the repayment agreement, fees will be paid according to the following schedule:

<b><u>REPAYMENT AGREEMENT</u></b>	<b><u>LA FEE</u></b>
<b>\$1,000 or less</b>	<b>50% amount collected</b>
<b>\$1,001 - \$2,000</b>	<b>Lesser of 50% amount collected or \$750</b>
<b>\$2,001 or More</b>	<b>Lesser of 40% amount collected or \$5000</b>

#### **19.05 - Additional Actions When Potential Fraud/Abuse is Observed**

The compensation method for repayment agreements is not intended to block LAs from initiating litigation or taking other actions when egregious fraud or abuse is observed. If or when LAs become aware of potentially serious program abuse, LAs are encouraged to review, investigate and act on such cases. As determined necessary by LAs, law enforcement and/or local District Attorney offices may be contacted for advice, counsel and assistance.

If matters are observed to be serious enough to pursue criminal charges, local District Attorney offices should be contacted to determine their interest and willingness to take on the case. If the local D.A. does

not indicate willingness to be involved, the LA should then contact HTFC to determine if the NYS State Attorney General's Office will take the case. In addition, in those limited instances where the abuse potentially involves a significant amount of program funds, HTFC may determine that the HUD Inspector General's office will be contacted.

#### **19.06 Late Payments**

A payment under a participant repayment agreement will be considered in arrears if payment has not been received by the LA within 5 business days of the due date.

Payment is due by the close of business on the due date. If the due date is on a weekend or holiday, the due date will be at the close of the next business day. If a participant's repayment agreement is in arrears and the participant has not contacted or made arrangements with the LA, the LA will require the participant to pay the balance in full within 30 days. If the participant subsequently fails to pay the full amount due within the 30 days, the participant will be terminated from the program.

If a family who has an outstanding balance on an existing repayment agreement requests to port to another jurisdiction (another LA or PHA), the outstanding balance must be paid in full before the family will be permitted to port.

#### **19.07 Minimum Rents**

HCR has a minimum rent policy of \$50 for all participants in the Statewide Section 8 Voucher Program. Adjustments to rent shares for affected families are to be implemented immediately at the next annual review or interim recertification, whichever comes first.

Refer to Section 21.06 for guidance on the Minimum Rent Hardship Exemption.