DEPARTMENT OF HUMAN SERVICES

Amendment and Compilation of Chapter 17-2028
Hawaii Administrative Rules
March 20, 2014

SUMMARY

1. Chapter Title is amended.

2. §§17-2028-1 to 17-2028-7 are amended.

3. §§17-2028-9 to 17-2028-54 are amended.

4. §§17-2028-56 to 17-2028-64 are amended.

5. §17-2028-74 is amended.

6. §§17-2028-82 to 17-2028-92 are amended.

7. Chapter 2028 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2028

FEDERALLY-ASSISTED PUBLIC HOUSING PROJECTS

Subchapter 1 General Provisions

§17-2028-1 Purpose
§17-2028-2 Definitions
§17-2028-3 Income limits
§17-2028-4 Asset transfers
§17-2028-5 Occupancy guidelines
§17-2028-6 Occupancy standards
§17-2028-7 Utility allowances
§17-2028-8 Verification of information
§17-2028-9 Misrepresentation

Subchapter 2 Eligibility

§17-2028-21 Applicants
§17-2028-22 Eligibility for admission and participation
§17-2028-23 Notification of eligibility
§17-2028-24 Informal hearing for applicants determined to be ineligible for admission

Subchapter 3 Tenant Selection

§17-2028-31 Nondiscrimination
§17-2028-32 Income targeting
§17-2028-33 Deconcentration
§17-2028-34 Local preferences
§17-2028-35 Loss of preference
§17-2028-36 Waiting list
§17-2028-37 Removal from waiting list
§17-2028-38 Closing the waiting list
§17-2028-39 Offers
§17-2028-40 Occupancy of accessible dwelling units

Subchapter 4 Occupancy and Rental Agreement

§17-2028-51 Rental agreement
§17-2028-52 Eligibility for continued occupancy
§17-2028-53 Reexamination
§17-2028-54 Reexamination results
§17-2028-55 Special reexamination
§17-2028-56 Interim rent adjustment
§17-2028-57 Tenant transfers
§17-2028-58 Backcharges
§17-2028-59 Rental agreement termination
§17-2028-60 Smoking prohibited

Subchapter 5 Rents, Security Deposits, and Other Charges

§17-2028-61 Minimum rents
§17-2028-62 Choice of rent
§17-2028-63 Security deposits
§17-2028-64 Other Charges

Subchapter 6 Family Self-Sufficiency Program

§17-2028-71 Family self-sufficiency program
§17-2028-72 Eligibility
§17-2028-73 Recruitment and outreach
§17-2028-74 Selection
§17-2028-75 Termination or withholding of service

Subchapter 7 Special Programs

§17-2028-81 Special programs
§17-2028-82 Occupancy by police officers
§17-2028-83 Designated housing

Subchapter 8 Household Pets

§17-2028-91 Pet ownership
§17-2028-92 Conditions for pet ownership

Subchapter 9 Miscellaneous Provisions

§17-2028-101 Severability
§17-2028-102 Number and gender

Historical Note: Chapter 2028 of Title 17, Hawaii Administrative Rules, is substantially based upon Chapter 17-2028, Hawaii Administrative Rules, [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014], Chapter 17-535, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 2/11/85; am and comp 5/26/98; R 12/03/01], and Chapter 15-190, Hawaii Administrative Rules [Eff 12/03/01; R 9/04/07]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-2028-1 Purpose. These rules are adopted under chapter 91, HRS, and shall govern the administration of federal public housing programs designated to be carried out by a public housing agency, including admission to and the continued occupancy of federally-assisted public housing projects owned or operated by the authority. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Parts 5, 903, 960, 965, 966; HRS §§356D-4, 356D-13)

§17-2028-2 Definitions. Whenever used in this chapter, unless specifically defined:

"Accessible dwelling unit" means a dwelling unit that is located on an accessible route and when designed, constructed, altered, or adapted can be approached, entered, and used by individuals with physical disabilities or a dwelling unit being made accessible as a result of alterations and is intended for use by a specific qualified individual with disabilities which meets the requirements of applicable standards that address the particular disability or impairment of an individual.

"Adjusted income" means "annual income" of the members of the family residing or intending to reside in the dwelling unit minus any HUD allowable expenses and deductions as defined in 24 C.F.R. §5.611 as it existed on March 28, 2013.

"Admissions and Continued Occupancy Policy" or "ACOP" means the regulatory document governing the policies by which the authority determines eligibility for admission, prospective tenant selection, dwelling unit assignment, fair and nondiscriminatory transfers, rental agreement terminations, pet policies, and other

property-specific guidelines as required pursuant to these rules.

"Annual income" means the gross amount of income anticipated to be received by the family during the twelve months after admission or reexamination. Gross income is the amount of income prior to any HUD allowable expenses or deductions, and does not include income which has been excluded by HUD, as defined in 24 C.F.R. §5.609 as it existed on March 28, 2013.

"Applicant" means an individual or family that submits an application for admission to the program but is not yet a participant in the program.

"Assets" or "net family assets" means net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment as defined in 24 C.F.R. §5.603 as it existed on March 28, 2013, and excludes the value of necessary items of personal property such as furniture and automobiles.

"Assisted housing" means the same as "federally-assisted housing".

"Authority" means the Hawaii public housing authority.

"Backcharge" means the amount of arrears in rent or other charges owed to the authority.

"C.F.R." means the United States Code of Federal Regulations.

"Common areas" means areas which are available for use by more than one family including lobbies, corridors, hallways, stairways, parking lots, spots, ramps, washing machine or laundry room, rooftops, elevators, washrooms and lobby areas, driveways, storerooms, and shared ventilation ducts that service more than one dwelling unit.

"Community facilities" means real and personal property; buildings, equipment, lands, and grounds for recreational or social assemblies, and for educational, health, or welfare purposes; and necessary or convenient utilities, when designed primarily for the benefit and use of the authority or the occupants of the dwelling units.

"Community service" means the performance of voluntary work or duties that are a public benefit and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

"Community wide" means inclusive of any location that is under the jurisdiction of the authority.

"Continuously assisted" means that the applicant is currently receiving assistance under any program of the United States Housing Act of 1937, as amended, and there is no break in assistance to the family.

"Covered families" means families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

"Criminal activity" means the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in any conduct constituting a criminal violation of federal law, HRS, or local ordinances regardless of whether there has been an arrest or conviction for such activity and without satisfying the standard of proof used for a criminal conviction.

"Designated housing" or "designated project" means a property (or properties), or a portion thereof that has been designated for occupancy by disabled families, elderly families, or mixed populations of disabled families and elderly families.

"Disabled family" means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

"Domestic violence" means the actual or threatened physical violence directed against a family

member by a spouse, former spouse, or other member of the family who is living or has lived with the family.

"Drug" means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802) as it existed on March 28, 2013.

"Drug related criminal activity" means the illegal manufacture, sale, distribution, or use of a drug, or possession of a drug with intent to manufacture, sell, distribute or use the drug.

"Dwelling unit" means a residential unit in a public housing project.

"Economic self-sufficiency program" means any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families.

"Elderly" or "elderly family" means a family whose head, spouse, or sole member is a person who is at least sixty-two years of age; or two or more persons who are at least sixty-two years of age living together; or one or more persons who are at least sixty-two years of age living with one or more live-in aides.

"Eligible family" means a family that meets the qualifications and requirements of the program for admission into federally-assisted public housing.

"Enclosed or partially enclosed" means closed in by a roof or overhang and at least one wall. Enclosed or partially enclosed areas include but are not limited to areas commonly described as public lobbies, lanais, interior courtyards, patios, and covered walkways.

"Exempt individual" means an individual who is exempt from complying with community service or self-sufficiency activities and which is further defined in 24 C.F.R. §960.601(b) as it existed on March 28, 2013.

"Extremely low-income family" means a family whose annual income does not exceed thirty per cent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty per cent of the median income for the area if HUD finds that such variations are

necessary because of unusually high or low family incomes.

"Family" means regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) Two or more persons who live or intend to live together as a unit and whose income and resources are available to meet the family's needs and who may be related by blood, marriage, or operation of law and whose head of family has reached the age of majority. Family may include foster children and hanai children;

(2) An elderly family;

(3) A disabled family;

(4) A displaced family;

(5) The remaining member of a tenant family who is recorded as an authorized occupant on the current list of household members and who has reached the age of majority; or

(6) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

"Family self-sufficiency program" or "FSS program" means the program established by the authority in accordance with 24 C.F.R. Part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services.

"Federally-assisted housing" means housing assisted under any of the following HUD programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. §1437f) as it existed on March 28, 2013;

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. §1701q) as it existed on March 28, 2013;

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act as it existed on March 28, 2013;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. §8013) as it existed on March 28, 2013;

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. §1715l (d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. §1715l (d)(5)) as it existed on March 28, 2013;

(7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. §1715z-1) as it existed on March 28, 2013; or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. §§1483, 1484) as it existed on March 28, 2013.

"Foster children" means a person or persons, under eighteen years of age who is or are not related to the foster parent by blood, marriage, or adoption and who is or are in need of parenting care.

"Foster parent" means any adult person who gives parenting care and maintenance to a foster child pursuant to placement by an authorized agency.

"Gender identity" means actual or perceived gender-related characteristics.

"Hanai children" means a person or persons, under eighteen years of age, for whom an applicant or tenant provides food, nourishment and support for a minimum period of at least a year or has been recognized in the household for support by the department of human services and who is acknowledged as the applicant's or

tenant's child among friends, relatives and the community.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States Department of Housing and Urban Development.

"Imputed welfare income" means the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

"Involuntarily displaced" means an applicant who has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) Displacement by disaster;

(2) Displacement by governmental action; or

(3) Displacement by action of housing owner for reasons beyond the applicant's control and despite the applicant meeting all previously imposed conditions of occupancy. The action taken by the owner shall be for reasons other than an increase in rent.

"Live-in aide" means a person who resides with one or more elderly persons, or near elderly persons, or persons with disabilities, and who:

(1) Is determined to be essential to the care and well-being of the persons;

(2) Is not obligated for the support of the persons;

(3) Would not be living in the unit except to provide the necessary support services; and

(4) Is not a tenant.

"Location" means any site comprising a common geographic area undivided by natural or man-made barriers (such as rivers, highways, railroads, or other major obstructions) that block or impede normal pedestrian traffic and which may contain more than one project.

"Low-income family" means a family whose annual income does not exceed eighty per cent of the median income for the area, as determined by HUD with

adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty per cent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

"Multifamily dwelling" means a building containing more than two dwelling units.

"Near elderly family" means a family whose head, spouse, or sole member is at least fifty years of age but below the age of sixty two, or two or more persons, who are at least fifty years of age but below the age of sixty two, living with one or more live-in aides.

"PHA plan" means the authority's public housing agency plan that is prepared pursuant to 24 C.F.R. Part 903.

"Projects" means those rental properties owned or operated by the authority.

"Public housing" or "federally-assisted public housing" means housing assisted under the United States Housing Act of 1937, other than under Section 8 of that Act, and includes dwelling units in a mixed finance project that are assisted by the authority with capital or operating assistance.

"Refusal of an offer" means an applicant declines an offer made by the authority for a specific unit from any waiting list or an applicant's failure to respond to a written offer from the authority for a specific unit within the time specified in the offer.

"Rental agreement" means the agreement or contract containing the terms and conditions of occupancy of a dwelling unit entered into by the tenant and authority.

"Resident" means a United States citizen or a permanent United States resident who is able to demonstrate his or her intent to reside in Hawaii. Intent to reside in Hawaii may be demonstrated by the following: length of time spent in Hawaii; leasing or renting of a home in Hawaii; filing of personal Hawaii income tax returns; registering to vote in Hawaii. Hawaii driver's license; record of Hawaii motor vehicle registration; notification of hire to work in

Hawaii; records of employment in Hawaii; military records substantiating Hawaii residency; enrollment of minor children in Hawaii schools; establishment of bank accounts and other accounts in Hawaii; written reference from Hawaii residents, relatives, or social agencies; and any other indicia which could substantiate a claim of an intent to reside in Hawaii.

"Security deposit" means a monetary deposit required prior to admission to federally-assisted public housing or use of community facilities that is applied against the cost of loss or damage to the authority's property (reasonable wear and tear excepted) and non-payment of rent.

"Serviceman" means a person active in the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States, and since July 29, 1945, the Commissioned Corps of the U.S. Public Health Service who has served therein at any time:

(1) On or after April 6, 1917, and prior to November 11, 1918;
(2) On or after September 16, 1940, and prior to July 26, 1947;
(3) On or after June 27, 1950, and prior to February 1, 1955; or
(4) On or after August 6, 1964 and prior to May 7, 1975.

"Sexual orientation" means homosexuality, heterosexuality, or bisexuality.

"Smoke" or "smoking" means inhaling or exhaling the fumes of tobacco or any other plant material, or burning or carrying any lighted smoking equipment for tobacco or any other plant material.

"Staff" means the employees or agents of the authority.

"Tenant" means the person or persons who enter into a rental agreement with the authority to reside in a dwelling unit.

"U.S.C." means the United States Code.

"Utility allowance" means the value of utilities such as electricity, gas, and water costs that are included in the gross rent of the tenant. This does not include telephone or cable television services.

"Utility reimbursement" means the amount, if any, by which the utility allowance for the unit exceeds the total tenant payment of the family occupying the unit.

"Very low-income family" means a family whose annual income does not exceed fifty per cent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty per cent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

"Veteran" means any person who served in the military or naval forces of the United States who has been discharged or released from active service under conditions other than dishonorable.

"Violent criminal activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Parts 5, 903, 960, 965, 966; HRS §§356D-4, 356D-13)

§17-2028-3 Income limits. (a) Income limits for an applicant's admission to a public housing project shall be as prescribed by HUD annual income limit guidelines.

(b) The authority shall adjust the income limits as established and required by HUD.

(c) Because the HUD income limits are mandatory and the authority has no discretion to amend or change the income limits, the income limits shall be established without a public hearing as provided in Chapter 91-3(d), HRS, as it existed on March 28, 2013. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §5.601; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-4 Asset transfers. (a) All assets transferred or assigned from an applicant or tenant to another person, within a two year period prior to submitting an application for the program or reexamination shall be included in determining an applicant's assets.

(b) In determining assets, the authority shall include the value of any business or assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or a bankruptcy sale) during the two years preceding the date of the application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §5.603; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-5 Occupancy guidelines. (a) The authority shall establish occupancy guidelines to maintain the maximum usefulness of the dwelling units, while preventing excessive wear and tear or underutilization. The occupancy guidelines are incorporated by reference and attached as exhibit A.

(b) The occupancy guidelines shall provide for minimum and maximum unit sizes depending on the number of persons in a household for purposes of determining unit size for the wait list. The occupancy guidelines are not to be confused with the authority's occupancy standards, which are based on prevailing county building codes. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 63 Fed. Reg. 70982-70987; 63 Fed. Reg. 70256-70257; HRS §§356D-4, 356D-13, 356D-31).

§17-2028-6 Occupancy standards. The authority and families shall abide by the occupancy standards for the admission and continued occupancy in housing projects as prescribed by the housing codes of the county in which the units are located. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 63 Fed. Reg. 70982 - 70987; 63 Fed. Reg. 70256-70257; HRS §§356D-4, 356D-13, 356D-31).

§17-2028-7 Utility allowances. (a) The monthly rent for a family residing in a federally-assisted public housing project shall include utility allowances established in accordance with HUD's standards for utility allowances as described in 24 C.F.R. §965.505 as it existed on March 28, 2013.

(b) Utility allowances shall be calculated by determining the utility rate then multiplying it by the applicable quantity allowance. A schedule of applicable quantity allowances for lighting, electric domestic hot water heaters, miscellaneous electrical, gas domestic hot water heaters shall be developed annually and shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used;
(2) The size of the dwelling units and the number of occupants per dwelling unit;
(3) Type of construction and design of the housing project;
(4) The energy efficiency of authority-supplied appliances and equipment;
(5) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total tenant payment; and
(6) Temperature of domestic hot water.

(c) The authority shall conduct a review of utility rates in January of each year as required by 24 C.F.R. §965.507 as it existed on March 28, 2013.

Electric and gas rate schedules for all providers shall be collected and reviewed for each month from the preceding January through December of the calendar year prior to the fiscal year beginning July 1. These monthly rates shall be averaged over the year period.

(d) The new utility allowances shall be posted and noticed to tenants at least sixty days prior to the implementation date, during which time tenants shall have the opportunity to present written or oral comments. The applicable schedules shall be publicly posted in a conspicuous manner at the authority's project offices and shall be furnished upon request. The implementation date for new allowances shall be July 1.

(e) Implementation of all new allowances or components of allowances, by utility, shall be required when there is more than a ten per cent change in the resulting allowance due to a rate change since the last change was effective. In cases when a utility is granted a substantial rate increase in between the annual review, a mid-year allowance adjustment may be required.

(f) The authority may update the quantity allowances. To update the quantity allowance, units of various sizes in a sampling of different types of developments shall be surveyed to determine the types of existing equipment as well as to identify any factors affecting energy efficiency. If there is a variance in energy consumption factors within housing projects, the worst case scenario shall be identified and utilized for calculating the quantity allowances. The authority may, at its option, develop property specific allowances for its properties.

(1) Allowances for lighting shall be developed by conducting a field survey of a representative sample of units to determine the number and type of fixtures. The following factors shall be used to determine the kilowatt hour per month allowance for each unit size:

(A) The number of fixtures;

(B) Watts per fixture; and

(C) Estimated hours of use per day.

(2) Allowances for miscellaneous electric equipment shall be based upon usage of a television, radio, miscellaneous small appliances, and a fan.

(3) The allowance for refrigerators is based on the equipment in place at the time of survey.

(4) Allowances for cooking shall be based on the equipment in place at the time of survey.

(5) Allowances for electric domestic hot water heating shall be based on engineering calculations for each bedroom size assuming a certain number of occupants. The data used in the calculations include estimated consumption per occupant per day, temperature of incoming water, temperature of hot water supply, efficiency of heater, and energy required to heat water to supply temperature.

(6) Allowance for solar domestic hot water shall be based on a cost analysis of a domestic hot water heating system.

(7) Gas consumption allowances shall be developed using the same methodology as the electric consumption allowance.

(g) The authority shall provide medical disability allowances for tenants who have provided proof of medical necessity to the authority. The quantity allowances for medical equipment shall be determined by taking the equipment's average energy consumption multiplied by the normal frequency of usage.

(h) A family shall pay for utility usage in excess of the applicable utility allowance.

(i) A family shall receive a utility reimbursement when the utility allowance exceeds the total family payment except where:

(1) The family is paying a flat rent;

(2) The utility reimbursement would result in a rent due to the authority below the minimum

rent as established in section 17-2028-61; or

(3) The family has received a financial hardship exemption pursuant to section 17-2028-61(b) from the minimum rent payment and reimbursement would result in a balance due from the authority to the household.

(j) If a family resides in a dwelling unit served by authority-furnished utilities and must pay for utility usage in excess of the applicable utility allowance pursuant to subsection (h), where:

(1) A checkmeter has been installed, the family must pay the excess unit cost of the relevant utility amount based on the authority's average utility rate as described in subsection (b).

(2) A checkmeter has not been installed, the family must pay for excess usage resulting from estimated utility consumption attributable to tenant-owned major appliances or to optional functions of authority-furnished equipment according to the schedule described in subsection (b). [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§5.603, 5.632, 960.253, Part 965 Subpart E, §966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-8 Verification of information. An applicant or tenant shall provide documentation to verify information upon request of the staff. [Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Part 5, Subpart B; 24 C.F.R. §§960.203, 960.259; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-9 Misrepresentation. An applicant may be denied admission to a housing project if the applicant has submitted false information, withheld information, or made wilful misstatements. A tenant who does the same may be denied continued eligibility and have the rental agreement terminated. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31)

SUBCHAPTER 2

ELIGIBILITY

§17-2028-21 Applicants. (a) A person seeking admission to a housing project shall submit a completed pre-application form prepared by the authority. The applicant may file at any of the authority's in-take offices and apply for one of the geographic waiting list areas prescribed in section 17-2028-36.

(b) The applicant shall be preliminarily placed on a waiting list upon submission of a completed pre-application form. Placement on a waiting list shall not be deemed a determination on eligibility or admission.

(c) An applicant who has misrepresented material information shall not be eligible to file an application with the authority for twelve months from the date of written notification from the authority. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§960.202, 960.203; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-22 Eligibility for admission and participation. (a) To be eligible for participation in the program, applicant and household members shall meet all of the requirements of the pre-application and final application phases as set forth below:

(1) During the pre-application phase, the applicant and adult household members shall:
   - (A) Qualify as a family;
   - (B) Be income eligible as determined under section 17-2028-3;
   - (C) Not have an outstanding debt owed to the authority as a participant in any of its programs;
   - (D) Not have an outstanding liability for unpaid rent or damages incurred while

previously participating in any section 8 rental subsidy program or any HUD rental assistance program;

(E) Provide a social security number for all family members or certify that the person does not have a social security number;

(F) Not have been evicted since March 1, 1985, from a public housing program administered by the authority or any of its predecessors, the housing and community development corporation of Hawaii or Hawaii housing authority;

(G) Not have been evicted from assisted housing by reason of drug-related criminal activity for a three-year period beginning on the date of the eviction unless the evicted tenant successfully completes a supervised drug rehabilitation program approved by the authority;

(H) Not have committed fraud, bribery, or any other corrupt or criminal act in connection with any federal or state housing program;

(I) Not be currently engaging in illegal use of a drug or give the authority reasonable cause to believe that a household member's illegal use (or pattern of illegal use) of a drug or abuse (or pattern of abuse) of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other tenants. For the purposes of this subsection:

(i) "Currently engaged in" means the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current; and

(ii) In determining whether to deny eligibility based on a pattern of

illegal use of a drug or a pattern of abuse of alcohol by a household member, the authority may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C) as it existed on March 28, 2013.

(J) Not currently or during a three year period preceding the date when the applicant household would otherwise be selected for admission be engaged in any drug-related criminal activity or violent criminal activity or other criminal activity involving assault, terroristic threatening, firearms, dangerous weapons, harassment, kidnapping, sexual assault, extortion, forgery, burglary, unauthorized entry into a dwelling, unauthorized entry into motor vehicle, criminal property damage, criminal trespass on public housing property, disorderly conduct, child pornography, and consuming liquor on public housing property, which is considered as reasonably likely to adversely affect the health, safety, right to peaceful enjoyment of the premises by other tenants, the authority, or staff;

(K) Not have been convicted of drug-related criminal activity for the manufacture, production, or distribution of methamphetamines;

(L) Not subject to lifetime registration requirements under any state sex offender's registration program;

(M) Disclose tobacco use of all family members within the household.

(2) During the final application phase, the applicant and all adult household members shall meet the requirements as set forth in

(1), above, as well as the following requirements:

(A) Not engage in or threaten abusive or violent behavior toward the authority's staff. For purposes of this subsection, "threaten" means an oral or written threat or physical gestures that communicate intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate; and

(B) Furnish evidence of citizenship or eligible immigrant status as provided for in 24 C.F.R. §5.508 as it existed on March 28, 2013.

(b) An applicant's past performance in meeting financial obligations, especially rent, may be considered by the authority in its selection of families for admission into its federally-assisted public housing program.

(c) An applicant who is continuously assisted under the United States Housing Act of 1937, as amended, shall be admitted to the program as though the applicant was already a program participant. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 42 U.S.C. §13661; 24 C.F.R. §§5.216, 960.201, 960.202, 960.203, 960.204, 960.205; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-23 Notification of eligibility. (a) Upon making a determination of eligibility, the authority shall mail or cause to be delivered a written notification to an applicant. The

notification shall specifically state the reasons for the determination.

(b) An applicant determined to be ineligible for admission or participation in the program shall be provided an opportunity for an informal hearing pursuant to section 17-2028-24. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.208; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-24 Informal hearing for applicants determined to be ineligible for admission. (a) An applicant determined to be ineligible for admission or participation in the program may request an informal hearing by submitting a written request within fourteen calendar days from the date of notification of ineligibility.

(b) The informal hearing shall be scheduled within twenty-one calendar days from the date the written request is received and shall be conducted by any person or persons designated by the authority, but shall not be a person who made or approved the determination of ineligibility or a subordinate of such person.

(c) The applicant shall be given the opportunity to present evidence, which shall be considered by the hearing officer, along with the data compiled by the authority.

(d) A written notice of the hearing officer's decision shall be mailed to the applicant within twenty-one calendar days after the hearing. The notice shall include an explanation of the reasons for decision. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.208; HRS §§356D-4, 356D-13, 356D-31)

SUBCHAPTER 3

TENANT SELECTION

§17-2028-31 Nondiscrimination. Tenant selection and assignment shall be made without regard to race, color, sex, religion, marital status, creed, national or ethnic origin, age, familial status, gender identity, sexual orientation, handicap or disability or HIV infection. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.103; HRS §§356D-4, 356D-13, 356D-31, 515-3)

§17-2028-32 Income targeting. (a) Not less than forty per cent of families admitted to the program during the fiscal year from the waiting list shall be extremely low income families.

(b) To the extent allowed by 24 C.F.R. §960.202(b)(2) as it existed on September 5, 2013, admission of extremely low income families to the authority's Section 8 voucher program during the authority's fiscal year shall be credited against the targeting requirement in subsection (a). [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.202; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-33 Deconcentration. (a) For federally-assisted public housing projects, the authority shall give priority to applicants to ensure that, to the maximum extent feasible, the housing projects will include families with a broad range of income generally representative of low income families in the authority's area of operation. The authority shall not allow dwelling units to remain vacant awaiting an applicant who meets the appropriate income range.

(b) The authority may not concentrate very low-income families in dwelling units in certain public housing projects or certain buildings within projects. Additionally, the authority may not concentrate higher income families in dwelling units in certain housing projects or certain buildings within projects.

(c) In order to effectuate the policies stated in this section, the authority may reserve a certain percentage of units for applicant placement for applicants who do not qualify for a preference as described in section 17-2028-34. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§5.607, 903.1, 903.2, 960.204, 960.205, 960.206; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-34 Local preferences. (a) Subject to section 17-2028-33(c), eligible applicants shall be given preference for admission in the program in the order of the dates of their applications if, at the time they are seeking housing assistance, they fall within the following preference priority groups:

(1) Involuntarily displaced;

(2) Victims of domestic violence who are participating in a program with case management through a domestic violence shelter, program, or clearinghouse; or

(3) Homeless persons who are participating in a federally or state funded homeless transitional shelter or program, and who are in compliance with a social service plan.

(b) Subject to section 17-2028-33(c), each preference in each priority group is of equal weight and an applicant who qualifies for any of the preferences shall receive assistance before any other applicant who is not so qualified regardless of:

(1) Place on the waiting list; or

(2) Date or time of submission of an application.

(c) A single applicant who is elderly, disabled or displaced shall be given preference over all other

single applicants, regardless of the other single applicant's local preference.

(d) An applicant shall not receive preference if any adult member of the applicant family is a person who was evicted or terminated from any federally-assisted housing or state-aided public housing program operated by the authority for a three-year period beginning on the date of eviction because of drug-related criminal activities unless the adult member has successfully completed a rehabilitation program approved by the authority. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4; 356D-13) (Imp: 24 C.F.R. §960.204, 960.206; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-35 Loss of preference. An applicant who declines one offer of a housing unit, without good cause, or who voluntarily requests cancellation of the application, shall lose all preferences for a period of twelve months from the date the offer was declined or from the date of the request for cancellation. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: 24 C.F.R. §960.206; HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.206; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-36 Waiting list. (a) The authority shall maintain fifteen geographical waiting lists, which are community wide in scope and consist of all eligible applicants as follows:

(1) City and County of Honolulu

(A) Honolulu waitlist which is comprised of Ka'ahumanu Homes, Kalakaua Homes, Kalihi Valley Homes, Kamehameha Homes, Kuhio Homes, Mayor Wright Homes, Palolo Valley Homes, Punchbowl Homes, Pu'uwai Momi, Salt Lake Apartments, Spencer House, Kalanihuia, Makamae, Makua Ali'i, Paoakalani, and Pumehana;

(B) Central Oahu waitlist which is comprised of Kauhale Nani, Wahiawa Terrace, and Kupuna Home O'Waialua;

(C) Windward Oahu waitlist which is comprised of Ho'okipa Kahalu'u, Kaneohe Apartments, Kauhale O'hana, Ko'olau Village, and Waimanalo Homes; and

(D) Leeward Oahu waitlist which is comprised of Hale Laulima, Kau'iokalani, Maili I & II, Nanakuli Homes, Waimaha - Sunflower, and Waipahu I & II.

(2) County of Hawaii

(A) Hilo waitlist which is comprised of Lanakila Homes, Punahele Homes, Pomaikai Homes, Hale Aloha O Puna, Hale Olaloa, Kauhale O'Hanakahi;

(B) Honoka'a waitlist which is comprised of Hale Hauoli;

(C) Ka'u waitlist which is comprised of Pahala;

(D) Kona waitlist which is comprised of Ka Hale Kahalu'u, Hale Ho'okipa, Kaimalino, Kealakehe, and Nani Olu;

(E) Waikoloa waitlist which is comprised of Ke Kumu 'Ekolu; and

(F) Waimea waitlist which is comprised of Noelani I & II.

(3) County of Maui

(A) East Maui waitlist which is comprised of Kahekili Terrace and Makani Kai Hale;

(B) West Maui waitlist which is comprised of Pi'ilani Homes and David Malo Circle; and

(C) Molokai waitlist which is comprised of Kahale Mua.

(4) County of Kauai

(A) East Kauai waitlist which is comprised of Hui O Hanama'ulu, Kapa'a, Hale Nana Kai O Kea, and Hale Ho'olulu; and

(B) West Kauai waitlist which is comprised of Ele'ele Homes, Hale Ho'onanea, Kalaheo Homes, Kekaha Ha'aheo, Kawailehua, and Home Nani.

(b) Applicants shall be notified of the opportunity to apply for and be placed on one of the waiting lists through notices posted in a conspicuous place at the authority's offices that accept applications and printed statements in the authority's informational material on its application process.

(c) Placement of applications on the waiting list shall be based upon the following:

(1) Size of dwelling unit required based on occupancy standards;

(2) Type of dwelling unit required (e.g., accessible for persons with disabilities);

(3) Local preference subject to income targeting and deconcentration policies and goals; and

(4) Date and time of receipt of application.

(d) An applicant cannot remain on a waiting list if they are currently a tenant in any federal public housing program.

(e) An applicant shall notify the authority of any change which will affect applicant's place on the waiting list and the authority's ability to contact applicant. Changes include, but are not limited to, family status, financial status, preference status, mailing address, and current residence.

(f) An applicant may elect to change from one geographic waiting list to another geographic waiting list while maintaining the original date and time of their application upon proper written notice to the authority. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: 24 C.F.R. §§960.206; HRS §§356D-4; 356D-13) (Imp: 24 C.F.R. §960.206; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-37 Removal from waiting list. An applicant shall not be removed from the waiting list unless:

(a) The applicant requests that applicant's name be removed;

(b) The applicant fails to notify the authority of applicant's continued interest for housing at least once every twelve months;

(c) The applicant no longer meets the eligibility criteria set forth in section 17-2028-22;

(d) The applicant fails to respond to the authority's reasonable contact efforts. Correspondence to the last known address will constitute reasonable effort to contact;

(e) The applicant fails without good cause to keep a scheduled interview or to provide requested information necessary to determine eligibility; or

(f) The applicant misrepresents any material information to the authority in the application or otherwise. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§960.206, 960.208; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-38 Closing the waiting list. (a) The authority, at its discretion, may restrict acceptance of applications, and close the waiting list in whole or in part, when it determines that it will be unable to assist all the applicants on the waiting list within a reasonable period of time.

(b) The authority shall announce any closure and reopening of the application process through notices posted in a conspicuous place at the authority's offices that accept applications.

(c) During periods when application acceptance is closed and until it is reopened, the authority shall not maintain a list of persons to be notified when application acceptance is reopened. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.202, 960.206; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-39 Offers. (a) An applicant shall be afforded one offer to rent a suitable unit.

(b) The offer to eligible applicants shall be made in sequence based upon the following:

(1) Size of dwelling unit required;

(2) Type of dwelling unit required (e.g. accessible units for the mobility, hearing or visually impaired);

(3) Local preferences, subject to income targeting and deconcentration policies and goals; and

(4) Date and time the application was received.

(c) Upon refusal of one offer, without good cause, the applicant's name will be cancelled from the waiting list on which the applicant's name has been placed.

(d) An applicant shall not be considered to have been offered a unit if an offer has been declined for good cause. Good cause may include, but is not limited to the following:

(1) The unit is not of the proper size or type and the applicant would be able to reside there only temporarily (e.g., a specially designed unit that is awaiting a person with a disability needing such a unit);

(2) The unit offered is unsuitable for health or safety reasons for the applicant;

(3) The applicant is unable to move at the time of the offer and presents clear evidence which substantiates this to the authority's satisfaction, including, but not limited to:

(A) A doctor verifies that the applicant has just undergone major surgery and needs a period to recuperate;

(B) A court verifies that the applicant is serving on a jury which has been sequestered; or

(C) A landlord verifies that the applicant has an existing rental agreement that cannot be breached without causing undue financial hardship.

(4) The applicant's acceptance of the offer would result in undue hardship not related to consideration of race, color, national origin, or language and the applicant presents evidence which substantiates this to the authority's satisfaction (e.g., inaccessibility to source of current employment or day care facilities). [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§960.202, 960.203, 960.206, 960.208; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-40 Occupancy of accessible dwelling units. (a) The authority shall take the following nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. When an accessible unit becomes vacant the authority shall, before offering such units to an applicant without a disability, offer such unit:

(1) First, to a current occupant of another unit of the same project or other projects within the same housing program, having disabilities requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) To an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit.

(b) When an applicant accepts an accessible unit, and the applicant does not have a disability that requires the accessibility features of the unit, the applicant shall be required to agree to move to a non-accessible unit when one becomes available. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: §§356D-4, 356D-13) (Imp: 24 C.F.R. §8.27, ; HRS §§356D-4, 356D-13, 356D-31)

SUBCHAPTER 4

OCCUPANCY AND RENTAL AGREEMENT

§17-2028-51 Rental agreement. (a) A tenant shall enter into a rental agreement with the authority that sets forth the conditions of occupancy for the tenant including, but not limited to, the rental terms, security deposit, smoking prohibitions, eligibility reexaminations and rental adjustments, and for welfare recipients, authorization for the authority to draw rental payments directly from their EBT or bank accounts.

(b) No tenant shall be permitted to remain in a housing project without a valid rental agreement. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-52 Eligibility for continued occupancy. (a) To be eligible for continued occupancy in a housing project, the tenant shall:

(1) Qualify as a family;
(2) Conform to the occupancy standards;
(3) Abide by smoking prohibitions pursuant to section 17-2028-60;
(4) Not have a record of conduct or behavior which may be detrimental to the project, its tenants or employees of the authority; and
(5) Except for an exempt individual, conform to the following community service and economic self-sufficiency requirements:
    (A) Contribute eight hours per month of community service (not including political activities);
    (B) Participate in an economic self-sufficiency program for eight hours per month; or

(C) Perform eight hours per month of combined activities as described in paragraphs (A) and (B), above.

(b) Except for a newborn child, a person shall not be permitted to join or rejoin the family until the authority verifies that the person meets the eligibility requirements set forth in section 17-2028-22, and approves of the family's request to add a family member as an occupant of the unit. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: C.F.R. §§960.603, 966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-53 Reexamination. (a) For families who pay an income-based rent, the authority shall reexamine a tenant's annual income, assets, family composition, and any other matter necessary to determine a tenant's rent and eligibility for continued occupancy at least once every twelve months.

(b) For families who pay a flat rent pursuant to section 17-2028-62, the authority shall conduct reexaminations as follows:

(1) At least once every twelve months, the authority shall reexamine the family's composition and any other matter necessary to determine the family's eligibility for continued occupancy; and

(2) At least once every three years, the authority shall reexamine the family's annual income, assets and any other matter necessary to determine the family's eligibility for continued occupancy.

(c) For all families who include non-exempt individuals, the authority shall also annually reexamine compliance with community service and economic self-sufficiency requirements. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§960.257, 966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-54 Reexamination results. (a) A family shall be given written notification within a reasonable time, after determination by the staff, of both the family's eligibility for continued occupancy and rent schedule.

(b) A family found ineligible for continued occupancy by the staff shall be required to vacate the dwelling unit unless the ineligibility is due to noncompliance with community service requirements pursuant to 24 C.F.R. Part 960, Subpart F as it existed on March 28, 2013. In such cases of noncompliance with community service requirements, the rental agreement shall not be renewed at the end of the twelve month term unless:

(1) The tenant, and any other noncompliant family member, enter into a written agreement with the authority, in the form and manner required by the authority, to cure such noncompliance in accordance with such agreement; or

(2) The family provides written assurance satisfactory to the authority that the tenant or other noncompliant family member no longer resides in the unit.

(c) A family aggrieved by the reexamination results may request a hearing pursuant to the authority's grievance procedure as provided in chapter 17-2021. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§960.257, 960.607, 966.4, 966.51; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-55 Special reexamination. If at the time of admission or reexamination, a family's income cannot be reasonably anticipated for the next twelve-month period, the authority may schedule a special reexamination at any time prior to the next annual reexamination when deemed necessary. [Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §5.609; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-56 Interim rent adjustment. (a) The authority may adjust a family's rent between reexamination if a tenant reports a change in family income. However, adjustments to rent shall not be made for covered families with reduced welfare benefit payments resulting from welfare sanctions for noncompliance with welfare self-sufficiency and work activity requirements. Adjustments, reflecting a lower rent, shall be made effective on the first of the month following the month the report was made. The authority will not process the rent adjustment if it confirms that the decrease in income will last less than thirty calendar days.

(b) A tenant who has obtained a decrease in rent under this section shall report all income increases to the authority which occur prior to the next reexamination within ten business days of when tenant knows the increase will occur, and rent shall be readjusted accordingly. Any increase in rent shall be effective on the first day of the second month following the month in which the change occurred.

(c) A tenant who fails to report any increase in income after obtaining a decrease in rent under this section shall be subject to a back rent charge retroactive to the month in which the rent increase should have been made pursuant to section 17-2028-58.

(d) A tenant shall report to the authority any changes in family composition. Rent adjustment shall be made between reexaminations when a person with income is added to the family and the rent adjustment shall be effective on the first of the second month following the approved inclusion. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§5.615, 960.257, 966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-57 Tenant transfers. (a) Tenant transfers shall be made without regard to race, sex, color, creed, age, religion, gender identity, sexual orientation, handicap, national origin, or familial status.

(b) The authority may transfer a family to another dwelling unit:

(1) To prevent overcrowding or under utilization of a dwelling unit as determined by the authority at the time of the annual or interim reexamination;

(2) To preserve the purpose for which a project or unit was specifically developed or designed such as to meet the needs of the elderly or persons with disabilities;

(3) Based on an emergency where conditions of the dwelling unit, building or project pose an immediate, verifiable threat to life, health or safety of the family;

(4) For economic reasons affecting the tenant or the authority;

(5) For administrative reasons determined by the authority including, but not limited to, permitting modernization, renovation, or rehabilitation work and transferring eligible tenants with disabilities from State-aided public housing projects to federally-assisted public housing projects; or

(6) As a reasonable accommodation.

(c) Tenant transfers may take priority over new admissions.

(d) A family shall be afforded one offer to transfer to a unit that meets the criteria set forth in (b) above within the same housing project in which the family resides. If such unit is not available, the family may then be offered a unit in another housing project under the control of the management unit. If such a unit is not available, the family may then be offered a suitable unit on the island on which the family resides. Declining an offer to transfer

for good cause as determined by the authority shall not be considered a refusal.

(e) A family requesting a transfer shall not be transferred during periods when eviction proceedings have been initiated or are in process against such family, which includes the issuance of a notice of violation of the rental agreement by the authority for which the authority is seeking eviction, or scheduling a grievance hearing related to same or during any periods of conditional deferment of eviction action against such family.

(f) A family requesting a transfer, who is not current with rent or other charges, and who does not have an approved payment arrangement shall not be transferred until the situation is resolved to the satisfaction of the authority.

(g) A family shall not be transferred between any federally-assisted housing programs.

(h) The authority may terminate the rental agreement of a family who refuses to transfer as required by the authority. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-58 Backcharges. (a) A family shall pay in full any backcharges within ninety days from the date of notification of the backcharge; provided that where the family timely reports a change in income to the authority and a backcharge results from an increase in income, payment for any backcharges shall not be due until ninety days from the date of a completed reexamination or interim rent adjustment. Failure to do so shall result in the termination of the rental agreement.

(b) The authority may, in its discretion, elect to negotiate a reasonable payment arrangement with a family to ensure payment in full of any backcharges. When the authority determines not to exercise this discretion, the family shall be responsible for the

full balance of backcharges as stated in subsection (a). [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-59 Rental agreement termination. (a) A family shall give the authority at least twenty-eight days written notice that the family will vacate the family's unit prior to the vacate date.

(b) The authority may terminate a rental agreement when the tenant, any member of the tenant's household, or any guest or other person under the tenant's control:

(1) Fails to observe or perform any covenant or obligation of the rental agreement, or rule of the authority or housing project, or law or ordinance of a governmental agency that pertains to or establishes standards of occupancy. This includes but is not limited to the following:

(A) Serious or repeated violation of the material terms of the rental agreement, including failure to make payments due or fulfill household obligations set forth in the rental agreement;

(B) Failure to provide family income, assets, employment and composition information and documentation to enable the authority to determine the family's rental rate and eligibility for continued occupancy;

(C) Family no longer conforms to the occupancy limits as established by the authority for the unit occupied by the family and the family refuses to move to the first appropriate size unit offered;

(D) When requested by the authority due to health and safety, repair, abatement, construction or renovation of the

dwelling unit, the family refuses to move;

(E) Family is ineligible for continued occupancy;

(F) Failure of a family member to comply with community service requirement provisions of 24 C.F.R. part 960, subpart F as it existed March 28, 2013, provided that such failure shall result in non-renewal of rental agreement and termination of tenancy at the end of the twelve-month rental agreement term;

(G) At the time of admission, reexamination, interim or at any other time, the family has submitted false information or has withheld valuable information or has made wilful misstatements; and

(H) Family fails to accept the authority's offer of a revision to the existing rental agreement.

(2) Engages in the illegal use of a drug or gives the authority reasonable cause to believe that the illegal use (or pattern of illegal use) of a drug or abuse (or pattern of abuse) of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other tenants;

(3) Who the authority determines engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants;

(4) Who the authority determines engages in any drug-related criminal activity on or near the authority's premises;

(5) Threatens the health or safety of an employee, contractor or agent of the authority or State;

(6) Violates the smoking prohibitions pursuant to section 17-2028-60 on more than three occasions and receives written notice of said violations; provided that if tenant,

any member of the tenant's household, or any guest or other person under the tenant's control receives only one violation of section 17-2028-60 in one year, and participates in and completes a smoking cessation service program within the same year, the authority will clear the one violation and shall not deem the incident as a violation for the following year;

(7) Fails to maintain utility services;

(8) Has been convicted of a felony during the term of the tenancy, and the felony is related to the authority's property or funds, the resident association or tenant association's property or funds, homicide, assault, terroristic threatening, firearms, dangerous weapons, kidnapping, sexual assault, extortion, burglary, unauthorized control of propelled vehicle, and criminal property damage. This subsection does not apply to tenant's guest or other person under tenant's control;

(9) Flees to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees;

(10) Violates a condition of probation or parole imposed under federal or state law; or

(11) Engages in wilful damage to the authority's property.

(c) The authority shall give a tenant written notice of the proposed termination of the rental agreement that conforms to 24 C.F.R. §966.4 as it existed on March 28, 2013, such as:

(1) Fourteen days in the case of failure to pay rent except for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a financial hardship exemption pursuant to section 17-2028-61(b);

(2) A reasonable time commensurate with the exigencies of the situation in the case of creation or maintenance of a threat to the health or safety of other tenants or project employees; or

(3) Thirty days in all other cases.

The authority shall terminate a rental agreement in accordance with chapter 356D, HRS.

(d) The authority may terminate a rental agreement if any member of the family engages in the use of marijuana, even if pursuant to a lawful prescription under part IX of the Hawaii uniform controlled substances act as it existed on March 28, 2013. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: 24 C.F.R. §966.4; §§356D-4, 356D-13; 356D-98) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31, 356D-92)

§17-2028-60 Smoking prohibited. (a) Smoking is prohibited in all public housing projects, or portions of public housing projects, including inside dwelling units, unless specifically exempted by the authority in the ACOP, including:

(1) In all common areas and community facilities in and around the authority's public housing projects. The authority may designate additional common areas in the ACOP; and

(2) Within a presumptively reasonable minimum distance of twenty feet from entrances, exits, and windows that open to common areas, community facilities, and dwelling units, and ventilation intakes that serve common areas, community facilities, and dwelling units, including enclosed or partially enclosed areas where smoking is prohibited.

(b) This prohibition applies to the use of marijuana, even if its use is pursuant to a lawful prescription under part IX of the Hawaii uniform controlled substances act as it existed on March 28,

2013 that was given subsequent to tenant placement in the dwelling unit.

(c) Where smoking is not prohibited in a dwelling unit pursuant to subsection (a) and the household includes a person who smokes as disclosed pursuant to section 17-2028-22, the family shall pay a non-refundable monthly fee of $5.00.

(d) The authority may discontinue the monthly fee required in subsection (c) when a family can demonstrate to the authority reasonable cause to believe that no member of the household continues to smoke. For the purposes of this subsection:

(1) "Reasonable cause to believe" means by a preponderance of the evidence; and

(2) In determining whether to discontinue charging the monthly fee, the authority may consider completion of a smoking cessation program. [Eff and comp MAY 24 2014] (Auth: §§356D-4, 356D-13) (Imp: 24 C.F.R. §§903.7, 966.3; HRS §§356D-4, 356D-13, 356D-31)

SUBCHAPTER 5

RENTS, SECURITY DEPOSITS, and OTHER CHARGES

§17-2028-61 Minimum rents. (a) There is established a minimum rent of $50.00 per month.

(b) The authority shall grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship attributable only to the following situations:

(1) The family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program;

(2) The family would be evicted because it is unable to pay the minimum rent;

(3) The income of the family has decreased because of changed circumstances, including loss of employment;

(4) A death has occurred in the family; and

(5) Other circumstances determined by the authority or HUD.

(c) If a family requests a financial hardship exemption, the authority shall suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the authority determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(d) When the authority determines that a qualifying financial hardship is temporary, the authority shall reinstate the minimum rent from the beginning of the suspension of the minimum rent ninety days after receiving the exemption request. The authority shall offer a reasonable payment arrangement to the family to ensure payment in full of any backcharges.

(e) When the authority determines a qualifying financial hardship is long term, the authority shall exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(f) When the authority determines that there is no qualifying financial hardship exemption, the authority shall reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family shall be responsible for backcharges as established in section 17-2028-58 and shall not be eligible for payment arrangements as provided under section 17-2028-58(b). [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. 5.630; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-62 Choice of rent. Once a year, the authority shall give each family the opportunity to choose between two methods of determining the monthly tenant rent. The family may choose to pay either a flat rent or income-based rent.

(a) The flat rent shall be the fair market rents ("FMRs") that are determined by HUD, at least annually, pursuant to 24 C.F.R. §888.113 as it existed on March 28, 2013. These FMRs, which include utilities (exclusive of telephone and cable television), are established for dwelling units of various bedroom sizes. Because the FMRs are determined by HUD and the authority has no discretion to amend or change the FMRs, the FMRs shall be established without a public hearing as provided in Section 91-3(d), HRS.

(b) The income-based rent is based on thirty per cent of the family's monthly adjusted income or ten per cent of the family's monthly income, or the minimum rent set forth in section 17-2028-61, whichever is greater.

(1) The income-based rent does not include charges for excess utility consumption or other charges.

(2) The income-based rent shall not exceed the total tenant payment pursuant to 24 C.F.R. §5.628 as it existed on March 28, 2013, for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the authority shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the authority pays the utility supplier, the authority shall notify the family of the amount of the utility reimbursement paid to the supplier.

(3) For purposes of establishing the income-based rent, the authority shall exclude from annual income the earned income of previously unemployed family members and increases in earnings of a family member during participation in any economic self-sufficiency or other job training program as provided for in 24 C.F.R. §960.255 as it existed on March 28, 2013 and the PHA plan.

(c) If a family is unable to pay the flat rent because of financial hardship, the family may at any time request a switch to payment of income-based rent prior to the next annual option to select the type of rent. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §356D-15) (Imp: HRS §§356D-4, 356D-13; 24 C.F.R. §§5.628, 960.253, 960.255; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-63 Security deposits. (a) Prior to admission to a housing project, a family shall pay a security deposit in an amount not to exceed one month's rent. The security deposit may be applied to rent or used to repay charges owed to the authority upon the termination of the rental agreement.

(b) Where smoking is not prohibited in a dwelling unit pursuant to section 17-2028-60(c) and the household includes a person who smokes as disclosed pursuant to section 17-2028-22, the family shall pay an initial refundable smoking deposit of $75.00.

(c) The authority may charge a non-refundable community facilities maintenance fee of not less than one per cent of the community facilities expenses for rental and use for private functions. Resident associations that are duly recognized by the authority shall be exempt from the payment of this deposit.
[Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31).

§17-2028-64 Other Charges. The authority may charge a family, in addition to monthly rent and applicable utility charges, the following:

(a) A late fee of $25.00 if the monthly rent is paid after the seventh business day of that month;

(b) A dishonored check fee of $25.00 for every check made payable to the authority that is returned for insufficient funds; and

(c) Maintenance costs which includes repair costs related to damages to the dwelling unit or appliances or equipment furnished by the authority, in excess of ordinary wear and tear, and for any repairs to project buildings, facilities, or common areas required because of the wrongful act or negligence of the family or the family's guest or visitor.
[Eff and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31).

SUBCHAPTER 6

FAMILY SELF-SUFFICIENCY PROGRAM

§17-2028-71 Family self-sufficiency program. The objective of the authority's family self-sufficiency (FSS) program is to reduce the dependency of low-income families on welfare assistance, section 8, public housing, or any federal, state, or local rent or homeownership subsidies. Under the family self-sufficiency program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency. [Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Part 984; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-72 Eligibility. (a) Tenants in the authority's federal public housing program are eligible to participate in the family self-sufficiency program.

(b) Preference shall be given to applicants who already receive family self-sufficiency-related support services for fifty per cent or less of the allocations. [Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Part 984; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-73 Recruitment and outreach. (a) The authority shall conduct outreach programs to recruit participants for the family self-sufficiency program.

(b) Outreach efforts may include the following:

(1) Sending informational brochures to each family participating in the authority federal public housing program;
(2) Conducting orientation sessions for families who express an interest in participating in the family self-sufficiency program; and
(3) Identifying and targeting potential families in the authority's caseloads.

[Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Part 984; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-74 Selection. (a) Families will be selected without regard to race, color, religion, sex, disability, gender identity, sexual orientation, familial status, or national origin.

(b) Families will be selected by date of receipt of the family self-sufficiency application.

(c) In the event there are more applicants than family self-sufficiency allocations available, the authority shall conduct a lottery to determine placement on the waiting list.

(d) Initially, up to twenty-five tenants may be selected to participate in the family self-sufficiency program. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Part 984; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-75 Termination or withholding of service. (a) The authority shall monitor and assess the family self-sufficiency participant's progress and compliance with the goals set forth in the contract of participation. When the authority determines that the family self-sufficiency participant is not making progress or complying with the goals of the contract of participation, the authority shall notify the family self-sufficiency participant of such determination and provide the family self-sufficiency

participant six months to demonstrate compliance with the plan of the contract of participation.

(b) If no progress has been made or the family self-sufficiency participant is still not complying with the contract of participation after the six-month period, the authority shall provide the family self-sufficiency participant with a written notice of intent to terminate or withhold services and of the opportunity to request an informal hearing.

[Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Part 984; HRS §§356D-4, 356D-13, 356D-31)

SUBCHAPTER 7

SPECIAL PROGRAMS

§17-2028-81 Special programs. The authority may administer programs that are created for special or specific purposes to benefit specific categories of persons pursuant to HUD regulations governing those programs. This may include selection from wait lists and lists of participants using criteria that are different from those provided in this chapter. [Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. 960.505; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-82 Occupancy by police officers. (a) For purposes of this section, "police officer" means a person determined by the authority to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a federal, State or local government or by any agency of these governments.

(b) For the purpose of increasing security for tenants of a public housing project, the authority may allow police officers that would not otherwise be eligible for occupancy in public housing, to reside in a public housing dwelling unit.

(c) The authority shall include in the PHA annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing tenants.

(d) Occupancy by police officers shall be carried out pursuant to 24 C.F.R. §960.505, as it existed on March 28, 2013. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.505; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-83 Designated housing. (a) The authority may designate public housing projects, or portions of public housing projects, for occupancy by disabled families, elderly families, or mixed populations of disabled and elderly families.

(b) The authority shall designate public housing projects, or portions of public housing projects in accordance with 24 C.F.R. Part 945 as it existed on March 28, 2013. The authority shall also include a description of the designation activity in the PHA plan. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Part 945; HRS §§356D-4, 356D-13, 356D-31)

SUBCHAPTER 8

HOUSEHOLD PETS

§17-2028-91 Pet ownership. (a) The authority may permit pet ownership by tenants of public housing, subject to compliance with the authority's pet policy established in the PHA plan.

(b) This subchapter does not apply to animals that assist, support or provide service to persons with disabilities. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§960.705, 960.707; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-92 Conditions for pet ownership. (a) A tenant shall comply with the authority's reasonable conditions for pet ownership that include, but are not limited to, the following:

(1) Obtaining a permit from the authority to own a pet pursuant to the requirements set forth in the authority's pet policy established in the PHA plan; and

(2) Complying with the authority's rules for pet ownership.

(b) The authority may revoke a pet permit for the following reasons:

(1) The authority determines that the pet is not properly cared for;

(2) The pet presents a threat to the safety and security of other tenants, employees of the authority, contractors and others on the premises;

(3) The pet is destructive or causes an infestation;

(4) The pet disturbs other tenants for reasons including, but not limited to, noise, odor, cleanliness, sanitation, and allergic reactions;

(5) The pet owner fails to provide an annual update on the pet as required in the pet rules;

(6) The resident association or project pet committee, which consists of tenants with and without a pet, recommends to the authority that the pet permit be revoked due to a demonstrated lack of cooperation and responsibility in maintaining the pet; or

(7) Tenant fails to pay on a timely basis the following applicable pet fees:

(A) An initial pet deposit of $75.00 or an amount equal to the total tenant payment, whichever is lower; and

(B) For owners of a dog or cat, a non-refundable monthly fee of $5.00. This fee shall not apply to residents of projects for the elderly and persons with disabilities. [Eff 7/21/05; am and comp 9/4/07; am and comp MAY 24 2014] (Auth:HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§5.318, 960.705, 960.707; HRS §§356D-4,356D-13,356D-31)

SUBCHAPTER 9

MISCELLANEOUS PROVISIONS

§17-2028-101 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances, shall not be affected. [Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §§356D-4, 356D-13) (Imp: HRS §1-23)

§17-2028-102 Number and gender. Words in the singular or plural number and masculine gender shall have the same meaning as defined in section 1-17, HRS." [Eff 7/21/05; am and comp 9/4/07; comp MAY 24 2014] (Auth: HRS §356D-4, 356D-13) (Imp: HRS §1-17)

EXHIBIT A

OCCUPANCY GUIDELINES

The authority does not determine who shares a bedroom/sleeping room, but there must be at least one person per bedroom. The Occupancy Guidelines for determining unit size shall be applied in a manner consistent with Fair Housing guidelines.

For occupancy guidelines, an adult is a person 18 years or older.

All guidelines relate to the number of bedrooms in the unit. Dwelling units will be so assigned that:

One bedroom will be generally assigned for every two family members. The authority shall consider factors such as family characteristics including sex, age, or relationship, the number of bedrooms and the size of sleeping areas or bedrooms and the overall size of the dwelling unit. Consideration shall also be given for medical reasons and the presence of a live-in aide.

Single person families shall be allocated one bedroom.

GUIDELINES FOR DETERMINING BEDROOM SIZE FOR WAIT LIST

Bedroom Size	Persons in Household: (Minimum #)	Persons in Household: (Maximum #)
0 Bedroom	1	1
1 Bedroom	1	2
2 Bedrooms	2	4
3 Bedrooms	3	6
4 Bedrooms	4	8
5 Bedrooms	6	10

Amendments to and compilation of chapter 2028, title 17, Hawaii Administrative Rules, on the Summary Page dated March 20, 2014 were adopted on March 20, 2014 after public notice was given in the Honolulu Star-Advertiser, the Maui news, the Garden Island News, West Hawaii Today, and the Hawaii Tribune Herald on January 28, 2014.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

DAVID J. GIERLACH, Chairperson
Board of Directors
Hawaii Public Housing Authority

NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 5-12-14

Filed

APPROVED AS TO FORM:

Deputy Attorney General

LIEUTENANT GOVERNOR'S OFFICE
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