

HOUSE RULES FOR THE MULTI-FAMILY

HOUSING PROGRAM

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CHAPTER 1: OVERVIEW OF THE PROGRAM AND PLAN

1-I.A. PHA MISSION

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides the basis for strategy development, identification of critical success factors, resource allocation decisions, as well as ensuring client and stakeholder satisfaction.

PHA Policy

The PHA's mission is to provide safe, decent and sanitary housing conditions for very low-income families and to manage resources efficiently. The PHA is to promote personal, economic and social upward mobility to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

1-I.B. THE PHA'S COMMITMENT TO ETHICS AND SERVICE

As a public service agency, the PHA is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, the PHA resolves to:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing in good repair – in compliance with program uniform physical condition standards – for very low- and low-income families.
- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human service's needs.
- Promote fair housing and the opportunity for very low- and low-income families of all races, ethnicities, national origins, religions, ethnic backgrounds, and with all types of disabilities, to participate in the public housing program and its services.
- Create positive public awareness and expand the level of family and community support in accomplishing the PHA's mission.
- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of the PHA's support systems and commitment to our employees and their development.

The PHA will make every effort to keep residents informed of program rules and regulations, and to advise participants of how the program rules affect them.

1-I.C. APPLICABLE REGULATIONS

Applicable regulations include: HUD HANDBOOK 4350.3

PART II: THE HOUSE RULES

1-II.A. OVERVIEW AND PURPOSE OF THE POLICY

The House Rules is the PHA's written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements. The House Rules is required by HUD and it must be available for public review. The House Rules also contains policies that support the objectives contained in the PHA's Agency Plan.

All issues related to assisted housing not addressed in the House Rules are governed by federal regulations, HUD handbooks and guidebooks, notices and applicable state and local laws. The policies in the House Rules have been designed to ensure compliance with the HAP contract and all HUD-approved applications for program funding. The PHA is responsible for complying with all changes in HUD regulations pertaining to public housing. If such changes conflict with this plan, HUD regulations will have precedence.

1-II.B. UPDATING AND REVISING THE POLICY

PHA Policy

The PHA will review and update the House Rules at least once a year, and more often if needed, to reflect changes in regulations, PHA operations, or when needed to ensure staff consistency in operation.

Discrimination Complaints

PHA Policy

Applicants or tenant families who believe that they have been subject to unlawful discrimination may notify the PHA either orally or in writing.

The PHA will attempt to remedy discrimination complaints made against the PHA.

The PHA will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

CHAPTER 2: FAIR HOUSING AND EQUAL OPPORTUNITY

PART I: POLICIES RELATED TO PERSONS WITH DISABILITIES

PHA Policy

The PHA will ask all applicants and resident families if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the PHA, by including the following language:

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority.”

2-I.A. DEFINITION OF REASONABLE ACCOMMODATION

A “reasonable accommodation” is a change, exception, or adjustment to a policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since policies and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

2-I.B. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the PHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to the PHA’s programs and services.

If the need for the accommodation is not readily apparent or known to the PHA, the family must explain the relationship between the requested accommodation and the disability.

PHA Policy

The PHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, the PHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

2-I.C. VERIFICATION OF DISABILITY

The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing an accommodation, the PHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to the PHA's programs and services.

If a person's disability is obvious or otherwise known to the PHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the PHA, the PHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the PHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 15 (Program Administration). In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

2-I.D. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION

The PHA must approve a request for an accommodation if the following three conditions are met.

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the PHA, or fundamentally alter the nature of the PHA's operations.

PHA Policy

After a request for an accommodation is presented, the PHA will respond, in writing, within 10 business days.

If the PHA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the PHA's decision through an informal hearing (if applicable) or the grievance process.

If the PHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the PHA's operations), the PHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the public housing program and without imposing an undue financial and administrative burden.

If the PHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the PHA will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal the PHA's decision through an informal hearing (if applicable) or the grievance process.

2-I.E. Program Accessibility for Persons with Hearing or Vision Impairments

HUD regulations require the PHA to take reasonable steps to ensure that persons with disabilities related to hearing and vision have reasonable access to the PHA's programs and services.

PHA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with PHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

PART II: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-II.A. ORAL INTERPRETATION

PHA Policy

The PHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. “Reasonable steps” may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible, the PHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents. Where feasible and possible, the PHA will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The interpreter may be a family member or friend.

2-II.B. WRITTEN TRANSLATION

PHA Policy

In order to comply with written-translation obligations, the PHA will take the following steps:

The PHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the PHA may not translate vital written materials, but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

PHA Policy

If it is determined that the PHA serves very few LEP persons, and the PHA has very limited resources, the PHA will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If the PHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.

CHAPTER 3: ELIGIBILITY

INTRODUCTION

The PHA is responsible for ensuring that every individual and family admitted to the public housing program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by the PHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the public housing program:

- The applicant family must:
 - Qualify as a family as defined by HUD and the PHA.
 - Have income at or below HUD-specified income limits.
 - Qualify on the basis of citizenship or the eligible immigrant status of family members.
 - Provide social security number information for family members as required.
 - Consent to the PHA's collection and use of family information as provided for in PHA-provided consent forms.
- The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

PHA Policy

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law, but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes.

Household

Household is a broader term that includes additional people who, with the PHA's permission, live in a unit, such as live-in aides, foster children, and foster adults.

3-I.A. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY

Family Breakup

PHA Policy

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open.

If a family breaks up into two otherwise eligible families while living in a housing, only one of the new families will continue to be assisted.

If a court determines the disposition of property between members of the applicant or resident family in a divorce or separation decree, the PHA will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, the PHA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the PHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, or stalking and provides documentation in accordance with section 16-VII.D of this ACOP; (4) any possible risks to family members as a result of criminal activity, and (5) the recommendations of social service professionals.

3-I.B. HEAD OF HOUSEHOLD [24 CFR 5.504(b)]

PHA Policy

The family may designate any qualified family member as the head of household.

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

3-I.C. SPOUSE, CO-HEAD, AND OTHER ADULT

PHA Policy

A marriage partner includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse. A co-head is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one co-head.

PHA Policy

Minors who are emancipated under state law may be designated as a co-head. Other adult means a family member, other than the head, spouse, or co-head, who is 18 years of age or older.

Foster adults and live-in aides are not considered other adults [HUD-50058 IB, p. 14].

3-I.D. DEPENDENT [24 CFR 5.603]

A dependent is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, co-head, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

Joint Custody of Dependents

PHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 50 percent or more of the time.

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial

examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the PHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

3-I.E. FULL-TIME STUDENT [24 CFR 5.603]

A full-time student (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because (1) each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction and (2) the income of such an FTS is treated differently from the income of other family members.

3-I.F. ELDERLY AND ELDERLY FAMILY

Elderly Persons

An *elderly person* is a person who is at least 62 years of age.

Elderly Family

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person [24 CFR 5.403]. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

3-I.G. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]

Persons with Disabilities

Under the public housing program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

The PHA must make all aspects of the public housing program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

Disabled Family

A *disabled family* is one in which the head, spouse, or co-head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the PHA from denying admission for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from enforcing the lease following the policies.

3-I.H. GUESTS [24 CFR 5.100]

A *guest* is defined as a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near PHA premises. .

PHA Policy

A guest can remain in the unit no longer than 14 consecutive days or a total of 30 cumulative calendar days during any 12 month period.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last 20 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.

Former residents who have been evicted are not permitted as overnight guests.

Guests who represent the unit address as their residence address for receipt of benefits or other purposes will be considered unauthorized occupants. In addition, guests who remain in the unit beyond the allowable time limit will be considered unauthorized occupants, and their presence constitutes violation of the lease.

3-I.I. FOSTER CHILDREN AND FOSTER ADULTS

PHA Policy

A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

3-I.J. ABSENT FAMILY MEMBERS

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, and illness.

Definitions of Temporarily and Permanently Absent

PHA Policy

Generally an individual who is or is expected to be absent from the housing unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the public housing unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

PHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the PHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

Absences Due to Placement in Foster Care

PHA Policy

If a child has been placed in foster care, the PHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

Absent Head, Spouse, or Co-head

PHA Policy

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

Individuals Confined for Medical Reasons

PHA Policy

An individual permanently confined to a nursing home or hospital may not be named family head, spouse, or co-head but may continue as a family member at the family's discretion. The family has a choice with regard to how the permanently confined individual's income will be counted. The family may elect either of the following:

Include the individual's income and receive allowable deductions related to the medical care of the permanently confined individual.

Exclude the individual's income and do not receive allowance based on the medical care of the permanently confined individual.

Return of Permanently Absent Family Members

PHA Policy

The family must request PHA approval for the return of any adult family members that the PHA has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

3-I.K. LIVE-IN AIDE

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, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by a family member with disabilities.

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(c)(5)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

PHA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional of the family's choosing, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. For continued approval, the family must submit a new, written request—subject to PHA verification—at each annual reexamination.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.

The PHA has the discretion not to approve a particular person as a live-in aide, and may withdraw such approval, if [24 CFR 966.4(d)(3)(i)]:

The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The person has a history of drug-related criminal activity or violent criminal activity; or

The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, the PHA will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the public housing program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Types of Low-Income Families [24 CFR 5.603(b)]

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

Extremely low-income family. A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size.

Using Income Limits for Eligibility [24 CFR 960.201]

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be a low-income family.

Using Income Limits for Targeting [24 CFR 960.202(b)]

At least 40 percent of the families admitted to the PHA's housing program during a PHA fiscal year from the PHA waiting list must be extremely low-income families. This is called the "basic targeting requirement".

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply.

Declaration [24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit the PHA to request additional documentation of their status, such as a passport.

PHA Policy

Family members who declare citizenship or national status will not be required to provide additional documentation unless the PHA receives information indicating that an individual's declaration may not be accurate.

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with PHA efforts to verify their immigration status as described

in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

Mixed Families

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated.

Ineligible Families [24 CFR 5.514(d), (e), and (f)]

PHA Policy

The PHA will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible noncitizen.

When a PHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

The notice will explain the reasons for the denial of assistance and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the PHA. The informal hearing with the PHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 13.

Time Frame for Determination of Citizenship Status [24 CFR 5.508(g)]

PHA Policy

The PHA will verify the status of applicants at the time other eligibility factors are determined.

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2010-3]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. A detailed discussion of acceptable documentation is provided in Chapter 7.

PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied admission.

In addition, HUD requires or permits the PHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The PHA's authority in this area is limited by the Violence against Women Act of 2005 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, or stalking [24 CFR 5.2005(b)].

This part covers the following topics:

- Required denial of admission
- Other permitted reasons for denial of admission
- Screening
- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, or stalking
- Notice of eligibility or denial

3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]

PHAs are required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if the PHA has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

Where the statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, the PHA may choose to continue that prohibition for a longer period of time [24 CFR 960.203(c)(3)(ii)].

HUD requires the PHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

PHA Policy

The PHA will not admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity under any circumstances.

- The PHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. Currently engaged in the illegal use of a drug means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

PHA Policy

Currently engaged in is defined as any use of illegal drugs during the previous six months.

- The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

In determining reasonable cause, the PHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The PHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.

PHA Policy

If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied admission.

- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

PHA Policy

If any household member is currently registered as a sex offender under a State registration requirement, the family will be denied admission.

3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

HUD permits, but does not require the PHA to deny admission for the reasons discussed in this section.

Criminal Activity [24 CFR 960.203(c)]

The PHA is responsible for screening family behavior and suitability for tenancy. In doing so, the PHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety, or welfare of other tenants.

PHA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, the family may be denied admission.

Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

Violent criminal activity, defined by HUD as 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 [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or welfare of other tenants [24 CFR 960.203(c)(3)].

Criminal activity that may threaten the health or safety of PHA staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members. A conviction for such activity will be given more weight than an arrest or an eviction.

In making its decision to deny assistance, the PHA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48]

PHA Policy

The PHA may deny admission to an applicant family if the PHA determines that the family:

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past five years

- Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants

- Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances)

- Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program

- Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent

Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program

Has engaged in or threatened violent or abusive behavior toward PHA personnel

Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny admission, the PHA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny admission.

The PHA will consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

3-III.D. SCREENING

Screening for Eligibility

PHA Policy

PHA will perform criminal background checks on all household members 18 years old and over. And may deny admission based on findings.

Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]

PHA Policy

The PHA must submit a request for information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents.

Screening for Suitability as a Tenant [24 CFR 960.203(c)]

The PHA is responsible for the screening and selection of families to occupy public housing units. The PHA may consider all relevant information. Screening is important to public housing communities and program integrity, and to ensure that assisted housing is provided to those families that will adhere to lease obligations.

PHA Policy

The PHA will consider the family's history with respect to the following factors:

Payment of rent and utilities

Caring for a unit and premises

Respecting the rights of other residents to the peaceful enjoyment of their housing

Criminal activity that is a threat to the health, safety, or property of others

Behavior of all household members as related to the grounds for denial

Compliance with any other essential conditions of tenancy

Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56]

PHA Policy

In order to determine the suitability of applicants the PHA will examine applicant history for the past five years. Such background checks will include:

Past Performance in Meeting Financial Obligations, Especially Rent

PHA and landlord references for the past five years, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the PHA/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. PHAs and landlords will be asked if they would rent to the applicant family again.

Utility company references covering the monthly amount of utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in his/her name. (Use of this inquiry will be reserved for applicants applying for units where there are tenant-paid utilities.)

If an applicant has no rental payment history the PHA will check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may.

Applicants with no rental payment history will also be asked to provide the PHA with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available. The applicant will also be required to complete a checklist documenting their ability to meet financial obligations.

If previous landlords or the utility company do not respond to requests from the PHA, the applicant may provide other documentation that demonstrates their ability to meet financial obligations (e.g. rent receipts, cancelled checks, etc.)

Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the Unit or the Development

PHA and landlord references for the past five years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.

Police and court records within the past five years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction.

A personal reference will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available. In these cases, the applicant will also be required to complete a checklist documenting their ability to care for the unit and to avoid disturbing neighbors.

Home visits may be used to determine the applicant's ability to care for the unit.

3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION

Evidence

PHA Policy

The PHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

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

Consideration of Circumstances [24 CFR 960.203(c)(3) and (d)]

PHA Policy

The PHA will consider the following factors prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that denial of admission may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.F) a victim of domestic violence, dating violence, or stalking

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The PHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

Removal of a Family Member's Name from the Application [24 CFR 960.203(c)(3)(i)]

PHA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit.

After admission to the program, the family must present evidence of the former family member's current address upon PHA request.

Reasonable Accommodation [PH Occ GB, pp. 58-60]

PHA Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, the PHA will determine whether the behavior is related to the disability. If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 2 for a discussion of reasonable accommodation.

3-III.F. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING

Notification

PHA Policy

The PHA acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the PHA's policies. Therefore, if the PHA makes a determination to deny admission to an applicant family, the PHA will include in its notice of denial information about the protection against denial provided by VAWA and will request that an applicant wishing to claim this protection notify the PHA within 10 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

PHA Policy

If an applicant claims the protection against denial of admission that VAWA provides to victims of domestic violence, dating violence, or stalking, the PHA will request in writing that the applicant provide documentation supporting the claim.

Perpetrator Documentation

PHA Policy

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL

PHA Policy

If, based on a criminal record or sex offender registration information an applicant family appears to be ineligible, the PHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 10 day period, the PHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal hearing process.

CHAPTER 4: APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to reside in public housing, the family must submit an application that provides the PHA with the information needed to determine the family's eligibility. HUD requires the PHA to place all eligible families that apply for public housing on a waiting list. When a unit becomes available, the PHA must select families from the waiting list in accordance with HUD requirements and PHA policies as stated in its Admissions and Continued Occupancy Policy (ACOP) and its annual plan.

The PHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the PHA to receive preferential treatment.

HUD regulations require that the PHA comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program [24 CFR 960.103, PH Occ GB p. 13]. Adherence to the selection policies described in this chapter ensures that the PHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and PHA policies for taking applications, managing the waiting list and selecting families from the waiting list. The PHAs policies for assigning unit size and making unit offers are contained in Chapter 5. Together, Chapters 4 and 5 comprise the PHA's Tenant Selection and Assignment Plan (TSAP).

The policies outlined in this chapter are organized into three sections, as follows:

Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how the PHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process the PHA will use to keep the waiting list current.

Part III: Tenant Selection. This part describes the policies that guide the PHA in selecting families from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that the PHA has the information needed to make a final eligibility determination.

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

This part describes the policies that guide the PHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the PHA's obligation to ensure the accessibility of the application process.

4-I.B. APPLYING FOR ASSISTANCE

Any family that wishes to reside in public housing must apply for admission to the program [24 CFR 1.4(b)(2)(ii), 24 CFR 960.202(a)(2)(iv), and PH Occ GB, p. 68]. HUD permits the PHA to determine the format and content of its applications, as well as how such applications will be made available to interested families and how applications will be accepted by the PHA. However, the PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application [Notice PIH 2009-36].

PHA Policy

Depending upon the length of time that applicants may need to wait to be housed, the PHA may use a one- or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and the amount of rent the family will pay.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the PHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and the amount of rent the family will pay when selected from the waiting list.

Families may obtain application forms from the PHA's office during normal business hours. Families may also request – by telephone or by mail – that a form be sent to the family via first class mail.

Completed applications must be returned to the PHA by mail, by fax, or submitted in person during normal business hours. Applications must be complete in order to be accepted by the PHA for processing. If an application is incomplete, the PHA will notify the family of the additional information required.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

The PHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process.

Disabled Populations [24 CFR 8; PH Occ GB, p. 68]

The PHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the PHA must provide an alternate approach that provides equal access to the application process. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

PHAs are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on the PHA's policies related to ensuring access to people with limited English proficiency (LEP).

4-I.D. PLACEMENT ON THE WAITING LIST

The PHA must review each completed application received and make a preliminary assessment of the family's eligibility. The PHA must place on the waiting list families for whom the list is open unless the PHA determines the family to be ineligible. Where the family is determined to be ineligible, the PHA must notify the family in writing [24 CFR 960.208(a); PH Occ GB, p. 41]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list.

Ineligible for Placement on the Waiting ListPHA Policy

If the PHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the PHA will send written notification of the ineligibility determination within 10 business days of receiving a completed application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal hearing and explain the process for doing so (see Chapter 13).

Eligible for Placement on the Waiting ListPHA Policy

The PHA will send written notification of the preliminary eligibility determination within 10 business days of receiving a completed application.

For apparently eligible families that are placed on the waiting list, the notice will indicate the family's relative place on the waiting list and the approximate length of time that the family can expect to wait before being selected from the waiting list. If applicable, it also will indicate the waiting list preference(s) for which the family appears to qualify.

Placement on the waiting list does not indicate that the family is, in fact, eligible for admission. A final determination of eligibility and qualification for preferences will be made when the family is selected from the waiting list.

Applicants will be placed on the waiting list according to PHA preference(s) and the date and time their complete application is received by the PHA.

The PHA will assign families on the waiting list according to the bedroom size for which a family qualifies as established in its occupancy standards (see Chapter 5). Families may request to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines (as long as the unit is not overcrowded according to PHA standards and local codes). However, in these cases, the family must agree not to request a transfer for two years after admission, unless they have a change in family size or composition.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

The PHA must have policies regarding the type of waiting list it will utilize as well as the various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for public housing, and conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how the PHA may structure its waiting list and how families must be treated if they apply for public housing at a PHA that administers more than one assisted housing program.

4-II.B. ORGANIZATION OF THE WAITING LIST

The PHA's public housing waiting list must be organized in such a manner to allow the PHA to accurately identify and select families in the proper order, according to the admissions policies described in this ACOP.

PHA Policy

The waiting list will contain the following information for each applicant listed:

Name and social security number of head of household

Unit size required (number of family members)

Amount and source of annual income

Accessibility requirement, if any

Date and time of application or application number

Household type (family, elderly, disabled)

Admission preference, if any

Race and ethnicity of the head of household

The specific site(s) selected (only if PHA offers site-based waiting lists)

The PHA may adopt one community-wide waiting list or site-based waiting lists. The PHA must obtain approval from HUD through submission of its Annual Plan before it may offer site-based waiting lists. Site-based waiting lists allow families to select the development where they wish to reside and must be consistent with all applicable civil rights and fair housing laws and regulations [24 CFR 903.7(b)(2)].

PHA Policy

The PHA will maintain one single community-wide waiting list for its developments. Within the list, the PHA will designate subparts to easily identify who should be offered the next available unit (i.e. mixed populations, general occupancy, unit size, and accessible units).

The PHA will not adopt site-based waiting lists.

HUD directs that a family that applies to reside in assisted housing must be offered the opportunity to be placed on the waiting list for any tenant-based or project-based voucher or moderate rehabilitation program that the PHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs [24 CFR 982.205(a)(2)(i)].

PHA Policy

The PHA will not merge the housing waiting list with the waiting list for any other program the PHA operates.

4-II.C. OPENING AND CLOSING THE WAITING LIST

Closing the Waiting List

The PHA is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to fill its developments. The PHA may close the waiting list completely, or restrict intake by preference, type of project, or by size and type of dwelling unit. [PH Occ GB, p. 31].

PHA Policy

The PHA will close the waiting list when the estimated waiting period for housing applicants on the list reaches 24 months for the most current applicants. Where the PHA has particular preferences or other criteria that require a specific category of family, the PHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

Reopening the Waiting List

If the waiting list has been closed, it may be reopened at any time. The PHA should publish a notice in local newspapers of general circulation, minority media, and other suitable media outlets that the PHA is reopening the waiting list. Such notice must comply with HUD fair housing requirements. The PHA should specify who may apply, and where and when applications will be received.

PHA Policy

The PHA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of

families, this information will be contained in the notice. The notice will specify where, when, and how applications are to be received.

The PHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

- Roswell Neighbor
- RHA Website

4-II.D. FAMILY OUTREACH [24 CFR 903.2(d); 24 CFR 903.7(a) and (b)]

The PHA should conduct outreach as necessary to ensure that the PHA has a sufficient number of applicants on the waiting list to fill anticipated vacancies and to assure that the PHA is affirmatively furthering fair housing and complying with the Fair Housing Act.

Because HUD requires the PHA to serve a specified percentage of extremely low income families, the PHA may need to conduct special outreach to ensure that an adequate number of such families apply for public housing.

PHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class

PHA outreach efforts must be designed to inform qualified families about the availability of units under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

PHA Policy

The PHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in the PHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

PHA Policy

While the family is on the waiting list, the family must inform the PHA, within 10 business days, of changes in family size or composition, preference status, or contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

Changes in an applicant's circumstances while on the waiting list may affect the family's qualification for a particular bedroom size or entitlement to a preference. When an applicant reports a change that affects their placement on the waiting list, the waiting list will be updated accordingly.

4-II.F. UPDATING THE WAITING LIST

HUD requires the PHA to establish policies to use when removing applicant names from the waiting list [24 CFR 960.202(a)(2)(iv)].

Purging the Waiting List

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to the PHA's request for information or updates because of the family member's disability, the PHA must, upon the family's request, reinstate the applicant family to their former position on the waiting list as a reasonable accommodation [24 CFR 8.4(a), 24 CFR 100.204(a), and PH Occ GB, p. 39 and 40]. See Chapter 2 for further information regarding reasonable accommodations.

PHA Policy

The waiting list will be updated as needed to ensure that all applicants and applicant information is current and timely.

To update the waiting list, the PHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that the PHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by the PHA not later than 15 business days from the date of the PHA letter.

If the family fails to respond within 15 business days, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent. If the family fails to respond within this time frame, the family will be removed from the waiting list without further notice.

When a family is removed from the waiting list during the update process for failure to respond, no informal hearing will be offered. Such failures to act on the part of the applicant prevent the PHA from making an eligibility determination; therefore no informal hearing is required.

If a family is removed from the waiting list for failure to respond, the Executive Director may reinstate the family if s/he determines the lack of response was due to PHA error, or to circumstances beyond the family's control.

Removal from the Waiting List

PHA Policy

The PHA will remove applicants from the waiting list if they have requested that their name be removed. Request must be made in writing. In such cases no informal hearing is required.

If the PHA determines that the family is not eligible for admission (see Chapter 3) at any time while the family is on the waiting list the family will be removed from the waiting list.

If a family is removed from the waiting list because the PHA has determined the family is not eligible for admission, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal hearing regarding the PHA's decision.

PART III: TENANT SELECTION

4-III.A. OVERVIEW

The PHA must establish tenant selection policies for families being admitted to public housing [24 CFR 960.201(a)]. The PHA must not require any specific income or racial quotas for any developments [24 CFR 903.2(d)]. The PHA must not assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations [24 CFR 1.4(b)(1)(iii) and 24 CFR 903.2(d)(1)].

The order in which families will be selected from the waiting list depends on the selection method chosen by the PHA and is impacted in part by any selection preferences that the family qualifies for. The availability of units also may affect the order in which families are selected from the waiting list.

The PHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the PHA's selection policies [24 CFR 960.206(e)(2)]. The PHA's policies must be posted any place where the PHA receives applications. The PHA must provide a copy of its tenant selection policies upon request to any applicant or tenant. The PHA may charge the family for providing a copy of its tenant selection policies [24 CFR 960.202(c)(2)].

PHA Policy

When an applicant or resident family requests a copy of the PHA's tenant selection policies, the PHA will provide copies to them free of charge.

4-III.B. SELECTION METHOD

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use.

Local Preferences [24 CFR 960.206]

PHAs are permitted to establish local preferences and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources [24 CFR 960.206(a)].

PHA Policy

The PHA utilizes a random lottery process for placement on the waiting list

The PHA will use the following local preferences following the random lottery process:

In order to bring higher income families into public housing, the PHA will establish a preference for "working" families, where the head, spouse, co-head, or sole member is employed at least 20 hours per week. Preference is also given to families that live and/or work in Roswell. As required by HUD, families where the head and spouse, or sole member is a person age 62 or older, or is a person with disabilities, will also be given the benefit of the working preference [24 CFR 960.206(b)(2)].

The PHA also provides a preferences to affect homeless populations for people who have graduated a HUD sponsored Transitional Housing Program within 2 years of the pre application.

Families with multiple preferences will be ahead of a family with two, one, or zero preferences.

Income Targeting Requirement [24 CFR 960.202(b)]

HUD requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during the PHA's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, the PHA may skip non-ELI families on the waiting list in order to select an ELI family.

PHA Policy

The PHA will monitor progress in meeting the ELI requirement throughout the fiscal year. ELI families will be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met.

Mixed Population Developments [24 CFR 960.407]

A mixed population development is a public housing development or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character) or the

PHA at some point after its inception obtained HUD approval to give preference in tenant selection for all units in the development (or portion of a development) to elderly and disabled families [24 CFR 960.102]. Elderly family means a family whose head, spouse, co-head, or sole member is a person who is at least 62 years of age. Disabled family means a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403]. The PHA must give elderly and disabled families equal preference in selecting these families for admission to mixed population developments. The PHA may not establish a limit on the number of elderly or disabled families that may occupy a mixed population development. In selecting elderly and disabled families to fill these units, the PHA must first offer the units that have accessibility features for families that include a person with a disability and require the accessibility features of such units. The PHA may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

Units Designated for Elderly or Disabled Families [24 CFR 945]

The PHA may designate projects or portions of a public housing project specifically for elderly or disabled families. The PHA must have a HUD-approved allocation plan before the designation may take place.

Among the designated developments, the PHA must also apply any preferences that it has established. If there are not enough elderly families to occupy the units in a designated elderly development, the PHA may allow near-elderly families (age 55+) to occupy the units [24 CFR 945.303(c)(1)]. Near-elderly family means a family whose head, spouse, or co-head is at least 50 years old, but is less than 62 [24 CFR 5.403].

If there are an insufficient number of elderly families and near-elderly families for the units in a development designated for elderly families, the PHA must make available to all other families any unit that is ready for re-rental and has been vacant for more than 60 consecutive days [24 CFR 945.303(c)(2)].

The decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not have an adverse affect on their admission or continued occupancy in public housing or their position on or placement on the waiting list. However, this protection does not apply to any family who refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area [24 CFR 945.303(d)(1) and (2)].

This protection does apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project [24 CFR 945.303(d)(3)].

PHA Policy

The PHA has designated housing. The PHA's developments with designated housing are as follows:

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When there are insufficient elderly families on the waiting list who wish to reside in a designated elderly development, near-elderly families will receive a preference over other families for designated elderly units.

Deconcentration of Poverty and Income-Mixing [24 CFR 903.1 and 903.2]

The PHA's admission policy must be designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. A statement of the PHA's deconcentration policies must be included in its annual plan [24 CFR 903.7(b)].

The PHA's deconcentration policy must comply with its obligation to meet the income targeting requirement [24 CFR 903.2(c)(5)].

Developments subject to the deconcentration requirement are referred to as 'covered developments' and include general occupancy (family) public housing developments. The following developments are not subject to deconcentration and income mixing requirements: developments operated by a PHA with fewer than 100 public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by a PHA with only one general occupancy development; developments approved for demolition or for conversion to tenant-based public housing; and developments approved for a mixed-finance plan using HOPE VI or public housing funds [24 CFR 903.2(b)].

Steps for Implementation [24 CFR 903.2(c)(1)]

To implement the statutory requirement to deconcentrate poverty and provide for income mixing in covered developments, the PHA must comply with the following steps:

Step 1. The PHA must determine the average income of all families residing in all the PHA's covered developments. The PHA may use the median income, instead of average income, provided that the PHA includes a written explanation in its annual plan justifying the use of median income.

PHA Policy

The PHA will determine the average income of all families in all covered developments on an annual basis.

Step 2. The PHA must determine the average income (or median income, if median income was used in Step 1) of all families residing in each covered development. In determining average income for each development, the PHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

PHA Policy

The PHA will determine the average income of all families residing in each covered development (not adjusting for unit size) on an annual basis.

Step 3. The PHA must then determine whether each of its covered developments falls above, within, or below the established income range (EIR), which is from 85% to 115% of the average family income determined in Step 1. However, the upper limit must never be less than the income at which a family would be defined as an extremely low income family (30% of median income).

Step 4. The PHA with covered developments having average incomes outside the EIR must then determine whether or not these developments are consistent with its local goals and annual plan.

Step 5. Where the income profile for a covered development is not explained or justified in the annual plan submission, the PHA must include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing.

Depending on local circumstances the PHA's deconcentration policy may include, but is not limited to the following:

- Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities
- Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments
- Establishing a preference for admission of working families in developments below the EIR
- Skipping a family on the waiting list to reach another family in an effort to further the goals of deconcentration
- Providing other strategies permitted by statute and determined by the PHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and PHA strategic objectives

A family has the sole discretion whether to accept an offer of a unit made under the PHA's deconcentration policy. The PHA must not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the PHA's deconcentration policy [24 CFR 903.2(c)(4)].

If, at annual review, the average incomes at all general occupancy developments are within the EIR, the PHA will be considered to be in compliance with the deconcentration requirement and no further action is required.

Order of Selection [24 CFR 960.206(e)]

The PHA system of preferences may select families either according to the date and time of application or by a random selection process.

PHA Policy

Families will be selected from the waiting list based on selection preference(s) for which they qualify, and in accordance with the PHA's hierarchy of those preferences. Within each preference category, families will be selected in numerical order based on the numbers that were assigned to each application, by lottery, at the time the applications were placed on the waiting list.

When selecting applicants from the waiting list the PHA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. The PHA will offer the unit to the highest ranking applicant who qualifies for that unit size or type, or that requires the accessibility features.

By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with a higher placement based on application number and/or higher preference status.

Factors such as deconcentration or income mixing and income targeting will also be considered in accordance with HUD requirements and PHA Policy.

4-III.C. NOTIFICATION OF SELECTION

When the family has been selected from the waiting list, the PHA must notify the family.

PHA Policy

The PHA will notify the family by first class mail when it is selected from the waiting list.

The notice will inform the family of the following:

- Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview

- Who is required to attend the interview

- Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation

- Documents that must be provided at the interview to document eligibility for a preference, if applicable

- Other documents and information that should be brought to the interview

If a notification letter is returned to the PHA with no forwarding address, the family will be removed from the waiting list without further notice. Such failure to act on the part of the applicant prevents the PHA from making an eligibility determination; therefore no informal hearing will be offered.

4-III.D. THE APPLICATION INTERVIEW

HUD recommends that the PHA obtain the information and documentation needed to make an eligibility determination through a private interview. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2010-3].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability [24 CFR 8.4(a) and 24 CFR 100.204(a)].

The head of household is required to attend the interview. Circumstances beyond the control of the head of household is the only exception for being absent at the interview. Documents that are copies are not acceptable. Documents must be originals and notarized. An offer for housing will not be made until ALL notarized documents are received. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the PHA.

PHA Policy

Families selected from the waiting list are required to participate in an eligibility interview.

The interview will be conducted only if the head of household or spouse/co-head provides appropriate documentation of legal identity (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

Pending disclosure and documentation of social security numbers, the PHA will allow the family to retain its place on the waiting list for 30 days. If not all household members have disclosed their SSNs at the next time a unit becomes available, the PHA will offer a unit to the next eligible applicant family on the waiting list.

If the family is claiming a waiting list preference, the family must provide documentation to verify their eligibility for a preference (see Chapter 7). If the family is verified as eligible for the preference, the PHA will proceed with the interview. If the PHA determines the family is not eligible for the preference, the interview will not proceed and the family will be placed back on the waiting list according to the date and time of their application.

The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, the PHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (see Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

Interviews will be conducted in English. For limited English proficient (LEP) applicants, the PHA will provide translation services in accordance with the PHA's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the PHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without PHA approval will have their applications made inactive based on the family's failure to supply information needed to determine eligibility. The second appointment letter will state that failure to appear for the appointment without a request to reschedule will be interpreted to mean that the family is no longer interested and their application will be made inactive. Such failure to act on the part of the applicant prevents the PHA from making an eligibility determination, therefore the PHA will not offer an informal hearing.

4-III.E. FINAL ELIGIBILITY DETERMINATION [24 CFR 960.208]

The PHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements, including PHA suitability standards, the PHA must make a final determination of eligibility (see Chapter 3).

When a determination is made that a family is eligible and satisfies all requirements for admission, including tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined [24 CFR 960.208(b)].

PHA Policy

The PHA will notify a family in writing of their eligibility within 10 business days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.

The PHA must promptly notify any family determined to be ineligible for admission of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination [24 CFR 960.208(a)].

PHA Policy

If the PHA determines that the family is ineligible, the PHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify

the reasons for ineligibility, and will inform the family of its right to request an informal hearing (see Chapter 14).

If the PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the PHA can move to deny the application. See Section 3-III.G for the PHA's policy regarding such circumstances.

CHAPTER 5: OCCUPANCY STANDARDS AND UNIT OFFERS

INTRODUCTION

The PHA must establish policies governing occupancy of dwelling units and offering dwelling units to qualified families.

This chapter contains policies for assigning unit size and making unit offers. The PHA's waiting list and selection policies are contained in Chapter 4. Together, Chapters 4 and 5 of the ACOP comprise the PHA's Tenant Selection and Assignment Plan (TSAP).

Policies in this chapter are organized in two parts.

Part I: Occupancy Standards. This part contains the PHA's standards for determining the appropriate unit size for families of different sizes and types.

Part II: Unit Offers. This part contains the PHA's policies for making unit offers, and describes actions to be taken when unit offers are refused.

PART I: OCCUPANCY STANDARDS

5-I.A. OVERVIEW

Occupancy standards are established by the PHA to ensure that units are occupied by families of the appropriate size. This policy maintains the maximum usefulness of the units, while preserving them from excessive wear and tear or underutilization. Part I of this chapter explains the occupancy standards. These standards describe the methodology and factors the PHA will use to determine the size unit for which a family qualifies, and includes the identification of the minimum and maximum number of household members for each unit size. This part also identifies circumstances under which an exception to the occupancy standards may be approved.

5-I.B. DETERMINING UNIT SIZE

In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms [24 CFR 960.206(c)].

HUD does not specify the number of persons who may live in public housing units of various sizes. PHAs are permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children [PH Occ GB, p. 62].

Although the PHA does determine the size of unit the family qualifies for under the occupancy standards, the PHA does not determine who shares a bedroom/sleeping room.

The PHA's occupancy standards for determining unit size must be applied in a manner consistent with fair housing requirements.

PHA Policy

The PHA has established occupancy standards for individual developments as specified below:

- Children of separate genders regardless of age (i.e., from birth) will be allocated separate bedrooms.
- Children of the same gender with an age difference exceeding 10 years will be allocated separate bedrooms.
- Unrelated adults of the same gender will be allocated separate bedrooms.
- Foster children will be included in determining unit size only if they will be in the unit for more than 6 months.

5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS

Types of Exceptions

PHA Policy

The PHA will consider granting exceptions to the occupancy standards at the family's request if the PHA determines the exception is justified by the relationship, age, sex, health or disability of family members, or other personal circumstances.

For example, an exception may be granted if a larger bedroom size is needed for medical equipment due to its size and/or function, or as a reasonable accommodation for a person with disabilities. An exception may also be granted for a smaller bedroom size in cases where the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides (according to the chart in Section 5-I.B) and the family does not want to transfer to a larger size unit.

When evaluating exception requests the PHA will consider the size and configuration of the unit. In no case will the PHA grant an exception that is in violation of local housing or occupancy codes, regulations or laws.

Requests from applicants to be placed on the waiting list for a unit size smaller than designated by the occupancy standards will be approved as long as the unit is not overcrowded according to local code, and the family agrees not to request a transfer for a period of two years from the date of admission, unless they have a subsequent change in family size or composition.

To prevent vacancies, the PHA may provide an applicant family with a larger unit than the occupancy standards permit. However, in these cases the family must agree to move to a suitable, smaller unit when another family qualifies for the larger unit and there is an appropriate size unit available for the family to transfer to.

Processing of Exceptions

PHA Policy

All requests for exceptions to the occupancy standards must be submitted in writing.

In the case of a request for exception as a reasonable accommodation, the PHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the PHA will consider the exception request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

Requests for a larger size unit must explain the need or justification for the larger size unit, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability-related request for accommodation is readily apparent or otherwise known.

The PHA will notify the family of its decision within 10 business days of receiving the family's request.

PART II: UNIT OFFERS

24 CFR 1.4(b)(2)(ii); 24 CFR 960.208

5-II.A. OVERVIEW

The PHA must assign eligible applicants to dwelling units in accordance with a plan that is consistent with civil rights and nondiscrimination.

In filling an actual or expected vacancy, the PHA must offer the dwelling unit to an applicant in the appropriate sequence. The PHA will offer the unit until it is accepted. This section describes the PHA's policies with regard to the number of unit offers that will be made to applicants selected from the waiting list. This section also describes the PHA's policies for offering units with accessibility features.

PHA Policy

The PHA will maintain a record of units offered, including location, date and circumstances of each offer, each acceptance or rejection, including the reason for the rejection.

5-II.B. NUMBER OF OFFERS

PHA Policy

The PHA has adopted a "one offer plan" for offering units to applicants. Under this plan the first qualified applicant in sequence on the waiting list will be made one offer of a unit of the appropriate size.

5-II.C. TIME LIMIT FOR UNIT OFFER ACCEPTANCE OR REFUSAL

PHA Policy

Applicants must accept or refuse a unit offer within 3 business days of the date of the unit offer.

Offers made by telephone will be confirmed by letter.

5-II.D. REFUSALS OF UNIT OFFERS

Good Cause for Unit Refusal

An elderly or disabled family may decline an offer for designated housing. Such a refusal must not adversely affect the family's position on or placement on the public housing waiting list [24 CFR 945.303(d)].

PHA Policy

Applicants may refuse to accept a unit offer for “good cause.” Good cause includes situations in which an applicant is willing to move but is unable to do so at the time of the unit offer, or the applicant demonstrates that acceptance of the offer would cause undue hardship not related to considerations of the applicant’s race, color, national origin, etc. [PH Occ GB, p. 104].

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

The family demonstrates to the PHA’s satisfaction that accepting the unit offer will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

The family demonstrates to the PHA’s satisfaction that accepting the offer will place a family member’s life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, or stalking in accordance with the regulation. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.

The unit is inappropriate for the applicant’s disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.

The unit has lead-based paint and the family includes children under the age of six. All units have been tested and there is no lead paint present above normed standards.

In the case of a unit refusal for good cause the applicant will not be removed from the waiting list as described later in this section. The applicant will remain at the top of the waiting list until the family receives an offer for which they do not have good cause to refuse.

The PHA will require documentation of good cause for unit refusals.

Unit Refusal without Good Cause

PHA Policy

When an applicant rejects the final unit offer without good cause, the PHA will remove the applicant’s name from the waiting list and send notice to the family of such removal. The notice

will inform the family of their right to request an informal hearing and the process for doing so (see Chapter 13).

The applicant may reapply for assistance if the waiting list is open. If the waiting list is not open, the applicant must wait to reapply until the PHA opens the waiting list.

5-II.E. ACCESSIBLE UNITS [24 CFR 8.27]

PHAs must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities, and take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of a particular unit.

When an accessible unit becomes vacant, before offering such units to a non-disabled applicant the PHA must offer such units:

- First, to a current resident of another unit of the same development, or other public housing development under the PHA's control, who has a disability that requires the special features of the vacant unit and is occupying a unit not having such features, or if no such occupant exists, then
- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, the PHA may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

PHA Policy

Families requiring an accessible unit may be over-housed in such a unit if there are no resident or applicant families of the appropriate size who also require the accessible features of the unit.

When there are no resident or applicant families requiring the accessible features of the unit, including families who would be over-housed, the PHA will offer the unit to a non-disabled applicant.

When offering an accessible unit to a non-disabled applicant, the PHA will require the applicant to agree to move to an available non-accessible unit within 30 days when either a current resident or an applicant needs the features of the unit and there is another unit available for the non-disabled family. This requirement will be a provision of the lease agreement.

5-II.F. DESIGNATED HOUSING

When applicable, the PHA's policies for offering units designated for elderly families only or for disabled families only are described in the PHA's Designated Housing Plan.

CHAPTER 6: INCOME AND RENT DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 960, Subpart C]

INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's rent payment. The PHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and PHA policies related to these topics in three parts as follows:

Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and PHA policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established HUD regulations require the PHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and PHA policies for calculating adjusted income are found in Part II.

Part III: Calculating Rent. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included here are flat rents and the family's choice in rents.

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

The general regulatory definition of annual income shown below is from 24 CFR 5.609.

5.609 Annual income.

(a) Annual income means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph [5.609(c)].

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(a)(1)].
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co-head)	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

Temporarily Absent Family Members

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

PHA Policy

Generally an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

PHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the PHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

PHA Policy

If a child has been placed in foster care, the PHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

Absent Head, Spouse, or Co-head

PHA Policy

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

Individuals Confined for Medical Reasons

PHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

If there is a question about the status of a family member, the PHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

Joint Custody of Children

PHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 50 percent or more of the time.

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the PHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

Caretakers for a Child

PHA Policy

If neither a parent nor a designated guardian remains in a household receiving assistance, the PHA will take the following actions:

If a responsible agency has determined that another adult is to be brought into the unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.

If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the PHA will extend the caretaker's status as an eligible visitor.

At any time that custody or guardianship legally has been awarded to a caretaker, the lease will be transferred to the caretaker, as head of household.

During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

6-I.C. ANTICIPATING ANNUAL INCOME

The PHA is required to count all income “anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date.” Policies related to anticipating annual income are provided below.

Basis of Annual Income Projection

PHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, the PHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the PHA will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

The PHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy.

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or

If the PHA determines additional information is needed.

In such cases, the PHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the PHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the PHA to show why the historic pattern does not represent the family’s anticipated income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

Wages and Related Compensation [24 CFR 5.609(b)(1)]

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income.

PHA Policy

For persons who regularly receive bonuses or commissions, the PHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the PHA will use the prior year amounts. In either case the family may provide, and the PHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the PHA will count only the amount estimated by the employer. The file will be documented appropriately.

6-I.E. BUSINESS INCOME [24 CFR 5.609(b)(2)]

Annual income includes “the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family” [24 CFR 5.609(b)(2)].

Business Expenses

Net income is “gross income less business expense” [HCV GB, p. 5-19].

PHA Policy

To determine business expenses that may be deducted from gross income, the PHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

Business Expansion

HUD regulations do not permit the PHA to deduct from gross income expenses for business expansion.

PHA Policy

Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

Capital Indebtedness

HUD regulations do not permit the PHA to deduct from gross income the amortization of capital indebtedness.

PHA Policy

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the PHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

Negative Business Income

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

Withdrawal of Cash or Assets from a Business

HUD regulations require the PHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

PHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, the PHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

Co-owned Businesses

PHA Policy

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

6-I.F. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

General Policies

Income from Assets

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the PHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the PHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the PHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

PHA Policy

Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and

documentation to the PHA to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

PHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions.

Jointly Owned Assets

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

PHA Policy

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the PHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the PHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the PHA will prorate the asset evenly among all owners.

Assets Disposed Of for Less than Fair Market Value [24 CFR 5.603(b)]

HUD regulations require the PHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold

The PHA may set a threshold below which assets disposed of for less than fair market value will not be counted

PHA Policy

There is no threshold established.

Separation or Divorce

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

PHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

Family Declaration

PHA Policy

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The PHA may verify the value of the assets disposed of if other information available to the PHA does not appear to agree with the information reported by the family.

Types of Assets

Checking and Savings Accounts

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

PHA Policy

In determining the value of a checking account, the PHA will use the average monthly balance for the last six months.

In determining the value of a savings account, the PHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the PHA will multiply the value of the account by the current rate of interest paid on the account.

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

PHA Policy

In determining the market value of an investment account, the PHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the PHA will calculate asset income based on the earnings for the most recent reporting period.

PHA Policy

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the PHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

Trusts

A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

Revocable Trusts

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset.

Non-revocable Trusts

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset.

Retirement Accounts

Company Retirement/Pension Accounts

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the PHA must know whether the money is accessible before retirement.

6-I.G. PERIODIC PAYMENTS

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

Periodic Payments Included in Annual Income

Periodic payments are from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family.

Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum.

Lump-Sum Payments for the Delayed Start of a Periodic Payment

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)]. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income.

PHA Policy

When a delayed-start payment is received and reported during the period in which the PHA is processing an annual reexamination, the PHA will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the PHA.

See the chapter on reexaminations for information about a family's obligation to report lump-sum receipts between annual reexaminations.

Treatment of Overpayment Deductions from Social Security Benefits

The PHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

Periodic Payments Excluded from Annual Income

Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income.

PHA Policy

The PHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency.

Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home]

Amounts received under the Low-Income Home Energy Assistance Program

Amounts received under the Child Care and Development Block Grant Act of 1990

Earned Income Tax Credit (EITC) refund payments *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

Lump sums received as a result of delays in processing Social Security and SSI payments.

6-I.H. PAYMENTS IN LIEU OF EARNINGS

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts.

6-I.I. WELFARE ASSISTANCE

Overview

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments.

Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The requirements are summarized below. This rule applies only if a family was a public housing resident at the time the sanction was imposed.

Covered Families

The families covered by are those “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”.

Imputed Income

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency inform the PHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements.

For special procedures related to grievance hearings based upon the PHA’s denial of a family’s request to lower rent when the family experiences a welfare benefit reduction.

Offsets

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero.

6-I.J. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with a tenant family.

Alimony and Child Support

The PHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

PHA Policy

The PHA will count court-awarded amounts for alimony and child support unless the PHA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.

Regular Contributions or Gifts

The PHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family. Temporary, nonrecurring, or sporadic income and gifts are not counted.

PHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the PHA. For contributions that may vary from month to month (e.g., utility payments), the PHA will include an average amount based upon past history.

The full amount of student financial assistance paid directly to the student or to the educational institution.

PHA Policy

Regular financial support from parents or guardians to students for food, clothing personal items, and entertainment **is not** considered student financial assistance and is included **in** annual income.

Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program.

Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)

Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

Adoption assistance payments in excess of \$480 per adopted child

Refunds or rebates on property taxes paid on the dwelling unit

Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Amounts specifically excluded by any other federal statute. HUD publishes an updated list of these exclusions periodically. It includes:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act
- (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973
- (c) Payments received under the Alaska Native Claims Settlement Act
- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes
- (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act. Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation,
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation

- (p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity (PHA) must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family;
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

Anticipating Expenses

PHA Policy

Generally, the PHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), the PHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the PHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The PHA may require the family to provide documentation of payments made in the preceding year.

6-II.B. DEPENDENT DEDUCTION

A deduction of \$480 is taken for each dependent. Dependent is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents.

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of \$400 is taken for any elderly or disabled family. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities.

6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted

Definition of Medical Expenses

HUD regulations define medical expenses at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

PHA Policy

The most current IRS Publication 502, Medical and Dental Expenses, will be used to determine the costs that qualify as medical expenses.

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, noncosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor	Cost and continuing care of necessary service animals
Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Medical insurance premiums or the cost of a health maintenance organization

Families That Qualify for Both Medical and Disability Assistance Expenses

PHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]

Eligible Disability Expenses

Examples of auxiliary apparatus are provided in the PH Occupancy Guidebook as follows: “Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals”, but only if these items are directly related to permitting the disabled person or other family member to work.

Eligible Auxiliary Apparatus

PHA Policy

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

Eligible Attendant Care

The family determines the type of attendant care that is appropriate for the person with disabilities.

PHA Policy

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the PHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

6-II.F. CHILD CARE EXPENSE DEDUCTION

HUD defines child care expenses as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household. However, child care expenses for foster children that are living in the assisted family’s household, are included when determining the family’s child care expenses.

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

PHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term eligible activity in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family’s request, the PHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the

relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

PHA Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by the PHA.

Furthering Education

PHA Policy

If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

Being Gainfully Employed

PHA Policy

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable.

However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income”.

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

The PHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working

PHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the PHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the tenant family. The PHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care.

Allowable Child Care Activities

PHA Policy

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the PHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

PHA Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, the PHA will use the schedule of child care costs from the local welfare agency. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

PART III: CALCULATING RENT

6-III.A. OVERVIEW OF INCOME-BASED RENT CALCULATIONS

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by the PHA.

Minimum Rent [24 CFR 5.630]

PHA Policy

The minimum rent for this locality is \$50.

Utility Reimbursement [24 CFR 960.253(c)(3)]

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits the PHA to pay the reimbursement to the family or directly to the utility provider.

PHA Policy

The PHA will make any utility reimbursements directly to the utility provider.

6-III.B. UTILITY ALLOWANCES [24 CFR 965, Subpart E]

Overview

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, the PHA must use the utility allowance applicable to the type of dwelling unit leased by the family.

Utility Allowance Revisions [24 CFR 965.507]

The PHA must review its schedule of utility allowances each year. Between annual reviews, the PHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based.

Unless the PHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

(a) *Annual income means all amounts, monetary or not, which:*

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions,

disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31¹; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from

¹ Text of 45 CFR 260.31 follows (next page).

organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, “financial assistance” does not include loan proceeds for the purpose of determining income.

HHS DEFINITION OF "ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term “assistance” mean?

(a)(1) The term “assistance” includes cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of “assistance”] excludes: (1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS
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24 CFR 5.609

Annual income does not include the following:

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977

b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973

c) Payments received under the Alaska Native Claims Settlement Act

d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes

e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program

f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998

g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians

h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands

i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs

j) Payments received from programs funded under Title V of the Older Americans Act of 1985

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation

l) Payments received under the Maine Indian Claims Settlement Act of 1980

- m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
- n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991
- o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation
- p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998

CHAPTER 7: VERIFICATION

INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and tenants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family.

The PHA will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information.

Consent Forms

It is required that all adult applicants and tenants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the PHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the PHA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with the PHA's grievance procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [Notice PIH 2010-19]

HUD authorizes the PHA to use six methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

PHA Policy

In order of priority, the forms of verification that the PHA will use are:

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system
- Written Third Party Verification (may be provided by applicant or resident)
- Written Third-party Verification Form
- Oral Third-party Verification
- Self-Certification

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

PHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 days of the date they are provided to the PHA. The documents must not be damaged, altered or in any way illegible.

Print-outs from web pages are considered original documents.

The PHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed in the presence of a PHA representative or PHA notary public.

File Documentation

The PHA must document in the file how the figures used in income and rent calculations were determined. .

PHA Policy

The PHA will document, in the family file, the following:

Reported family annual income

Value of assets

Expenses related to deductions from annual income

Other factors influencing the adjusted income or income-based rent determination

When the PHA is unable to obtain third-party verification, the PHA will document in the family file the reason that third-party verification was not available.

7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the PHA.

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for resident families. HUD requires the PHA to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

EIV Income Reports

The data shown on income reports is updated quarterly. Data may be between three and six months old at the time reports are generated.

PHA Policy

The PHA will obtain income reports for annual reexaminations on an annual basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income reports will be retained in resident files with the applicable annual or interim reexamination documents.

When the PHA determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

EIV Discrepancy Reports

PHA Policy

The PHA will generate the Income Discrepancy Report at least once every 6 months.

When the PHA determines that a resident appearing on the Income Discrepancy Report has not concealed or underreported income, the resident's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, residents appearing on this list will be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.

The PHA will review the EIV discrepancy tab during processing of annual and interim reexaminations.

When it appears that a family may have concealed or underreported income, the PHA will request independent written third-party verification of the income in question.

When the PHA determines through file review and independent third-party verification that a family has concealed or underreported income, corrective action will be taken pursuant to the policies.

PHA Policy

The PHA will inform all applicants and residents of its use of the following UIV resources during the admission and reexamination process: HUD's EV system.

7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

Written Third-Party Verification [Notice PIH 2010-19]

PHA Policy

Third-party documents provided by the family must be dated within 60 days of the PHA request date.

If the PHA determines that third-party documents provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation.

As verification of earned income, the PHA will request pay stubs covering the 60-day period prior to the PHA's request.

PHA Policy

The PHA will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the PHA.

Oral Third-Party Verification [Notice PIH 2010-19]

PHA Policy

In collecting third-party oral verification, PHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the PHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

When Third-Party Verification is Not Required [Notice PIH 2010-19]

PHA Policy

If the family cannot provide original documents, the PHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost.

Primary Documents

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

7-I.E. SELF-CERTIFICATION

Self-certification, or "tenant declaration," is used as a last resort when the PHA is unable to obtain third-party verification.

When the PHA relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

PHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the PHA.

The PHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a PHA representative or PHA notary public.

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

PHA Policy

The PHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicle identification card	Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
U.S. passport	School records
Employer identification card	

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the PHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the PHA and be signed in the presence of a PHA representative or PHA notary public.

Legal identity will be verified on an as needed basis.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2010-3]

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status.

Exemptions also include, existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

The PHA must accept the following documentation as acceptable evidence of the social security number:

An original SSN card issued by the Social Security Administration (SSA)

An original SSA-issued document, which contains the name and SSN of the individual

An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual, along with other identifying information of the individual

Such other evidence of the SSN as HUD may prescribe in administrative instructions

The PHA may only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

PHA Policy

The PHA will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

When the resident requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a resident requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

PHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the resident's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously-assisted occupancy.

PHA Policy

The PHA will verify each disclosed SSN by:

Obtaining documentation from applicants and residents that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

PHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and tenants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

PHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

PHA Policy

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a marital relationship, the PHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

PHA Policy

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a separation or divorce, the PHA will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

PHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Foster Children and Foster Adults

PHA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

PHA Policy

The PHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family claims full-time student status for an adult other than the head, spouse, or co-head, or

The family claims a child care deduction to enable a family member to further his or her education.

7-II.F. DOCUMENTATION OF DISABILITY

Family Members Receiving SSA Disability Benefits

Verification of receipt of disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions.

PHA Policy

For family members claiming disability who receive disability payments from the SSA, the PHA will attempt to obtain information about disability benefits through HUD's Enterprise Income Verification (EIV) system. If documentation is not available through HUD's EIV system, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, the PHA will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from www.ssa.gov. Once the family receives the benefit verification letter, it will be required to provide the letter to the PHA.

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

PHA Policy

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

PHA Policy

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the PHA receives information indicating that an individual's declaration may not be accurate.

Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

PHA Verification

For family members age 62 or older who claim to be eligible immigrants, proof of age is required. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.G. VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant.

PHA Policy

The PHA offers a preference for working families and families that live and/or work in Roswell and graduates or HUD sponsored transitional housing programs, within 2 years of preapplication.

PART III: VERIFYING INCOME AND ASSETS

The types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

PHA Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

PHA Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

Social Security/SSI Benefits

PHA Policy

To verify the SS/SSI benefits of applicants, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member who receives social security benefits. If a family member is unable to provide the document, the PHA will help the applicant request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at

1-800-772-1213. Once the family has received the original benefit verification letter, it will be required to provide the letter to the PHA.

To verify the SS/SSI benefits of residents, the PHA will obtain information about social security/SSI benefits through HUD's EIV system, and confirm with the resident(s) that the current listed benefit amount is correct. If the resident disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the PHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If a family member is unable to provide the document, the PHA will help the resident request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the benefit verification letter, it will be required to provide the letter to the PHA.

7-III.D. ALIMONY OR CHILD SUPPORT

PHA Policy

The way the PHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it receives regular payments, verification will be sought in the following order.

Copy of the receipts and/or payment stubs for the 60 days prior to PHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received

If the family declares that it receives irregular or no payments, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The PHA needs to verify only those certifications that warrant documentation.

PHA Policy

The PHA will verify the value of assets disposed of only if:

The PHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

7-III.F. NET INCOME FROM RENTAL PROPERTY

PHA Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the PHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

PHA Policy

The PHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, the PHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, the PHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, the PHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.H. INCOME FROM EXCLUDED SOURCES

The PHA must obtain verification for income exclusions only if, without verification, the PHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, the PHA will confirm that PHA records verify the child's age but will not require third-party verification of the amount earned. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

PHA Policy

The PHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family's rent (as is the case with the earned income disallowance). In all other cases, the PHA will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

PHA Policy

The PHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by families claiming to have zero annual income.

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the PHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

7-IV.B. MEDICAL EXPENSE DEDUCTION

The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

PHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

The PHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms, if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 or a person with disabilities. The PHA will verify that the family meets the definition of an elderly or disabled family.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. e.

Unreimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

PHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Amount of Expense

Attendant Care

PHA Policy

The PHA will accept written third-party documents provided by the family.

If family-provided documents are not available, the PHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Auxiliary Apparatus

PHA Policy

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the PHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities
- The expense permits a family member, or members, to work.
- The expense is not reimbursed from another source

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The PHA will verify that the expense is incurred for a person with disabilities

Family Member(s) Permitted to Work

The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

PHA Policy

The PHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work. This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

PHA Policy

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, the PHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable.

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The PHA will verify that the child being cared for (including foster children) is under the age of 13.

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

PHA Policy

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

The PHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

PHA Policy

The PHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

Whenever possible the PHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the PHA will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to the PHA any reports provided to the other agency.

In the event third-party verification is not available, the PHA will provide the family with a form on which the family member must record job search efforts. The PHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The PHA will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment

The PHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines.

PHA Policy

The PHA will verify that the type of child care selected by the family is allowable.

The PHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable child care costs can be deducted.

PHA Policy

The actual costs the family incurs will be compared with the PHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

CHAPTER 8: LEASING AND INSPECTIONS

PART I: LEASING

8-I.A. OVERVIEW

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that the PHA may not renew the lease if the family has violated the community service requirement.

Part I of this chapter contains regulatory information, when applicable, as well as the PHA's policies governing leasing issues.

8-I.B. LEASE ORIENTATION

PHA Policy

After unit acceptance but prior to occupancy, a PHA representative will provide a lease orientation to the family. The head of household or spouse is required to attend.

Orientation Agenda

PHA Policy

When families attend the lease orientation, they will be provided with:

- A copy of the lease

- A copy of the PHA's grievance procedure

- A copy of the house rules

- A copy of the PHA's schedule of maintenance charges

- A copy of the pamphlet Protect Your Family From Lead in Your Home

- A copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

- A copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19

Topics to be discussed will include:

- Applicable deposits and other charges

- Review and explanation of lease provisions

- Unit maintenance and work orders

- The PHA's reporting requirements

- Explanation of occupancy forms

8-1.C.EXECUTION OF LEASE

The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease.

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one PHA unit to another.

The lease must state the composition of the household as approved by the PHA (family members and any PHA-approved live-in aide).during the lease term.

PHA Policy

The head of household and spouse and/or co-head will be required to sign the assisted housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and the PHA will retain a copy in the resident's file.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to PHA assistance. The live-in aide is only approved to live in the unit while serving as the attendant for the participant family member.

PHA Policy

When the PHA proposes to modify or revise schedules of special charges or rules and regulations, the PHA will post a copy of the notice in the central office, and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

Other Modifications

PHA Policy

The lease will be amended to reflect all changes in family composition.

If, for any reason, any member of the household ceases to reside in the unit, the lease will be amended by drawing a line through the person's name. The head of household and PHA will be required to initial and date the change.

If a new household member is approved by the PHA to reside in the unit, the person's name and birth date will be added to the lease. The head of household and PHA will be required to initial and date the change.

Policies governing when and how changes in family composition must be reported.

8-I.D. SECURITY DEPOSITS [24 CFR 966.4(b)(5)]

The amount of the security deposit cannot exceed the tenant's share of 1 months' rent, after 1/1/16.

Existing tenant's security deposits will remain what were charged at the time they entered public housing prior to the RAD conversion.

8-I.E. PAYMENTS UNDER THE LEASE

Rent Payments [24 CFR 966.4(b)(1)]

Families must pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and the PHA must give written notice stating any change in the amount of tenant rent and when the change is effective.

PHA Policy

The tenant rent is due and payable at the PHA-designated location on the first of every month. If the first falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.

If a family's tenant rent changes, the PHA will notify the family of the new amount and the effective date by sending a "Notice of Rent Adjustment" which will become an attachment to the lease.

Late Fees and Nonpayment

At the option of the PHA, the lease may provide for payment of penalties when the family is late in paying tenant rent.

PHA Policy

If the family fails to pay their rent by the fifth (5th) day of the month, and the PHA has not agreed to accept payment at a later date, a 14 day Notice to Vacate will be issued to the resident for failure to pay rent, demanding payment in full or the surrender of the premises. The policy is described in the lease.

Maintenance and Damage Charges

PHA Policy

When applicable, families will be charged for maintenance and/or damages according to the PHA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the PHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.

PART II: INSPECTIONS

8-II.A. OVERVIEW

HUD rules require the PHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the PHA may require additional inspections, in accordance with PHA Policy. This part contains the PHA's policies governing inspections, notification of unit entry, and inspection results.

8-II.B. TYPES OF INSPECTIONS

Move-In Inspections [24 CFR 966.4(i)]

The lease must require the PHA and the family to inspect the dwelling unit prior to occupancy in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by the PHA and the resident, must be provided to the tenant and be kept in the resident file.

PHA Policy

Head of Household or co-head is required to attend the initial inspection and sign the inspection form for the head of household.

Move-Out Inspections [24 CFR 966.4(i)]

The PHA must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if he or she wishes, unless the tenant vacates without notice to the PHA. The PHA must provide to the tenant a statement of any charges to be made for maintenance and damage beyond normal wear and tear.

The difference between the condition of the unit at move-in and move-out establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

PHA Policy

When applicable, the PHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 10 business days of conducting the move-out inspection.

Annual Inspections [24 CFR 5.705]

The PHA is required to inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS). Under the Public Housing Assessment System (PHAS), HUD's physical condition inspections do not relieve the PHA of this responsibility to inspect its units.

Special Inspections

PHA Policy

PHA staff may conduct a special inspection for any of the following reasons:

- Housekeeping
- Unit condition
- Suspected lease violation
- Preventive maintenance
- Routine maintenance
- There is reasonable cause to believe an emergency exists

8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS

Notice of Entry

Non-emergency Entries [24 CFR 966.4(j)(1)]

PHA Policy

The PHA will notify the resident in writing at least 48 hours prior to any non-emergency inspection.

For regular annual inspections, the family will receive at least 2 weeks written notice of the inspection to allow the family to prepare the unit for the inspection.

Entry for repairs requested by the family will not require prior notice. Resident-requested repairs presume permission for the PHA to enter the unit.

Emergency Entries [24 CFR 966.4(j)(2)]

The PHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, the PHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

Scheduling of Inspections

PHA Policy

Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify the PHA at least 24 hours prior to the scheduled inspection. The PHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. The PHA may request verification of such cause.

Attendance at Inspections

PHA Policy

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes.

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

8-II.D. INSPECTION RESULTS

The PHA is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units.

Emergency Repairs [24 CFR 966.4(h)]

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify the PHA of the damage, and the PHA must make repairs within a reasonable time frame.

If the damage was caused by a household member or guest, the PHA must charge the family for the reasonable cost of repairs. The PHA may also take lease enforcement action against the family.

If the PHA cannot make repairs quickly, the PHA must offer the family standard alternative accommodations. If the PHA can neither repair the defect within a reasonable time frame nor offer alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

PHA Policy

When conditions in the unit are hazardous to life, health, or safety, the PHA will make repairs or otherwise abate the situation within 24 hours.

Defects hazardous to life, health or safety include, but are not limited to, the following:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors

Non-emergency Repairs

PHA Policy

The PHA will correct non-life threatening health and safety defects within 15 business days of the inspection date. If the PHA is unable to make repairs within that period due to circumstances beyond the PHA's control (e.g. required parts or services are not available, weather conditions, etc.) the PHA will notify the family of an estimated date of completion.

The family must allow the PHA access to the unit to make repairs.

Resident-Caused Damages

PHA Policy

Damages to the unit beyond wear and tear will be billed to the tenant in accordance with the policies in 8-I.C., Maintenance and Damage Charges.

Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.

Housekeeping

PHA Policy

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, the PHA will provide proper notice of a lease violation.

A reinspection will be conducted within 30 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a reinspection is considered a violation of the lease and may result in termination of tenancy.

Notices of lease violation will also be issued to residents who purposely disengage the unit's smoke detector. Only one warning will be given. A second incidence will result in lease termination.

CHAPTER 9: REXMINATIONS

INTRODUCTION

The PHA is required to monitor each family's income and composition over time, and to adjust the family's rent accordingly. PHAs must adopt policies concerning the conduct of annual and interim reexaminations that are consistent with regulatory requirements, and must conduct reexaminations in accordance with such policies.

PART I: ANNUAL REEXAMINATIONS

FOR FAMILIES PAYING INCOME BASED RENTS [24 CFR 960.257]

9-I.A. OVERVIEW

The PHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition as part of the reexamination process.

9-I.B. SCHEDULING ANNUAL REEXAMINATIONS

PHA Policy

The PHA will send notifications for annual re-exam on December 1st for the following year. Re-exams will be completed by March 31st and all rent changes will be effective on May 1st, except in the case of rent reductions. Rent reductions will be effective on the first day of the following month.

Notification of and Participation in the Annual Reexamination Process

PHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended all family members 18 or older. If the family member is unable to attend an original notarized consent form is acceptable. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the PHA to request a reasonable accommodation.

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview the PHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without PHA approval, the family will be in violation of their lease and may be terminated in accordance with the policies.

An advocate, interpreter, or other assistant may assist the family in the interview process.

9-I.C. CONDUCTING ANNUAL REEXAMINATIONS

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition.

PHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease, and may be terminated in accordance with the policies.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

Change in Unit Size

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual reexamination to require the family to move to an appropriate size unit.

Criminal Background Checks

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy.

PHA Policy

Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

9-I.D. EFFECTIVE DATES

As part of the annual reexamination process, the PHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.

PHA Policy

In general, an *increase* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, increases in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA.

If the family causes a delay in processing the annual reexamination, decreases in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.

Conducting Annual Updates

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition.

PHA Policy

Families will be asked to bring all required information (as described in the notice) to the annual update appointment. Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials with the required time frame, the family may request an extension.

If the family does not provide the required documents, or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies.

An advocate, interpreter, or other assistant may assist the family in the interview process.

Change in Unit Size

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual update to require the family to move to an appropriate size unit. If the appropriate size unit is not available at the annual update, the family will be required to transfer when a unit becomes available.

Criminal Background Checks

Information obtained through criminal background checks may be used for lease enforcement and eviction. Criminal background checks of residents will be conducted in accordance with the policy.

PHA Policy

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

PART II: INTERIM REEXAMINATIONS [24 CFR 960.257; 24 CFR 966.4]

9-II.A. OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time.

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition change. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

9-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to provisions of the public housing lease, the PHA has limited discretion in this area.

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards.

PHA Policy

All families must report all changes in family and household composition that occur between annual reexaminations (or annual updates).

The PHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA .

PHA Policy

The family must inform the PHA of the birth, adoption, or court-awarded custody of a child within 10 business days.

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member or other household member (live-in aide or foster child)

PHA Policy

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or a total of 30 cumulative calendar days during any 12-month period and therefore no longer qualifies as a “guest.” Requests must be made in writing and approved by the PHA prior to the individual moving into the unit.

The PHA will not approve the addition of new family or household members unless the individual meets the PHA’s eligibility criteria and documentation requirements.

If the PHA determines that an individual does not meet the PHA’s eligibility criteria or documentation requirements, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA will make its determination within 10 business days of receiving all information required to verify the individual’s eligibility.

Departure of a Family or Household Member

PHA Policy

If a family member ceases to reside in the unit, the family must inform the PHA within 10 business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the PHA within 10 business days.

9-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

PHA Policy

This section only applies to families paying income-based rent.

PHA-initiated Interim Reexaminations

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

PHA Policy

The PHA will conduct interim reexaminations in each of the following instances:

If the family has reported zero income, the PHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the PHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination.

The PHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Required Reporting

PHA Policy

Families are required to report all increases in earned income, including new employment, within 10 business days of the date the change takes effect.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination. The PHA must process the request if the family reports a change that will result in a reduced family income. .

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced

PHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, the PHA will conduct an interim reexamination.

Families may report changes in income or expenses at any time.

9-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

PHA Policy

The family may notify the PHA of changes either orally or in writing. If the family provides oral notice, the PHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required original documentation by mail, or in person.

Effective Dates

The PHA must make the interim reexamination within a reasonable time after the family request

PHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

PART III: RECALCULATING TENANT RENT

9-III.A. OVERVIEW

For those families paying income-based rent, the PHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes.

9-III.B. CHANGES IN UTILITY ALLOWANCES [24 CFR 965.507, 24 CFR 966.4]

PHA Policy

Unless the PHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

9-III.C. NOTIFICATION OF NEW TENANT RENT

PHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

9-III.D. DISCREPANCIES

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies.

CHAPTER 10: PETS

INTRODUCTION

This chapter explains the PHA's policies on the keeping of pets and any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of the PHA to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of the PHA.

A pet policy has been established and issued to tenants in the orientation package.

CHAPTER 11: TRANSFER POLICY

PART I: EMERGENCY TRANSFERS

11-I.A. OVERVIEW

The emergency transfer differs from a typical transfer in that it requires immediate action by the PHA.

In the case of a genuine emergency, it may be unlikely that the PHA will have the time or resources to immediately transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, the PHA should find alternate accommodations for the tenant until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is reached.

11-I.B. EMERGENCY TRANSFERS

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, the PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time.

PHA Policy

The following is considered an emergency circumstance warranting an immediate transfer of the tenant or family:

Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of such unit or building conditions would include: a gas leak; no heat in the building during the winter; no water; toxic contamination; and serious water leaks.

11-I.C. EMERGENCY TRANSFER PROCEDURES

PHA Policy

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, the PHA will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the PHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers are mandatory for the tenant.

11-I.D. COSTS OF TRANSFER

PHA Policy

The PHA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers, if any, due to emergency conditions.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

The PHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the PHA will collect information from companies in the community that provide these services.

The PHA will reimburse the family for eligible out-of-pocket moving expenses up to the PHA's established moving allowance.

PART II: PHA REQUIRED TRANSFERS

11-II.A. OVERVIEW

The PHA may require that a resident transfer to another unit under some circumstances. For example, the PHA may require a resident to transfer to make an accessible unit available to a disabled family. The PHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, a PHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by the PHA is an adverse action, and is subject to the notice requirements for adverse actions.

11-II.B. TYPES OF PHA REQUIRED TRANSFERS

PHA Policy

The types of transfers that may be required by the PHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the PHA are mandatory for the tenant.

Transfers to Make an Accessible Unit Available

When a family is initially given an accessible unit, but does not require the accessible features, the PHA may require the family to agree to move to a non-accessible unit when it becomes available.

PHA Policy

When a non-accessible unit becomes available, the PHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. The PHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

Occupancy Standards Transfers

The PHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to PHA Policy. On some occasions, the PHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition.

PHA Policy

The PHA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

Overcrowded: the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart.

Over-housed: the family no longer qualifies for the bedroom size in which they are living based on the PHA's occupancy standards.

The PHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the PHA's occupancy standards, when the PHA determines there is a need for the transfer.

The PHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by the PHA that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies will only be required to transfer if it is necessary to comply with the approved exception.

Demolition, Disposition, Revitalizations, or Rehabilitation Transfers

These transfers permit the PHA to demolish, sell or do major capital or rehabilitation work at a building site.

PHA Policy

The PHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The PHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

11-II.C. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]

A PHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, the PHA may not take action on the transfer until the conclusion of the grievance process.

11-II.D. COST OF TRANSFER

PHA Policy

The PHA will bear the reasonable costs of transfers that the PHA requires.

The reasonable costs of transfers include the cost of packing, moving, and unloading, as well as the cost of reconnecting existing resident paid services such as telephone or cable television.

The PHA will establish a moving allowance based on the typical costs in the community of packing, moving, unloading and reconnecting resident paid services. To establish typical costs, the PHA will collect information from companies in the community that provide these services.

The PHA will reimburse the family for eligible out-of-pocket moving expenses up to the PHA's established moving allowance.

PART III: TRANSFERS REQUESTED BY TENANTS

11-III.A. OVERVIEW

HUD provides the PHA with discretion to consider transfer requests from tenants. The only requests that the PHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the PHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by the PHA.

Some transfers that are requested by tenants should be treated as higher priorities than others due to the more urgent need for the transfer.

11-III.B. TYPES OF RESIDENT REQUESTED TRANSFERS

PHA Policy

The types of requests for transfers that the PHA will consider are limited to requests for transfers to alleviate a serious or life threatening medical condition, transfers due to a threat of physical harm or criminal activity, reasonable accommodation, transfers to a different unit size as long as the family qualifies for the unit according to the PHA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by the PHA.

The PHA will consider the following as high priority transfer requests:

When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature

When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the PHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime, or domestic violence, dating violence, sexual assault, or stalking.

When a family requests a transfer as a reasonable accommodation; Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features

11-III.C. ELIGIBILITY FOR TRANSFER

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the PHA may establish other standards for considering a transfer request.

PHA Policy

Except where reasonable accommodation is being requested, the PHA will only consider transfer requests from residents that meet the following requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff
- Owe no back rent or other charges, or have a pattern of late payment
- Have no housekeeping lease violations or history of damaging property
- Can get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities)

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the PHA's advantage to make the transfer. Exceptions may also be made when the PHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, or stalking and who provides documentation of abuse.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

11-III.D. SECURITY DEPOSITS

PHA Policy

When a family transfers from one unit to another, the PHA will transfer their security deposit to the new unit. The tenant will be billed for any maintenance or others charges due for the “old” unit.

11-III.E. COST OF TRANSFER

The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident’s disability [Notice PIH 2006-13].

PHA Policy

The resident will bear all of the costs of transfer s/he requests. However, the PHA will bear the transfer costs when the transfer is done as a reasonable accommodation.

11-III.F. HANDLING OF REQUESTS

PHA Policy

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

In case of a reasonable accommodation transfer, the PHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the PHA will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

The PHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family, such as documentation of domestic violence, dating violence, or stalking.

If the family does not meet the “good record” requirements, the manager will address the problem and, until resolved, the request for transfer will be denied.

The PHA will respond within ten (10) business days of the submission of the family’s request. If the PHA denies the request for transfer, the family will be informed of its grievance rights.

PART IV: TRANSFER PROCESSING

11-IV.A. OVERVIEW

Generally, transfers should be placed on a transfer list and handled in the appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience disparate treatment.

11-IV.B. TRANSFER LIST

PHA Policy

The PHA will maintain a centralized transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case by case basis. If the emergency will not be finally resolved by a temporary accommodation, and the resident requires a permanent transfer, that transfer will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions)
2. High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standards
6. Other PHA-required transfers
7. Other tenant-requested transfers

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

With the approval of the executive director, the PHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow the PHA to meet the demolition or renovation schedule.

Transfers will take precedence over waiting list admissions

11-IV.C. TRANSFER OFFER POLICY

PHA Policy

Residents will receive one offer of a transfer.

When the transfer is required by the PHA, refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, refusal of that offer without good cause will result in the removal of the household from the transfer list and the family must wait six months to reapply for another transfer.

11-IV.D. GOOD CAUSE FOR UNIT REFUSAL

PHA Policy

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- The family demonstrates to the PHA's satisfaction that accepting the unit offer will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.
- The family demonstrates to the PHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, or stalking. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.
- The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.
- The unit has lead-based paint and the family includes children under the age of six.

The PHA will require documentation of good cause for unit refusals.

11-IV.E. DECONCENTRATION

PHA Policy

If subject to deconcentration requirements, the PHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the PHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

11-IV.F. REEXAMINATION POLICIES FOR TRANSFERS

PHA Policy

The reexamination date will be changed to the first of the month in which the transfer took place.

CHAPTER 12: LEASE TERMINATIONS

INTRODUCTION

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing which is in good repair. The PHA may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a PHA can terminate a family's lease, and give PHAs authority to determine other reasons.

When determining PHA Policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

PART I: TERMINATION BY TENANT

12-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

PHA Policy

If a family desires to move and terminate their tenancy with the PHA, they must give at least 30 calendar days advance written notice to the PHA of their intent to vacate. When a family must give less than 30 days' notice due to circumstances beyond their control the PHA, at its discretion, may waive the 30 day requirement.

The notice of lease termination must be signed by the head of household, spouse, or co-head.

PART II: TERMINATION BY PHA – MANDATORY

12-II.A. OVERVIEW

HUD requires the PHA to terminate the lease in certain circumstances. In other circumstances HUD requires the PHA to establish provisions for lease termination, but it is still a PHA option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, the PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the PHA to terminate the lease.

12-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The PHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination.

12-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The PHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

12-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2010-3]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

PHA Policy

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter 7 for a complete discussion of documentation and certification requirements.

12-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(I)(2)(ii)(E)]

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

12-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(I)(5)(i)(A)]

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

12-II.G. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2010-3]

The PHA must immediately terminate program assistance for deceased single member households.

PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS

12-III.A. OVERVIEW

Besides requiring PHAs to terminate the lease under the mandatory circumstances,, HUD requires the PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. The PHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PHA may, as an alternative to termination, require the exclusion of the culpable household member. The PHA must make policy decisions concerning these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. The PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the PHA lease. In the development of the terms of the lease, the PHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

The PHA may consider alternatives to termination and must establish policies describing the criteria the PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PHA must take when terminating a family's lease.

Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

PHA Policy

The PHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives and other factors as described. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHA will terminate the lease when the PHA determines that a household member is illegally using a drug or the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, the PHA will consider alternatives and other factors. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises are grounds for termination of tenancy.

PHA Policy

The PHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

Immediate vicinity means within a three-block radius of the premises.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives and other factors. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, the PHA will consider alternatives and other factors. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the PHA will consider alternatives and other factors. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

PHA Policy

The PHA will terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent;

Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.

Failure to fulfill the following household obligations:

- Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- Not to provide accommodations for boarders or lodgers
- To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose
- To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants this shall be posted in the project office and incorporated by reference in the lease
- To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety
- To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition
- To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner
- To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators
- To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project
- To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest
- To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition

In making its decision to terminate the lease, the PHA will consider alternatives and other factors. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

12-III.B. OTHER AUTHORIZED REASONS FOR TERMINATION

[24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes PHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]

HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples. The Violence against Women Act of 2005 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, or stalking as "other good cause" for terminating the tenancy or occupancy rights of the victim of such violence.

PHA Policy

The PHA will terminate the lease for the following reasons.

Fugitive Felon or Parole Violator. If a tenant is fleeing 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, or that, in the case of the State of New Jersey,

is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery after admission of facts that made the tenant ineligible

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income

Failure to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available

Failure to permit access to the unit by the PHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists

Failure to promptly inform the PHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.

Failure to abide by the provisions of the PHA pet policy

If the family has breached the terms of a repayment agreement entered into with the PHA

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

If a household member has engaged in or threatened violent or abusive behavior toward PHA personnel.

Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the PHA will consider alternatives and other factors. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Family Absence from Unit [24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the PHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

PHA Policy

The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose.

The family must promptly notify the PHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, the PHA will terminate the lease for other good cause.

Abandonment. If the family appears to have vacated the unit without giving proper notice, the PHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the PHA will secure the unit immediately to prevent vandalism and other criminal activity.

Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]

Subject to certain restrictions, HUD authorizes PHAs to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, the PHA may not evict or terminate the tenancy of a family solely because the family is over income if: (1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or (2) the family is currently receiving the earned income disallowance. This rule does not require PHAs to evict over-income residents, but rather gives PHAs the discretion to do so thereby making units available for applicants who are income-eligible.

PHA Policy

The PHA will not evict or terminate the tenancies of families solely because they are over income.

12-III.C. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the PHA may consider exclusion of the culpable household member. Such an alternative can be used, by, for any other reason where such a solution appears viable.

PHA Policy

The PHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon PHA request.

Repayment of Family Debts

PHA Policy

If a family owes amounts to the PHA, as a condition of continued occupancy, the PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

12-III.D. CRITERIA FOR DECIDING TO TERMINATE TENANCY

PHA Policy

The PHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

PHA Policy

The PHA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, or stalking
- The effects that the eviction will have on other family members who were not involved in the action or failure to act
- The effect on the community of the termination, or of the PHA's failure to terminate the tenancy
- The effect of the PHA's decision on the integrity of the assisted housing program
- The demand for housing by eligible families who will adhere to lease responsibilities
- The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action
- The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future
- In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

PHA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the PHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

For this purpose the PHA will require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, the PHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation.

PHA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the PHA will determine whether the behavior is related to the disability. If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination.

PHA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

Documentation of Abuse [24 CFR 5.2007]

PHA Policy

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, or stalking claims protection under VAWA, the PHA will request that the individual provide documentation supporting the claim in accordance with the policies.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual's file.

Terminating or Evicting a Perpetrator of Domestic Violence

PHA Policy

The PHA will bifurcate a family's lease and terminate the tenancy of a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the PHA by the victim. The PHA will also consider the factors in section 13.III.E. Upon such consideration, the PHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the PHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies. If necessary, the PHA will also take steps to ensure that the remaining family members have a safe place to live during the termination process. For example, the PHA may offer the remaining family members another public housing unit, if available; it may help them relocate to a confidential location; or it may refer them to a victim service provider or other agency with shelter facilities.

PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

12-IV.A. OVERVIEW

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. Notices shall comply with Fulton County, State of Georgia civil procedures for tenant landlord law.

12-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA Policy determines when the PHA will conduct such checks.

PHA Policy

The PHA will conduct criminal records checks when it has come to the attention of the PHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household

members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis. The PHA may not pass along to the tenant the costs of a criminal records check.

12-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

PHA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the PHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of the PHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 10 business day period, the PHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

12-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

PHA Policy

The PHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.

All notices of lease termination will include information about the protection against termination provided by the Violence against Women Act of 2005 (VAWA) for victims of domestic violence, dating violence, or stalking. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies.

Timing of the Notice [24 CFR 966.4(l)(3)(i)]

PHA Policy

The PHA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations the PHA will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

12-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

PHA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the PHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the PHA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PHA may not proceed with an eviction action if the PHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents.

12-IV.F. RECORD KEEPING

PHA Policy

A written record of every termination and/or eviction will be maintained by the PHA at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail.

Date and method of notifying the resident

Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

CHAPTER 13: GRIEVANCES AND APPEALS

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

13-I.A. OVERVIEW

When the PHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the PHA policies necessary to respond to applicant appeals through the informal hearing process.

13-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants in the PHA grievance procedure [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

Use of Informal Hearing Process

While the PHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the PHA could make the informal hearing process available to applicants who wish to dispute other PHA actions that adversely affect them.

PHA Policy

The PHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

Notice of Denial [24 CFR 960.208(a)]

The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial.

Scheduling an Informal Hearing

PHA Policy

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's notification of denial of admission.

The PHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

Conducting an Informal Hearing [PH Occ GB, p. 58]

PHA Policy

The informal hearing will be conducted by a person other than the one who made the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether admission should be granted or denied.

Informal Hearing Decision [PH Occ GB, p. 58]

PHA Policy

The PHA will notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA Policy, then the decision to deny assistance will be overturned. .

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the PHA must consider such accommodations. The PHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

13-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

The notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families.
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing.

PHA Policy

The PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

PHA Policy

The PHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

PHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the PHA is still obligated to provide oral translation services in accordance with its LEP Plan.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

PHA Policy

The PHA will not provide a transcript of an audio taped informal hearing.

Hearing Decision

The PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

PART III: GRIEVANCE PROCEDURES FOR HOUSING RESIDENTS

13-III.A. REQUIREMENTS [24 CFR 966.52]

The PHA grievance procedures are issued with the lease.

PHA Policy

The PHA grievance procedure will be incorporated by reference in the tenant lease.

The PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by the PHA before adoption of any grievance procedure changes by the PHA.

PHA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by the PHA of any proposed changes in the PHA grievance procedure, to submit written comments to the PHA.

The PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

13-III.B. APPLICABILITY [24 CFR 966.51]

Potential grievances could address most aspects of a PHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PHA. It is not applicable to disputes between tenants not involving the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

If HUD has issued a due process determination, a PHA may exclude from the PHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, the PHA may evict through the state/local judicial eviction procedures. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure as described above.

PHA Policy

The PHA is located in a due process state. Therefore, the PHA will not offer grievance hearings for lease terminations involving criminal activity that resulted in a felony conviction of a household member or that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for drug-related criminal activity on or off the premises.

13-III.C. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

A grievance must be personally presented, in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

PHA Policy

The PHA will accept requests for an informal settlement of a grievance either orally or in writing, to the PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the PHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

PHA Policy

The PHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in the PHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

13-III.D. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]

Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision.

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion. The request must specify the reasons for the grievance and the action or relief sought.

PHA Policy

The resident must submit a written request for a grievance hearing to the PHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the PHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

Escrow Deposits [24 CFR 966.55(e)]

Before a hearing is scheduled in any grievance involving the amount of rent that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

The PHA must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income.

Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

PHA Policy

The PHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

Scheduling of Hearings [24 CFR 966.55(f)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

PHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PHA.

The PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

PHA Policy

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the “good cause” prior to rescheduling the hearing.

Expedited Grievance Procedure [24 CFR 966.55(g)]

The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA, or
- Any drug-related criminal activity on or near such premises

In such expedited grievances, the informal settlement of grievances is not applicable.

The PHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

PHA Policy

The PHA will not offer expedited grievance procedures.

13-III.E. SELECTION OF HEARING OFFICER/PANEL [24 CFR 966.55(b)]

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review, or a subordinate of such person.

PHA Policy

The PHA has designated the a three member panel serve as hearing officers, two chosen by the Board of Commissioners, one by the Tenant Council:

The PHA must determine the methodology for appointment of the hearing officers and it must be stated in the grievance procedure.

PHA Policy

The PHA will appoint a person who has been selected in the manner required under the grievance procedure. Efforts will be made to assure that the person selected is not a friend, nor enemy, of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.

The PHA must consult with resident organizations before a person is appointed as a hearing officer or hearing panel member. Comments from the resident organizations must be considered before making the appointment.

13-III.F. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)]

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

PHA Policy

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

- The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf.

PHA Policy

Hearings may be attended by the following applicable persons:

A PHA representative(s) and any witnesses for the PHA

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by the PHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

Decision without Hearing [24 CFR 966.56(c)]

The hearing officer/panel may render a decision without proceeding with the hearing if the hearing officer/panel determines that the issue has been previously decided in another proceeding.

Failure to Appear [24 CFR 966.56(d)]

If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer/panel: Provided, That a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the

complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

PHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear, the PHA will not reschedule the hearing unless needed as a reasonable accommodation for a person with disabilities.

General Procedures [24 CFR 966.56(e), (f), and (g)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

The hearing must be conducted informally by the hearing officer/panel. The PHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the PHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

PHA Policy

If the complainant would like the PHA to record the proceedings by audiotape, the request must be made to the PHA by 12:00 p.m. on the business day prior to the hearing.

The PHA will consider that an audio tape recording of the proceedings is a transcript.

Accommodations of Persons with Disabilities [24 CFR 966.56(h)]

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

13-III.G. DECISION OF THE HEARING OFFICER/PANEL [24 CFR 966.57]

The hearing officer/panel must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by the PHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel.

PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

PHA Notice to the Family: The hearing officer will determine if the reasons for the PHA's decision are factually stated in the notice.

Discovery: The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PHA Policy.

PHA Evidence to Support the PHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.

Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of the PHA representative(s)

Name of family representative (if any)

Names of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.

Order: The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the PHA to restore the family's status.

Procedures for Further Hearing

PHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer/panel is binding on the PHA which must take the action, or refrain from taking the action cited in the decision unless the PHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer/panel is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA

PHA Policy

When the PHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the PHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court.

CHAPTER 14: PROGRAM INTEGRITY

PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

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

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

PHA Policy

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

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

The PHA will provide each applicant and resident with a copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

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

The PHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The PHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The PHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

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

The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family member.

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

For purposes of this chapter the term *error* refers to an unintentional *error* or omission.

Program abuse or *fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

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

Quality Control and Analysis of Data

PHA Policy

The PHA will employ a variety of methods to detect errors and program abuse, including:

The PHA routinely will use available sources of up-front income verification, including HUD’s EIV system, to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The PHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

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

PHA Policy

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

Individual Reporting of Possible Errors and Program Abuse

PHA Policy

The PHA will encourage staff, residents, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the PHA Will Investigate

PHA Policy

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

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

Consent to Release of Information [24 CFR 960.259]

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

Analysis and Findings

PHA Policy

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

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

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

Consideration of Remedies

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

PHA Policy

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

Notice and Appeals

PHA Policy

The PHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing.

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. UNDER- OR OVERPAYMENT

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect rental determination is an overpayment or underpayment, the PHA must promptly correct the tenant rent and any utility reimbursement prospectively.

PHA Policy

Increases in the tenant rent will be implemented only after the family has received 30 days' notice.

Any decreases in tenant rent will become effective the first of the month following the discovery of the error.

Reimbursement

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

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

General administrative requirements for participating in the program are discussed throughout this document. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA

PHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, the PHA will terminate the family's lease in accordance with the policies.

PHA Reimbursement to Family

PHA Policy

The PHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

Prohibited Actions

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the PHA
- Provide incomplete or false information to the PHA
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income.

PHA Policy

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

Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives

Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

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

Penalties for Program Abuse

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

- The PHA may require the family to repay any amounts owed to the program.
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit.
- The PHA may deny admission or terminate the family's lease.
- The PHA may refer the family for state or federal criminal prosecution.

14-II.C. PHA-CAUSED ERRORS OR PROGRAM ABUSE

This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect rental determinations include (1) failing to correctly apply housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

Repayment to the PHA

The family is not required to repay an underpayment of rent if the error or program abuse is caused by PHA staff.

PHA Reimbursement to Family

PHA Policy

The PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

Prohibited Activities

PHA Policy

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

Failing to comply with any housing program requirements for personal gain

Failing to comply with any housing program requirements as a result of a conflict of interest relationship with any applicant or resident

Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the PHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of PHA activities, policies, or practices

Misappropriating or misusing housing funds

Destroying, concealing, removing, or inappropriately using any records related to the public housing program

Committing any other corrupt or criminal act in connection with any federal housing program

14-II.D. CRIMINAL PROSECUTION

PHA Policy

When the PHA determines that program abuse by a family or PHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

14-II.E. FRAUD AND PROGRAM ABUSE RECOVERIES

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that the PHA recovers [Notice PIH 2005-7 (HA)].

If the PHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the PHA's grievance process.

CHAPTER 15: PROGRAM ADMINISTRATION

PART I: FAMILY DEBTS TO THE PHA

15-I.A. OVERVIEW

This part describes the PHA's policies for recovery of monies owed to the PHA by families.

PHA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the PHA holds the family liable to return any underpayments to the PHA.

The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When a family refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies

- Small claims court

- Civil law suit

- State income tax set-off program

15-I.B. REPAYMENT POLICY

Family Debts to the PHA

PHA Policy

Any amount owed to the PHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate the family's tenancy in accordance with the policies in Chapter 13. The PHA will also pursue other modes of collection.

General Repayment Agreement Guidelines

Down Payment Requirement

PHA Policy

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the PHA that a down payment of 10 percent would impose an undue hardship, the PHA may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

Notice PIH 2010-19 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income, which is considered “affordable.” Moreover, Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families.

PHA Policy

The PHA has established the following thresholds for repayment of debts:

Amounts between \$3,000 and the Federal or State threshold for criminal prosecution must be repaid within 36 months.

Amounts between \$2,000 and \$2,999 must be repaid within 30 months.

Amounts between \$1,000 and \$1,999 must be repaid within 24 months.

Amounts under \$1,000 must be repaid within 12 months.

If a family can provide evidence satisfactory to the PHA that the threshold applicable to the family’s debt would impose an undue hardship, the PHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the PHA will consider all relevant information, including the following:

The amount owed by the family to the PHA

The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control

The family’s current and potential income and expenses

The family’s current family share, as calculated

Execution of the Agreement

PHA Policy

Any repayment agreement between the PHA and a family must be signed and dated by the PHA and by the head of household and spouse/co-head (if applicable).

Due Dates

PHA Policy

All payments are due by the close of business on the 5th day of the month. If the 5th does not fall on a business day, the due date is the close of business on the first business day after the 5th.

Late or Missed Payments

PHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the PHA, the PHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PHA will terminate tenancy in accordance with the policies,

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the PHA will terminate tenancy in accordance with the policies.

No Offer of Repayment Agreement

PHA Policy

The PHA generally will not enter into a repayment agreement with a family under any of the following conditions:

The family is already under an existing repayment agreement with the PHA.

The PHA determines that the family's debt is a result of program abuse or fraud

The amount owed by the family exceeds the federal or state threshold for criminal prosecution.

Repayment Agreements Involving Improper Payments

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy

PART II: RECORD KEEPING

15-II.A. OVERVIEW

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

15-II.B. RECORD RETENTION

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date.

PHA Policy

During the term of each public housing tenancy, and for at least four years thereafter, the PHA will keep all documents related to a family's eligibility, tenancy, and termination.

In addition, the PHA will keep the following records for at least four years:

- An application from each ineligible family and notice that the applicant is not eligible

- Lead-based paint records as required.

- Documentation supporting the establishment of flat rents and the public housing maximum rent

- Documentation supporting the establishment of utility allowances and surcharges

- Documentation related to PHAS

- Accounts and other records supporting PHA budget and financial statements for the program

- Other records as determined by the PHA or as required by HUD

If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. .

15-II.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

PHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data*.

PHA Policy

Prior to utilizing HUD's EIV system, the PHA will adopt and implement EIV security procedures required by HUD.

Criminal Records

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information.

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

Domestic Violence, Dating Violence, or Stalking Records

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, or stalking.

PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

15-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. The PHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

PHA Policy

The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

The PHA will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within 5 business days of receiving the information.

Note all properties of the Authority have been lead paint tested and no lead has been found above normative levels.