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**CHAPTER 8 Eligibility & Occupancy Study Guide**

**CHAPTER 9 Answers to Eligibility & Occupancy Study Guide**

## ONLINE RESOURCES

Additional resources and references for this course are available at <http://NMReferences.com>. Click the specific program link at the top of the web page to jump directly to the references you wish to access. No login information is required.

## LEARNING OUTCOMES

Explain and apply HUD regulations and guidance to determining eligibility, the intake process, and occupancy in the public housing program.

When you have completed the **Eligibility** portion of the Public Housing Specialist seminar, you should be able to:

- Describe and explain the basics of the public housing program
- Recognize all of the factors of eligibility and how they affect families
- Discuss waiting list management as it applies to application taking and processing, preferences, and removal from the waiting list as well as requirements for site-based waiting lists
- Identify how unit offers are made

When you have completed the **Occupancy** portion of the Public Housing Specialist seminar, you should be able to:

- Describe the various aspects of the leasing process and analyze the required provisions of the public housing lease
- List and define annual and interim activities including requirements for community service

- Identify requirements and restrictions for pets in public housing
- Describe and analyze the reasons for terminations and the hearing process

## CHAPTER 1

## Basic Program Information

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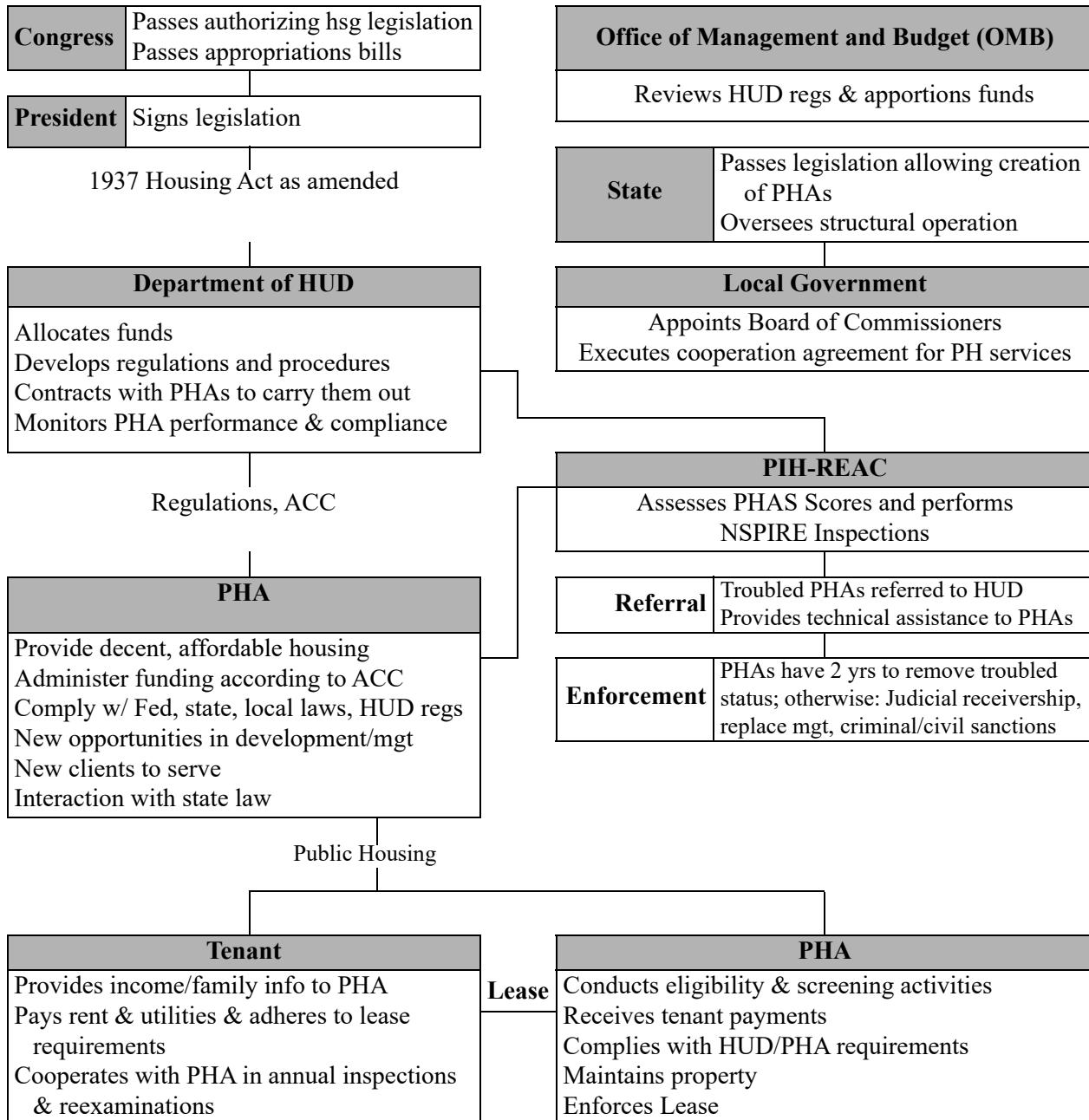
### LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify the key roles and relationships in the public housing program
- Read and interpret HUD notices, regulations, and other resources with a focus on critical information
- Explain PHA responsibilities throughout the program
- Apply HUD requirements regarding fair housing and VAWA to public housing program operations

## Section 1.1 Program Components

### KEY RELATIONSHIPS



## **ROLES IN SUBSIDIZED HOUSING**

### **CONGRESS**

- Primary role: Passes laws and creates statutes
  - Authorizing legislation
    - Creates programs
  - Appropriations bills
    - Fund programs
  - Federal statutes found in the United States Code (U.S.C.)
    - Serve as basis for federal regulations
    - Mandatory references

### **HUD HEADQUARTERS IN WASHINGTON, DC**

- Primary role: Decision-making and information
- Writes and publishes regulations to implement laws (proposed, interim or final – published in 24 Code of Federal Regulations)
- Writes and prints:
  - Program handbooks and guidebooks
  - Notices and memoranda
  - Instruction manuals and booklets
  - Forms
- Responds to letters
- HUD's references
  - Mandatory – must be followed
  - Optional – offered as guidance

### **HUD OFFICES**

- Primary role: payments and HUD compliance monitoring
- Public and Indian Housing (PIH) is responsible for public housing and Section 8 Housing Choice Voucher programs

### **Field Offices**

- Primary role: PHA monitoring and guidance in program operation

### **Real Estate Assessment Center (PIH-REAC)**

- Evaluates the overall condition of HUD's housing portfolio
- Assesses PHAs under the Public Housing Assessment System (PHAS)
- Performs NSPIRE inspections
- Determines what level of scrutiny a PHA receives

## How HUD COMMUNICATES

- Nan McKay's site: [www.nanmckay.com](http://www.nanmckay.com)
- HUD's homepage: [www.hud.gov](http://www.hud.gov)
- PIH homepage: [www.hud.gov/program\\_offices/public\\_indian\\_housing](http://www.hud.gov/program_offices/public_indian_housing)
- eCFR: [www.ecfr.gov](http://www.ecfr.gov)
- HUD Notices:  
<https://www.hud.gov/hudclips/notices/pih>
- Form HUD-50058:  
<https://www.hud.gov/sites/dfiles/OCHCO/documents/50058.PDF>
- Public Housing Occupancy Guidebook:  
[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/mod/guidebook](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mod/guidebook)

## ADMINISTRATION OF SUBSIDIZED HOUSING

- HUD (Department of Housing and Urban Development) is charged by Congress as the department to administer subsidized housing activities
- HUD, by itself, cannot carry out all subsidized housing activities and must contract with entities who actually build, manage, and maintain the buildings and administer the rent subsidy programs
- There are two types of entities that contract with HUD to carry out the subsidized housing activities authorized by Congress
  - PHAs (public sector)
  - Owners (private sector)

### **Role of the State**

- PHAs (public housing agencies) are set up under state enabling legislation.
- PHAs may be set up as:
  - A public corporation with a separate board of commissioners appointed by local officials such as the mayor and/or city council (the traditional structure)
  - A department of a city, county, or state (under special legislation)
- Their jurisdiction could be city, county, multicounty, or statewide, depending on the enabling legislation.

### **Project-based vs. Tenant-based Subsidy**

- Under project-based subsidy, families must live in the unit which has the subsidy attached to it in order to receive assistance
  - Public housing
- Under tenant-based subsidy, families can choose their unit and their assistance follows them from unit to unit
  - Section 8 housing choice vouchers

## **PUBLIC HOUSING**

- PHAs typically administer public housing which is owned and operated by the PHA
- Families generally pay a portion of their income toward rent (based on a HUD formula), but since their incomes are low, this does not generate enough money to operate and maintain the housing
- Because Congress sets the limitation on what the families can pay, the PHA cannot raise the rent to obtain more money, like an owner on the private market could do
- Therefore, HUD provides operating subsidy to PHAs in order to maintain the properties and administer the program

## **Role of the PHA**

- Primary role: delivery of housing to low-income families
- PHA is both owner of the properties and manager of the HUD public housing program
  - Four broad functions
    - Manage waiting list, determine eligibility
    - Certify/recertify tenants
    - Manage/maintain buildings
    - Monitor program performance

Basic Program Information

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Section 1.1: Program Components

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- Historical role
  - Provide decent, safe and sanitary housing to low-income families at affordable rent
  - Administer funding according to the ACC
  - Comply with federal, state and local laws and HUD regulations
  - Follow PHA policies as approved by the PHA board of commissioners
- PHA's role expanded under Quality Housing and Work Responsibility Act of 1998 (QHWRA), also known as the Public Housing Reform Act (PHRA)
  - New opportunities for development and management
  - New clients to serve

**SUMMARY OF PHA RESPONSIBILITIES**

*CFR 902.20*

- The PHA must maintain public housing properties to the standard of decent, safe, sanitary, and in good repair.

*CFR 902.30*

- The PHA has a responsibility to ensure adequate financial resources and to be capable of managing those financial resources effectively to support housing that is decent, safe, sanitary, and in good repair.

*CFR 902.40*

- The PHA has a responsibility to perform key management operations and responsibilities, such as:
  - Minimizing vacancies while avoiding overcrowding units;
  - Using capital funds effectively for long-range modernization needs and extraordinary nonroutine maintenance;

Basic Program Information

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Section 1.1: Program Components

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- Establishing a work order system;
- Inspecting all units and systems annually;
- Tracking, screening, and enforcing the lease for criminal activity, including drug-related criminal activity; and
- If applicable, coordinating, promoting or providing effective programs and activities to promote the economic self-sufficiency of residents.

*CFR 966.4*

- The PHA must establish a lease, entered into between the PHA and each tenant of a dwelling unit.

*CFR 966.4(e)*

- The lease must set forth the PHA's obligations, which shall include the provisions stated in 24 CFR 966.4(e).

**PHA's Role to Develop Policies and Procedures**

- Distinguish between mandatory and discretionary references
  - Mandatory policy or procedure is one that is required by a current law, regulation, notice or handbook
  - Discretionary policies or procedures are decisions made by PHAs within legal and regulatory limits for the purpose of:
    - Clarifying regulations, as needed, without changing their intent
    - Providing guidance and direction in areas on which HUD is silent (such as fraud detection)
    - Following a HUD requirement with one or more discretionary components

### **HUD Guidance as a “Safe Harbor” for PHAs**

- For issues not covered by mandatory references, HUD recommends that PHAs develop policies and procedures based on HUD guidance
- Using HUD guidance creates a “safe harbor” for PHAs because HUD has determined that the guidance is consistent with applicable requirements
- Since HUD guidance is optional, PHAs may use alternative approaches to developing policies and procedures in discretionary areas. However, they must then make their own determination of consistency with applicable requirements. They are not protected by the “safe harbor” concept

## **RULES AND REFERENCES FOR PUBLIC HOUSING**

- 24 Code of Federal Regulations (CFR)
  - Part 1: Nondiscrimination in Federally Assisted Programs
  - Part 5: General HUD Program Requirements
  - Part 8: Nondiscrimination Based on Handicap
  - Part 35: Lead-Based Paint
  - Part 100: Fair Housing
  - Part 902: Public Housing Assessment System
  - Part 903: Public Housing Agency Plans
  - Part 907: Substantial Default by a Public Housing Agency
  - Part 908: Electronic Submission

Basic Program Information

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Section 1.1: Program Components

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- Part 960: Admission to, and Occupancy of, Public Housing
- Part 965: PHA-Owned or Leased Projects, General Provisions
- Part 966: Public Housing Lease and Grievance Procedure
- PIH Notices
  - PIH Notices are numbered using the year of publication and a notice number
  - For example, notice PIH 2018-12 is the twelfth PIH notice issued in the year 2018
  - Typically have a shelf life
  - Many state, "This notice remains in effect until amended, superseded, or rescinded."
- HUD forms and instructions
  - Family Report Form HUD-50058 and Form HUD 50058 Instruction Booklet
- Public Housing Occupancy Guidebook
  - If instructions are supported by federal law, CFR, notices or forms, the instructions are mandatory.
  - If not supported by federal law, CFR, notices or forms, then instructions are discretionary. Following HUD guidance in these cases to establish policy would be considered "safe harbor".
  - Expired guidance can sometimes be helpful, if not replaced by a mandated requirement.
  - There are two versions of the guidebook. The "old" version was published in 2003. The "new" version was published starting 2022 and is being released chapter-by-chapter. This course book relies on references from both versions of the guidebook.

Basic Program Information

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Section 1.1: Program Components

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**HOW TO READ A HUD REGULATION**

- Rules issued in the *Federal Register* are organized as follows:
  - List of regulations affected
  - Subject
  - Rule status (final, interim, proposed)
  - Effective (implementation) date
  - Contact person for comments
  - Preamble
  - Comments
  - Text of new or revised regulations
- See sample pages following.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 247, 880, 882, 884, 891, 960, 966, and 982

[Docket No. FR-4495-F-02]

RIN 2501-AC63

## Screening and Eviction for Drug Abuse and Other Criminal Activity

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** This final rule amends the regulations for the public housing and Section 8 assisted housing programs, and for other HUD assisted housing programs, such as the Section 221(d)(3) below market interest rate (BMIR) program, Section 202 program for the elderly, and Section 811 program for persons with disabilities, and Section 236 interest reduction program. All of these programs were affected by 1998 amendments to the statute authorizing the public housing and Section 8 programs. These amendments give Public Housing Agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for screening out programs applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity.

**DATES: Effective Date:** June 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** For tenant-based Section 8 and public housing—Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4224, Washington DC, 20410; telephone (202) 708-0744 or the Public and Indian Housing Resource Center at 1-800-955-2232. Ms. Arnaudo also may be reached via the Internet at Patricia\_S\_Arnaudo@hud.gov.

For the Section 8 project-based programs—Willie Spearmon, Director, Office of Housing Assistance and Grants Management, Office of Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3000. Mr. Spearmon also may be reached via the Internet at Willie\_Spearmon@hud.gov.

Only the Public and Indian Housing Resource Center number is toll-free. Persons with hearing or speech impairments may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

## SUPPLEMENTARY INFORMATION:

## I. Background

## Regulations affected

HUD-assisted housing safer places to live on July 23, 1999 (64 FR 40262), which superseded earlier proposed

## Subject

Crime prevention in federally assisted

## Rule status

engage in illegal drug use or other criminal activity, and both prevention and enforcement will be advanced by the authority to evict and terminate assistance for persons who participate in criminal activity.

The changes proposed in that rule derived from several sources. (See the chart published in the July 23, 1999, proposed rule at 64 FR 40264-40265 for more detail.) Section 9 of the Housing Opportunity Program Extension Act (Pub. L. 104-120, 110 Stat. 834-846, approved March 28, 1996) (“the Extension Act”) amended sections 6 and 16 of the United States Housing Act of 1937 (42 U.S.C. 1437a, *et seq.*) (“the 1937 Act”). Sections 428, 506, 545, and 575-579 of the HUD Appropriation Act for Fiscal Year 1999 (Pub. L. 105-276, approved Oct. 21, 1998) amended sections 3, 6, 8, and 16 of the 1937 Act

## Implementation or Comments due date

V of the HUD Appropriation Act for Fiscal Year 1999 (Pub. L. 105-276, approved October 21, 1998) was designated the Quality Housing and Work Responsibility Act of 1998 and is referenced in this rule as “the QHWRRA” or “the 1998 Act.” Section 903 of the Personal Responsibility and Work Opportunity Act of 1996 (Pub. L. 104-

## Contact person for comments

terminating tenancy for fleeing to avoid prosecution, custody or confinement after commission of a felony, or for violation of probation or parole.

Although owners and PHAs have been free to deny admission to applicants for assisted housing on the basis of criminal activity, these new statutory provisions mandate denial of admission for specified criminal activity. In implementing the new mandatory provisions, HUD does not impair existing authority of owners and PHAs to deny admission for criminal activity other than that specified in this rule or which has taken place at times other than those specified. In addition,

## Preamble Starts here and goes on

other means of obtaining criminal records and may continue to use these other means of obtaining that information. The portion of this rule that addresses access to criminal records, subpart J of part 5, does not affect those other means. However, HUD cautions PHAs and owners to handle any information obtained about criminal records in accordance with applicable State and Federal privacy laws and with the provisions of the consent forms signed by applicants.

The preamble to the July 23, 1999, proposed rule provided additional information about the proposed implementation of the Extension Act and the 1998 Act.

## II. Significant Differences Between This Final Rule and the Proposed Rule

This final rule takes into consideration the public comments received on the proposed rule and attempts to simplify the rule where possible. The more significant changes made to the July 23, 1999 proposed rule by this final rule are described below.

1. *Revised and reorganized regulatory text.* HUD has revised and reorganized the majority of the proposed regulatory text. These changes are not substantive, but are designed to streamline the contents of the proposed rule and make the new requirements easier to understand. For example, the final rule uses a more reader-friendly question and answer format. The more significant of these clarifying and organizational changes are described in greater detail in this section.

2. *Cross-reference to generally applicable definitions (§ 5.100).* The final rule eliminates unnecessary redundancy by relocating the definitions of commonly used terms to subpart A of 24 CFR part 5 (see § 5.100 of this final rule). The program regulations using the defined terms have been revised to simply cross-reference to 24 CFR part 5, rather than repeating the generally applicable definitions.

3. *Authority to screen applicants and evict tenants (24 CFR part 5, subpart I).* This final rule reorganizes and clarifies the provisions of the proposed rule concerning the authority of housing providers to screen and evict tenants. Some of the 1998 Act provisions require certain actions, while other provisions authorize various actions. In the proposed rule, this distinction was not always entirely clear. HUD has made several revisions to proposed 24 CFR part 5, subpart I to clarify these

5. Add a new § 200.37 to read as follows:

**§ 200.37 Preventing crime in federally assisted housing.**

See part 5, subparts I and J of this title, for provisions concerning preventing crime in federally assisted housing, including programs administered under section 236 and under sections 221(d)(3) and 221(d)(5) of the National Housing Act.

**PART 247—EVICTIONS FROM SUBSIDIZED AND HUD-OWNED PROJECTS**

6. The authority citation for part 247 continues to read as follows:

**Authority:** 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z-1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

7. In § 247.2, revise the last sentence in the definition of “subsidized project” to read as follows:

**§ 247.2 Definitions.**

\* \* \* \* \*

*Subsidized project.* \* \* \* For purposes of this part, *subsidized project* also includes those units in a housing project that receive the benefit of:

(1) Rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(2) Housing assistance payments for project-based assistance under Section 8 of the 1937 Act (42 U.S.C. 1437f).

However, this part is not applicable to Section 8 project-based assistance under parts 880, 881, 883 and 884 of this title (except as specifically provided in those parts).

8. In § 247.3, revise paragraph (a)(3) to read as follows:

**§ 247.3 Entitlement of tenants to occupancy.**

(a) \* \* \*

(3) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

\* \* \* \* \*

**PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION**

9. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

10. In § 880.607, revise paragraph (b)(1)(iii) to read as follows:

**§ 880.607 Termination of tenancy and modification of lease.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

\* \* \* \* \*

**PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS**

11. The authority citation for part 882 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

12. In § 882.102, amend paragraph (b)

**Compare with previous regulation**

follows:

**§ 882.102 Definitions.**

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing agency (PHA), Section 8, and violent criminal activity.*

\* \* \* \* \*

13. In § 882.511, amend paragraph (a) by adding after the heading a paragraph designation (1), and by adding a new paragraph (a)(2).

**§ 882.511 Lease and termination of tenancy.**

(a) \* \* \*

(2) The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may terminate the tenancy of a family when the owner determines that a household member is illegally using a drug or when the owner 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.

\* \* \* \* \*

**§ 882.514 [Amended]**

14. In § 882.514, remove paragraph (a)(2) and redesignate paragraph (a)(3) as

paragraph (a)(2), and remove paragraph (g).

15. Add § 882.518 to read as follows:

**§ 882.518 Denial of admission and termination of assistance for criminals and alcohol abusers.**

(a) *Requirement to deny admission.*—

(1) *Prohibiting admission of drug criminals.* (i) The PHA must prohibit admission to the program of an applicant for three years from the date of termination of tenancy if any household member's federally assisted housing tenancy has been terminated for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) The household member who engaged in drug-related criminal activity and whose tenancy was terminated has successfully completed an approved supervised drug rehabilitation program, or

(B) The circumstances leading to the termination of tenancy no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that prohibit admission of a household to the program if the PHA determines that any household member is currently engaging in illegal use of a drug or that it has reasonable cause to believe that a household member's pattern of illegal use of a drug, as

**That portion of the CFR section not listed remains unchanged**

*offenders.* The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and

**That portion of the section either above or below remains unchanged**

program under standards established by the PHA if the PHA determines that any

## Section 1.2 Key Program Documents

*CFR 982.151*

### **ANNUAL CONTRIBUTIONS CONTRACT (ACC)**

- HUD executes an Annual Contributions Contract (ACC) with the PHA to provide an operating subsidy to assist in covering the operational expenses when the rent collection from families is inadequate.
- An Annual Contributions Contract (ACC) is a written contract between HUD and a PHA.
- Under the ACC, HUD agrees to make payments to the PHA.
- The PHA agrees to administer the program in accordance with HUD regulations and requirements.

### **ADMISSIONS AND CONTINUED OCCUPANCY POLICY**

*HUD Handbook 7465.1, Rev-2,  
1-1(a)  
CFR 960.202*

- The Admissions and Continued Occupancy Policy (ACOP) is the PHA's principal statement of the policies to be used in the administration of the public housing program.
- The PHA must adopt a written ACOP that establishes local PHA policies for the administration of the program in accordance with HUD requirements.
- The ACOP and revisions must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials, with discretionary ACOP policies included in the PHA Plan.
- The written ACOP does not have to be approved by HUD, but must be available for audit.
- The purpose of the plan is to prevent misunderstandings between PHA staff and residents, to avoid lawsuits and provide consistency of administration.

*Industry practice*

*HUD Handbook 7465.1,  
Rev-2, 1-1(a)  
CFR 960.202*

### **Contents of the Admissions and Continued Occupancy Policy**

- PHAs must adopt admissions policies which meet the requirements of:
  - HUD regulations
  - Fair housing and civil rights laws
  - The Annual Contributions Contract (ACC)
  - State and local laws.
- Admission policies must be reasonable and must be consistent with the PHA's responsibilities as a public body.
- Admission policies must include a tenant selection and assignment plan which covers:
  - The organization of the waiting list
  - The method by which applicants will be chosen from the waiting list and offered available dwelling units
  - The circumstances under which a transfer would take precedence over an admission.
- Admission policies must also include:
  - The PHA's standards for determining:
    - Eligibility
    - Suitability for tenancy
    - The size and type of unit and project needed
  - The PHA's procedures for verifying the information the applicant has provided
  - The PHA's method for achieving deconcentration of poverty and income-mixing in public housing developments
  - The PHA's selection preferences and their relative weights.

- The PHA must post copies of the admission policies in each office where applications are received.
- The PHA must provide the pertinent portion of its admission policies to each applicant who requests it.

*CFR 903.3*

### **THE PHA PLAN**

- Each PHA submits to HUD:
  - A 5-Year Plan once every five PHA fiscal years
  - An Annual Plan each fiscal year.
- The purpose is to provide local accountability and an easily identifiable source by which public housing residents, tenant-based program participants, and other members of the public may locate basic PHA policies, rules and requirements concerning its operations, programs and services.

*CFR 903.6*

- A PHA must include in its 5-Year Plan a statement of:
  - The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction
  - The PHA's goals and objectives that enable the PHA to serve the needs of the families.

*CFR 903.7*

- The Annual Plan contains the discretionary policies of the various plan components or elements (for example, selection policies) and not the statutory or regulatory requirements of these components.

### **Contents of the PHA Plan**

- A statement of housing needs
- A statement of financial resources
- A statement of the PHA’s policies that govern eligibility, selection, and admissions
  - Includes admission preferences, assignment, maintaining the waiting list (including any site-based waiting lists), and deconcentration and income-mixing.
- A statement of the PHA’s rent determination policies
  - Includes applicable flat rents
  - HUD has determined that flat rent changes due to PIH 2014-12 constitute a “significant amendment” to the PHA Plan. Implementation requirements differ depending on whether a PHA is classified as a “qualified” or “non-qualified” PHA
  - Qualified PHAs are defined as PHAs that:
    - Have a combined total of no more than 550 combined public housing units and housing choice vouchers, and
    - Are not designated as “troubled” under PHAS (and have not been so designated within the last 12 months), and
    - Do not have a failing SEMAP score within the last 12 months.
  - These agencies are exempted from the annual plan requirement under the provisions of the Housing and Economic Recovery Act of 2008 (HERA). However, qualified PHAs must hold a public hearing regarding the flat rent changes

Basic Program Information

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Section 1.2: Key Program Documents

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- Non-qualified PHAs must follow the required procedures for a significant amendment to their PHA Plans. HUD has provided sample amendment language in Appendix A of PIH 2014-12
  - After initial implementation, subsequent annual changes to the HUD-determined FMR amounts do not trigger the significant amendment process
- A statement of the PHA's operation and management
- A statement of the PHA grievance procedures
- A statement of capital procedures needed
- A statement of any demolition and/or disposition
- A statement of the public housing projects designated as housing for elderly families or families with disabilities or elderly families and families with disabilities
- A statement of the conversion of public housing to tenant-based assistance
- A statement of the conversion of public housing to project-based assistance under the Rental Assistance Demonstration (RAD) program
- A statement of homeownership programs administered by the PHA
- A statement of the PHA's community service and self-sufficiency programs
- A statement of the PHA's safety and crime prevention measures, including specific information required by the Violence against Women Act (VAWA)

Basic Program Information

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Section 1.2: Key Program Documents

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- A statement of the PHA's policies and rules regarding ownership of pets in public housing
- Civil rights certification
- Recent results of PHA's fiscal year audit
- A statement of asset management
- Resident advisory board (RAB) comments
- Other statements and certifications, as required

*Industry practice*

*Notice PIH 97-56*

**THE LEASE**

- The lease is the contract between the PHA and the public housing resident family.
- All units must be occupied pursuant to a dwelling lease agreement that complies with HUD regulations.
- The lease must meet all regulatory requirements and must also comply with applicable state and local laws and codes.

## Section 1.3 HOTMA

On July 29, 2016, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs. The Final Rule implementing broad changes to income and asset in Sections 102 and 104 of HOTMA, and for PHAs that administer the public housing program over-income provisions in Section 103, was officially published in the *Federal Register* on February 14, 2023. On September 29, 2023, HUD issued notice PIH 2023-27, which provided guidance to PHAs on the implementation of the program changes described in the Final Rule (Note, HUD released a revised version of the notice on 2/2/24).

HUD released Notice PIH 2024-38 on December 18, 2024. The notice identifies provisions of HOTMA 102/104 that PHAs must comply with for all transactions that occurred July 1, 2025 or later. This means that for PIH programs HUD is taking a phased approach to implementing HOTMA. The notice included the following three provisions which became mandatory on July 1, 2025:

- Income exclusions at 24 CFR 5.609(b)
- Definitions
- De minimis errors

Further, prior to the July 1 deadline, PHAs must have stopped enrolling families in the EID as of January 1, 2024 and must have begun using the new Form HUD 9886-A for all families as of February 1, 2025.

Basic Program Information

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Section 1.3: HOTMA

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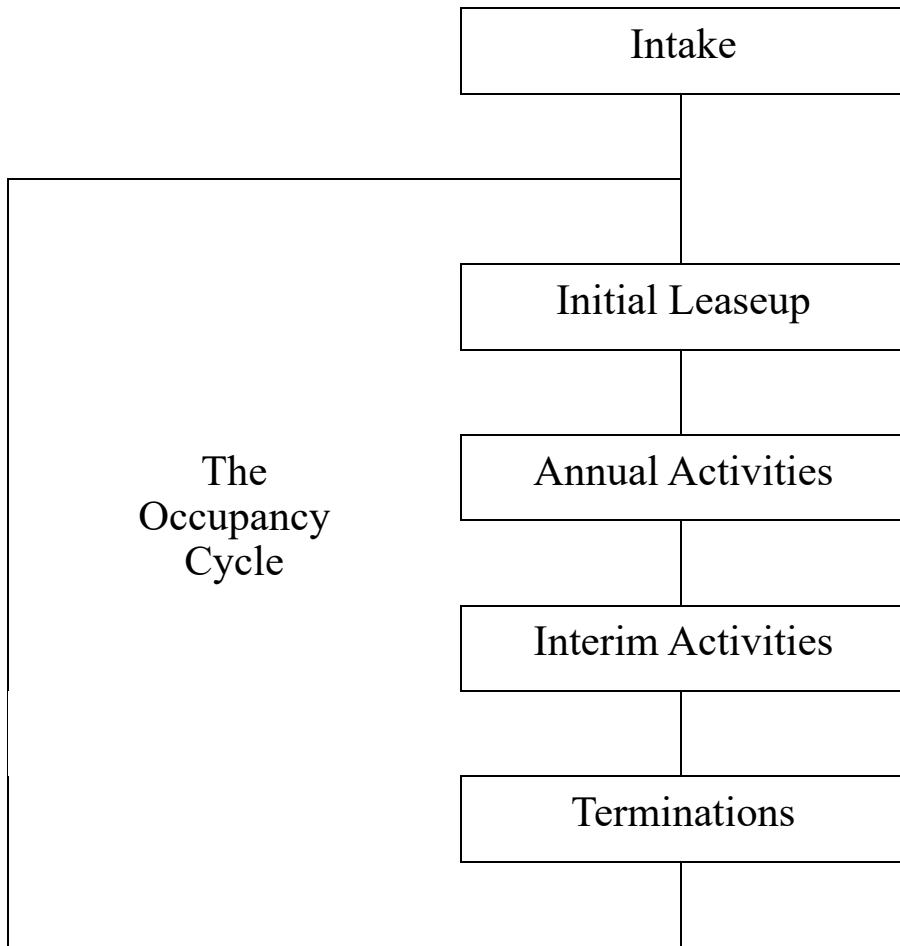
In addition, PHAs may, but are not required to, implement the following provisions of HOTMA now:

- Stop using EIV at interims
- Use Safe Harbor income determinations from means-tested federal assistance programs as verification of a family's total annual income
- Rely third-party verification dated within 120 days of the date received by the PHA with the exception of verification of fixed income sources which must be dated within the appropriate benefit year
- Allow for self-certification of social security numbers when an individual is unable to supply other forms of acceptable documentation

The July 1, 2025 compliance deadline did not apply to other HOTMA 102/104 provisions not listed in the notice. All other provisions of HOTMA 102/104 are on hold, and a date for implementation of those provisions has not yet been determined. This book only covers those changes that are currently applicable under HOTMA

## Section 1.4      Overview of the Housing Process

### THE PUBLIC HOUSING PROGRAM



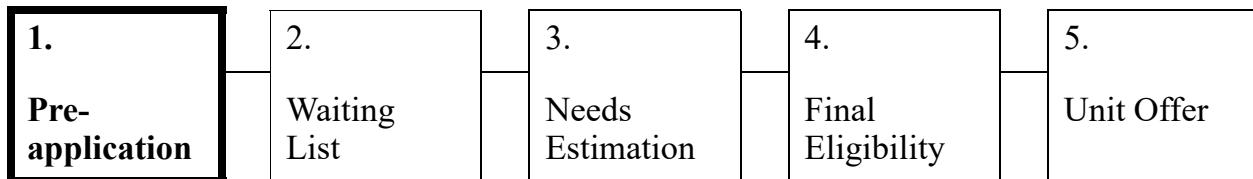
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Basic Program Information

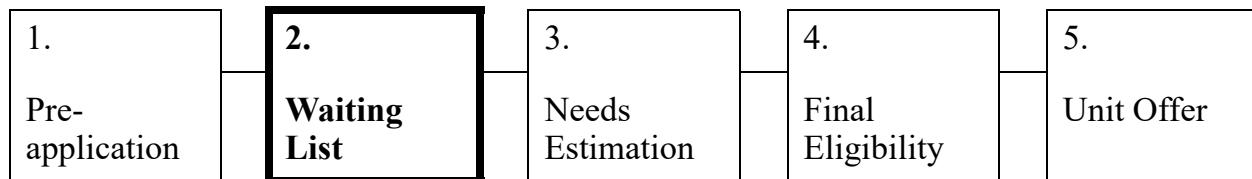
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Section 1.4: Overview of the Housing Process

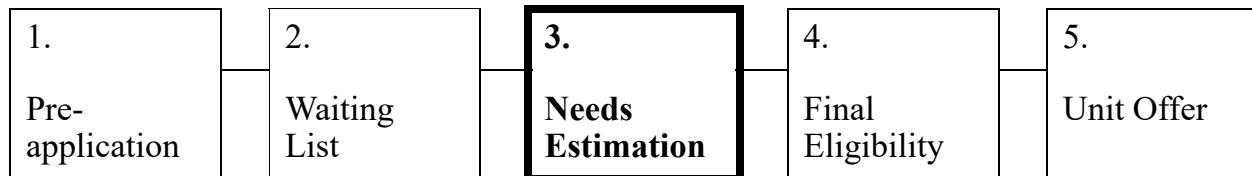
## THE INTAKE PROCESS



- a. Family submits preapplication if waiting list is open.
- b. Preapplication has less information than full application, but enough to determine preliminary eligibility and placement on list. Usually not verified.
- c. If family is eligible, send letter:
  - Preliminary eligibility
  - Name on waiting list
  - Approximate wait
- d. If family is ineligible, send letter:
  - Notifying of ineligibility
  - Reasons why
  - Informal hearing

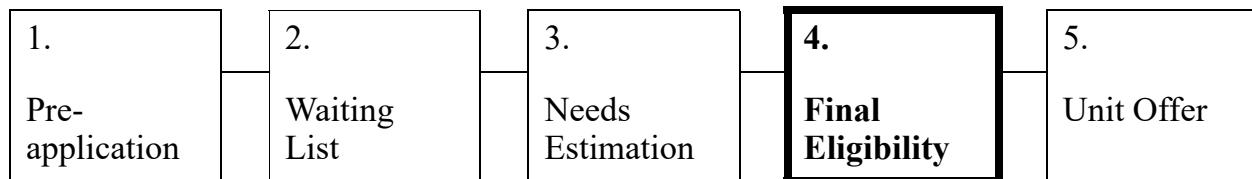
**THE INTAKE PROCESS**

- a. PHA determines waiting list bedroom size according to Occupancy Standards.
- b. Eligible families only go on waiting list.
- c. Waiting list divided by bedroom size for public housing.
  - PH list usually separate from Section 8.
- d. PHA may use date and time, or may apply local preferences used to select among applicants without regard to date and time.
  - PHA must establish local preferences which promote deconcentration and income mixing in public housing developments.
- e. PHAs may establish a system of site-based waiting lists.
  - System of site-based waiting lists must be described in PHA Plan.
- f. PHAs must reserve a minimum of 40% of new admissions to public housing each fiscal year for extremely low-income families.
  - Referred to as “income targeting”
  - Extremely low-income families are families whose income doesn’t exceed the higher of 30% of area median income or the federal poverty level
- g. Waiting lists purged every 12 to 18 months (industry practice).

**THE INTAKE PROCESS**

- a. PHA estimates opening slots by bedroom size, based on projected unit turnover.
  - Should be projecting ahead about 90 days, not waiting until opening occurs.
- b. PHA estimates number of families needed to fill each slot.
  - Will be influenced by accuracy of waiting list and many other factors (i.e. quality and location of unit).
  - Look at past data.
- c. PHA must provide for deconcentration of poverty by attempting to bring:
  - Higher income tenants into lower income public housing developments; and
  - Lower income tenants into higher income public housing developments
- d. PHA verifies preferences for the top “X” number of families on list.
  - PHA sends family preference claim and verification form.
    - If preference doesn't verify, family may be offered a meeting and placed in the proper order on the waiting list.
    - If preference verifies, PHA proceeds to final eligibility verification.
- e. If no response from family, PHA sends notice of withdrawal of assistance, and family is removed from waiting list. The PHA may elect to send follow-up letter(s).

## THE INTAKE PROCESS



- a. PHA schedules family for interview (or asks family to contact PHA to set up interview).
- b. Family fills out Personal Declaration form; PHA or family fills out application form. Family signs release forms. PHA photocopies documents submitted by family.
- c. PHA follows HUD's verification hierarchy for verifying eligibility factors.
  - If higher-level verifications are not obtained within time frame in ACOP, PHA uses lower levels of verification and documents reason in file.
- d. PHA compares annual income to income limits to determine income eligibility.
- e. PHA verifies social security numbers.
- f. PHA verifies citizenship/noncitizenship status.
- g. PHA calculates total tenant payment from verified information.
- h. PHA offers family choice between income-based rent (TTP) and flat rent.

*Notice PIH 2018-18*

Basic Program Information

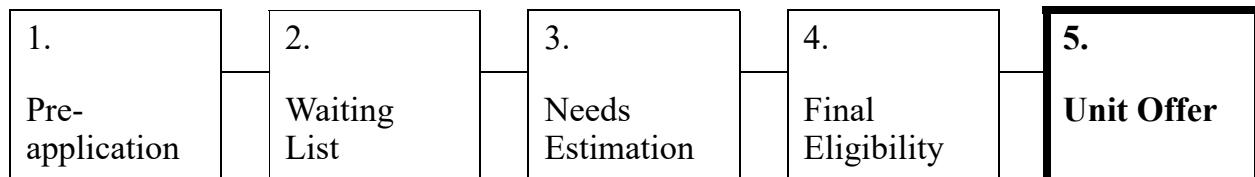
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Section 1.4: Overview of the Housing Process

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- i. PHA determines if unit actually available for family.
  - If PHA offers system of site-based waiting lists, family is offered unit in development designated.
  - PHA takes into account deconcentration of poverty and income-mixing in deciding to offer unit.
  - Final eligibility is determined and PH unit made ready to offer.
    - If family is ineligible, PHA sends notice of denial and opportunity for informal hearing.
- j. If no unit is available, family stays in verified pool of applicants waiting for available unit.

## THE INTAKE PROCESS



- a. PHA reviews units of appropriate size available.
- b. PHA must develop offer system
  - Plan A (one offer) or Plan B (two or three offers)
  - System of site-based waiting lists has option of adopting Plan A, Plan B, or another reasonable system.
- c. If family refuses offers made, name goes to bottom of waiting list.

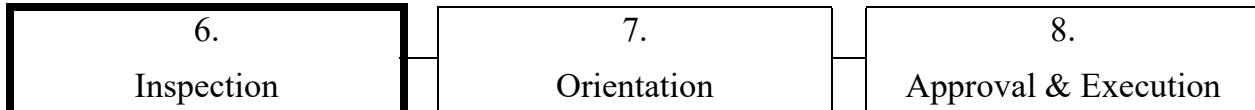
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Basic Program Information

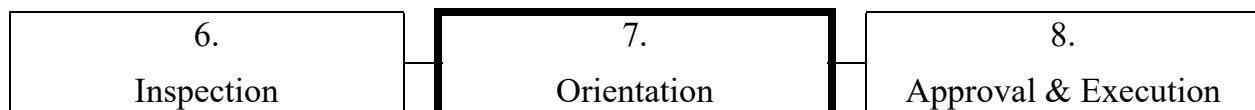
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Section 1.4: Overview of the Housing Process

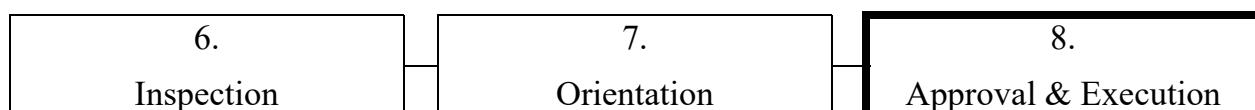
**LEASEUP PROCESS**



- a. PHA schedules and conducts inspection of vacant unit(s) according to National Standards for the Physical Inspection of Real Estate (NSPIRE) and any higher PHA standards.
- b. PHA prepares unit(s) for move-in.



- a. Orientation is held to explain tenant/PHA obligations and go over lease.
- b. Questions are answered.
- c. Unit is shown to family.



- a. Documents are reviewed:
  - Lease Content
  - Security Deposit
  - Others as required by PHA
- b. Move-in inspection conducted by PHA and family or representative.
- c. PHA and family execute lease.
- d. PHA collects rent and security deposit.
- e. PHA gives family keys.
- f. PHA makes any additional unit repairs.
- g. Assisted tenancy begins on effective date stated in lease.

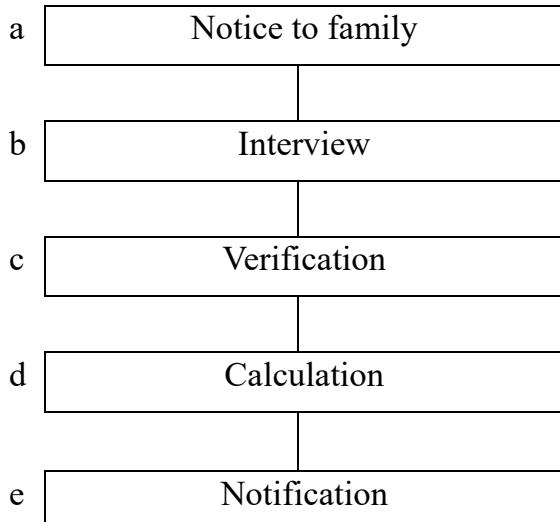
## Basic Program Information

## Section 1.4: Overview of the Housing Process

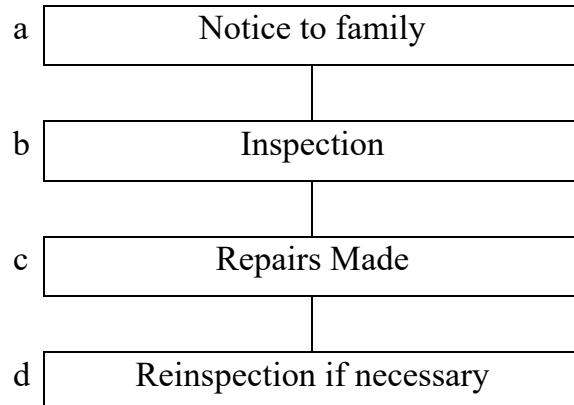
## ANNUAL ACTIVITIES

## 9. Reexamination

(If family pays flat rent, the PHA must conduct a reexamination of family income at least once every three years)



## 10. NSPIRE



Process similar to 4a-d

**INTERIM ACTIVITIES**  
(Between Annual Activities)

## Interim Reexamination

- Or -

## NSPIRE Compliance

Same steps as annual self-inspection except only inspect specified items. Include any deficiencies that may be observed.

## TERMINATION OF TENANCY

## 11. Family

a. Family terminates by giving proper written notice or moving.

## 12. Housing Authority

a. PHA terminates for violation of lease.

b. Written notice according to lease & grievance procedures.

## Section 1.5 Fair Housing Enforcement

### INTRODUCTION

- Public housing staff must be knowledgeable about nondiscrimination requirements, particularly Section 504 of the 1973 Rehabilitation Act, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act, because these laws affect policies and procedures.
- Legal challenges cost both time and money. The PHA can mitigate challenges if the public housing staff understands the intent of fair housing laws and puts them into practice.

### HUD's NON-DISCRIMINATION/FAIR HOUSING COMPLIANCE REQUIREMENT

- Every PHA has an affirmative duty to comply with federal fair housing laws.
  - “Affirmative duty” means that PHAs must be vigilant and proactive
  - Every PHA must submit a signed certification to HUD of the PHA’s intention to comply with:
    - Fair Housing Act
    - Title VI of the Civil Rights Act of 1964
    - Age Discrimination Act of 1975
    - Executive Order 11063
    - Section 504 of the Rehabilitation Act of 1973
    - Title II of the Americans with Disabilities Act
- The Admissions and Continued Occupancy Policy must include the intent to ensure full compliance with these laws.

- The PHA must ensure that policies, procedures, and staff conduct are consistent with the PHA's fair housing oath.
- Residents must be briefed about fair housing.
- Residents who believe they have been illegally discriminated against have the right to be put in contact with the local fair housing agency.
- The PHA should never steer an applicant or tenant toward a particular development or area based on their race, national origin, or any other arbitrary classification.

#### **NOTICE OF NON-DISCRIMINATION AND RECORD KEEPING FOR HUD**

- PHAs may wish to maintain records on applicants and tenants for at least three years to provide HUD with racial, ethnic, gender and disability status.
- Every PHA office must have a posted policy on non-discrimination, which must state that the PHA will not discriminate on the basis of:
  - Race
  - Color
  - Sex
  - Religion
  - Disability (some HUD references still use the term "handicap")
  - National origin
  - Family status
  - Age

Basic Program Information

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Section 1.5: Fair Housing Enforcement

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*Executive Order 13988*

- “Sex” includes discrimination on the basis of sexual orientation and gender identity.

*Public Housing Occupancy Guidebook*

- “Familial status” gives protection to families with children.
- PHAs may not be aware that they may not use lead-based paint (LBP) considerations to deny housing to families with children.
  - PHA must educate family on LBP issues
  - Family chooses whether to occupy unit
- If family with children wishes to remain in unit with LBP hazards:
  - PHA may not seek to terminate tenancy due to the presence of minor children
  - PHA may offer to transfer family
- Equal treatment is required for all applicants.
  - In limited circumstances, PHA may be required to treat persons with disabilities differently
  - Reasonable accommodation
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, effective March 5, 2012, also requires that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

*FR Notice 02/03/12,  
Notice PIH 2014-20*

Basic Program Information

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Section 1.5: Fair Housing Enforcement

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- As part of this rule, administrators and owners of HUD-assisted housing, and owners participating in multifamily programs may not inquire about the sexual orientation or gender identity of an applicant or occupant for the purposes of making eligibility determinations or otherwise making housing available.
  - A private owner that participates in the HCV program becomes subject to the rule at the point when the owner executes a housing assistance payments (HAP) contract with the PHA.
- The rule does not, however, prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.
- It also does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.
- HUD has stated that failure to comply will result in sanctions or corrective action plans as it deems appropriate to remedy any violations.

Basic Program Information

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Section 1.5: Fair Housing Enforcement

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*Executive Order 13988*

- Further, on January 20, 2021, the White House issued Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation. The order states that federal laws prohibiting discrimination on the basis of sex, including the Fair Housing Act, also cover discrimination on the basis of sexual orientation and gender identity under the same category.
  - The order requires federal agencies, including HUD, to review any regulations, guidance documents, policies, programs, or other agency actions that were put into effect under any statute or regulation prohibiting sex discrimination and to develop a plan to ensure their consistency with the order.
- In addition to these protections at the federal level, PHAs must be aware of protections that may be provided by state or local ordinance.

**OBLIGATION TO AFFIRMATIVELY FURTHER FAIR HOUSING**

- PHA must determine whether programs reach all eligible population groups
- Take actions to increase participation by under-served populations
- Market to groups least likely to apply for housing

## OTHER STATE AND LOCAL FAIR HOUSING LAWS

- In addition to the classes protected under federal law, PHAs must be aware of protections that may be provided by state or local ordinance.

## PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS

- National origin protections extend to Limited English Proficient (LEP) persons
- HUD published a Final Notice of Guidance in the Federal Register on January 22, 2007 outlining steps PHAs should follow to meet obligations under the law
- Implementation is required by Executive Order 13166
- All entities receiving federal financial assistance (includes PHAs) are covered and have a responsibility to ensure meaningful access to their programs and activities by LEP persons
- **NOTE:** Some PHAs operate in jurisdictions in which English has been declared the official language. Nonetheless, these PHAs continue to be subject to federal nondiscrimination requirements, including LEP
- Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be LEP, entitled to language assistance with respect to a particular type of service or benefit
- PHA staff must be familiar with their PHA's policies and procedures for dealing with LEP individuals

## Section 1.6 Nondiscrimination and Reasonable Accommodation

- This section is an overview of the major federal laws protecting people with disabilities.

### SECTION 504 OF THE REHABILITATION ACT OF 1973

- Section 504 requires housing agencies to affirmatively ensure that persons with disabilities are given an equal opportunity to participate in the public housing program.
- A “qualified” person with a handicap:
  - Must be afforded an *opportunity equal* to that afforded to others, and/or
  - Must be provided housing or benefits *as effective* as those afforded to others, and/or
  - May *not be provided different or separate* housing or benefits unless necessary to provide the person with a handicap with housing or benefits that are *as effective* as those provided to others.
- These regulations make clear that it is not necessary to produce an “*identical*” result. Instead, the law affords people with handicaps an “equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.”
- In each case, *a participant with a disability must ask for an accommodation of their disability before the PHA treats them differently.*

## THE FAIR HOUSING AMENDMENTS ACT

- The Fair Housing Act<sup>1</sup> prohibits housing discrimination based on race, color, religion, sex, and national origin, regardless of whether federal funds are involved.
- The Fair Housing Amendments Act (FHA) of 1988 extended this law to prohibit discrimination against people with disabilities and familial status (known as discrimination against families with children) in almost every kind of housing-related activity, including advertising, renting, selling, and lending.

## AGE DISCRIMINATION ACT OF 1975

- Prohibits discrimination on the basis of age in federally-assisted programs and activities.
- Most often involved in protecting rights of older Americans.

## TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

- Signed into law in 1990, the ADA is the most comprehensive civil rights law for disabled people. Title II of the ADA and the regulations that implement it extended 504's non-discrimination policy to apply to all activities of state and local governments regardless of whether they receive federal funds.
- If your PHA employs more than 50 people, Title II requires the PHA to adopt grievance procedures for anyone denied a reasonable accommodation, *including applicants*. The grievance procedures can be the same as the regular informal hearing procedures, as long as they provide due process.

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1. Title VIII of the Civil Rights Act of 1968

## Section 1.6: Nondiscrimination and Reasonable Accommodation

## Federal Laws Prohibiting Housing Discrimination Against People With Disabilities

	<b>Rehabilitation Act 29 USC 504 29 USC 794</b>	<b>Fair Housing Amendments Act 42 USC 3601</b>	<b>Title II of the Americans with Disabilities Act (ADA)</b>
<b>Prohibited or required practices</b>	<ol style="list-style-type: none"> <li>1. Cannot discriminate, exclude, or deny benefits solely because of disability.</li> <li>2. Must provide reasonable modifications in all rules, policies, and procedures.</li> <li>3. Program must be readily accessible and usable by individuals with disabilities.</li> </ol>	<ol style="list-style-type: none"> <li>1. Cannot discriminate.</li> <li>2. Provide reasonable accommodation in rules, policies, and procedures.</li> <li>3. Allow tenant to make reasonable physical accommodations.</li> </ol>	<ol style="list-style-type: none"> <li>1. Cannot discriminate, exclude, or deny benefits solely because of disability.</li> <li>2. Must provide reasonable modifications in all rules, policies, and procedures.</li> <li>3. Program must be readily accessible and usable by individuals with disabilities.</li> </ol>
<b>Housing covered</b>	Any housing that receives federal funds, including public housing agencies and assisted-housing providers.	All housing except owner-occupied 4-, 3-, or 2-family housing	Housing provided by state and local governments and their entities, including public housing agencies.
<b>Definition of a person with a disability</b>	<p>A person who</p> <ol style="list-style-type: none"> <li>1. has a physical or mental impairment that substantially limits a major life activity, such as walking, thinking, speaking, breathing, hearing, learning, or working.</li> <li>2. a record or history of an impairment that limits a major life activity, even if the person no longer has the disability or if the disability no longer limits a major life activity.</li> <li>3. is regarded as having an impairment that limits a major life activity.</li> </ol>	<p>A person who</p> <ol style="list-style-type: none"> <li>1. has a physical or mental impairment that substantially limits a major life activity, such as walking, thinking, speaking, breathing, hearing, learning, or working.</li> <li>2. a record or history of an impairment that limits a major life activity, even if the person no longer has the disability or if the disability no longer limits a major life activity.</li> <li>3. is regarded as having an impairment that limits a major life activity.</li> </ol>	<p>A person who</p> <ol style="list-style-type: none"> <li>1. has a physical or mental impairment that substantially limits a major life activity, such as walking, thinking, speaking, breathing, hearing, learning, or working.</li> <li>2. a record or history of an impairment that limits a major life activity, even if the person no longer has the disability or if the disability no longer limits a major life activity.</li> <li>3. is regarded as having an impairment that limits a major life activity.</li> </ol>

## Basic Program Information

## Section 1.6: Nondiscrimination and Reasonable Accommodation

	<b>Rehabilitation Act 29 USC 504 29 USC 794</b>	<b>Fair Housing Amendments Act 42 USC 3601</b>	<b>Title II of the Americans with Disabilities Act (ADA)</b>
<b>Are people with psychiatric disabilities covered?</b>	Yes	Yes	Yes
	<ol style="list-style-type: none"> <li>1. if the psychiatric disability substantially limits a major life activity</li> <li>2. or if a housing provider thinks the person's psychiatric disability or perceived psychiatric disability limits a major life activity</li> <li>3. or if the person has a history of psychiatric disability that limits a major life activity, and the housing provider discriminates against the person because of the history.</li> </ol>	<ol style="list-style-type: none"> <li>1. if the psychiatric disability substantially limits a major life activity</li> <li>2. or if a housing provider thinks the person's psychiatric disability or perceived psychiatric disability limits a major life activity</li> <li>3. or if the person has a history of psychiatric disability that limits a major life activity, and the housing provider discriminates against the person because of the history.</li> </ol>	<ol style="list-style-type: none"> <li>1. if the psychiatric disability substantially limits a major life activity</li> <li>2. or if a housing provider thinks the person's psychiatric disability or perceived psychiatric disability limits a major life activity</li> <li>3. or if the person has a history of psychiatric disability that limits a major life activity, and the housing provider discriminates against the person because of the history.</li> </ol>
<b>Is current illegal drug use covered?</b>	No	No	No
	If the illegal use of controlled substances occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.		
<b>Is a history of illegal drug use covered?</b>	Yes	Yes	Yes
	<ol style="list-style-type: none"> <li>1. if recovered from addiction, i.e., successfully completed a rehabilitation program and not using,</li> <li>2. or if participating in a treatment program or self-help group and not currently using drugs.</li> </ol>	<ol style="list-style-type: none"> <li>1. if recovered from addiction, i.e., successfully completed a rehabilitation program and not using,</li> <li>2. or if participating in a treatment program or self-help group and not currently using drugs.</li> </ol>	<ol style="list-style-type: none"> <li>1. if recovered from addiction, i.e., successfully completed a rehabilitation program and not using,</li> <li>2. or if participating in a treatment program or self-help group and not currently using drugs.</li> </ol>
<b>Are people who have alcoholism covered?</b>	Yes	Yes	Yes
<b>Are people with AIDS or who are HIV+ covered?</b>	Yes	Yes	Yes

## **DEFINITIONS OF THE TERM “DISABILITY”**

- This section is an overview of the two definitions of “disability.” The first is the HUD definition used for purposes of eligibility as a disabled family, and the HUD allowances and deductions. The second is the ADA definition used for purposes of reasonable accommodation.

### **HUD DEFINITION OF A DISABLED PERSON**

*CFR 5.611*

- The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the elderly/disabled household deduction, the dependent allowance, the allowance for medical expenses, and/or the allowance for disability assistance expenses.

### **DEFINITION OF A DISABLED PERSON FOR PURPOSES OF REASONABLE ACCOMMODATION**

- The definition of a person with a disability for purposes of granting a reasonable accommodation request under either 504, FHAA or the ADA is much broader than the HUD definition of “disability.” The Fair Housing Act defines “handicap” as:
  - “a physical, mental or emotional impairment that substantially limits one or more of a person’s major life activities;
  - “has a record of such impairment; or
  - “is regarded as having such an impairment.”
- This definition is identical to the 504 definition at 29 U.S.C. section 706(8)(B) and the definition of a disabled person under the ADA.

Section 1.6: Nondiscrimination and Reasonable Accommodation

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- The physical or mental impairment can include practically any condition, disease, illness, disfigurement or disorder, as long as the impairment substantially limits one or more major life activities. Examples include:
  - Alcoholism
  - Cerebral palsy
  - Cancer
  - Mental illness
  - Emotional disorder
  - Former drug addiction
  - HIV infection
- Major life activities include, but are not limited to:
  - Caring for oneself
  - Performing tasks
  - Walking
  - Seeing
  - Hearing
  - Breathing
  - Learning
  - Working

Section 1.6: Nondiscrimination and Reasonable Accommodation

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- These federal civil rights laws were intended to cover a wide range of disabilities and do not require the severity of the HUD definition.
  - This broader definition is used for purposes of reasonable accommodation. This is because the laws were intended to ensure that a person with some limitation due to an impairment was not excluded from a program simply by virtue of that impairment so long as a reasonable shift in a program's rules or practices could allow them full access to the program.
- Qualifying as a person eligible to request an accommodation is the first step in the reasonable accommodation process. It is the establishment of the person's right to make a request of the program.
- However, the person must also show that they are limited by the program due to the nature of their disability.

### **LIMITATIONS SPECIFICALLY EXCLUDED FROM DISABILITY PROTECTION**

- The following three categories are specifically excluded from disability laws' protections:
  - Current drug users
  - People whose alcohol use interferes with the rights of others
  - A person with any disability that poses a direct threat or substantial risk of harm to others, that cannot be controlled with a reasonable accommodation under the public housing program
- In addition, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by civil rights and fair housing laws.

### **NON-DISABLED PEOPLE WHO ARE CONSIDERED DISABLED**

- This part of the definition of disability is used only to determine who is protected by civil rights laws.
- A person does not have to have a mental or physical impairment to be discriminated against under fair housing laws.
  - A person is "handicapped" if others regard or treat them as if they are
- If a staff member treats an applicant or tenant as though they had an impairment that substantially limits a major life activity, and because of that perception discriminates against that person, that person may file a discrimination claim under 504, whether or not they are actually disabled, and even though they are not qualified to receive an accommodation.

## **Section 1.7      Reasonable Accommodation Process**

- This section is an overview of the correct approach for a request for a reasonable accommodation.
- The best way to ensure consistent compliance with legal obligations to provide reasonable accommodation is to standardize the procedure for considering such requests. The process should be included in the Admissions and Continued Occupancy Policy, and should describe protocol and steps beginning with the original request for an accommodation and concluding with the resolution of the request.

### **PHA OBLIGATION TO NOTIFY**

- The PHA has an obligation to inform applicants and tenants of the right for any person with disabilities to request a reasonable accommodation. The PHA should review forms, letters, posters and signs for inclusion of this information.
- PHAs should consider adding the following to relevant application and occupancy documents:
  - “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 (name and phone number).”

- PHAs should create or adopt standardized forms that clearly and simply ask for all the information and verifications the PHA will use in considering the request. It is best to ask the same questions of everyone.
  - However, PHAs must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the PHA's preferred forms or procedures.
- The PHA should have written procedures that spell out:
  - The position in the PHA responsible for overseeing compliance with reasonable accommodation requirements
  - The manner in which the PHA will respond to the request
  - The decision-making process (including a determination of undue burdens or fundamental alterations)
  - The time periods for decision and implementation of the accommodation
  - The right of appeal for unfavorable decisions regarding an accommodation or a particular choice of accommodation
  - The procedure for handling confidential verification forms that may disclose private medical facts.

**APPLICANT OR TENANT MUST REQUEST A SPECIFIC ACCOMMODATION**

- An applicant's or tenant's request triggers the need for an accommodation.
- The PHA should never offer an accommodation until one has been specifically requested. Treating people differently because of a perceived disability is discrimination.

**THE REQUEST FOR AN ACCOMMODATION BEGINS A PROCESS**

- It's important to be aware that sometimes the need for an accommodation first presents itself in the form of a complaint (from or about the applicant or tenant), or through issues of noncompliance.
  - For example, if an applicant is denied admission, or if a tenant is facing lease termination, the need for some type of accommodation may be brought up. This is the signal for the PHA to begin the reasonable accommodation *process*.
- The reasonable accommodation process should be documented beginning with the initial request for an accommodation.
- The PHA's legal protection from a discrimination complaint or lawsuit lies in having *written* proof that consideration was given to the request.

## WHAT THE PHA CANNOT ASK

- The general rule is that the PHA **cannot** ask:
  - If a person has a disability (unless it is relevant to whether the applicant qualifies for the program or type of designated development);
  - The nature or extent of the disability;
  - Any question that would require the disabled person to waive or disclose a medical condition or history;
  - Whether any family member has a disability.
- It is always the right of a person with disabilities to not say anything about their disabilities.
  - However, the PHA does not have to provide any accommodation or special preference for that person.
- A public housing program cannot require that the tenant be able to live independently.
  - The PHA can only require that the family meet all its defined family obligations.

## WHAT THE PHA CAN ASK

- A PHA can ask only for information that is relevant.
  - If a person is applying for housing designated for individuals with disabilities or a certain type of disability, the PHA may ask if the applicant has a qualifying disability and for verification of that disability.
  - If the person is applying for the public housing program and is single, the PHA may ask if they qualify for a priority over other single applicants.
  - If the person is trying to qualify for allowances that reduce their rent on the basis of a disability (such as the \$400 allowance for elderly and disabled families, the allowance for unreimbursed medical expenses, or the disability assistance allowance), the PHA may ask the person to verify a disability (and disability-related expenses when relevant).
  - If the person requests an accommodation due to their particular disability, you may ask the person to verify they have a disability and the need for the requested accommodation.
  - If, during the denial of admission process, the person asserts the poor history was caused by their disability and that a reasonable accommodation would prevent future violations, or that mitigating circumstances should be taken into account, the family may be asked to verify that:
    - They have a disability
    - The poor history or violation was a result of their disability
    - There are mitigating circumstances related to the disability, and the problems causing the poor history have been reasonably resolved, or that the requested accommodation is reasonable and likely to cure the violation.

### **TREAT EACH CASE INDIVIDUALLY**

- The essential intent of federal anti-discrimination laws is that each case should be treated on its individual merits.
- The PHA's legal protection from a discrimination complaint or lawsuit lies in having written proof that *good-faith, individual consideration was given to that particular person.*

### **CONSIDER THE APPLICANT'S OR TENANT'S CHOICE OF ACCOMMODATION**

- Special consideration should be given to applicant's or tenant's choice of accommodation.
  - Accommodations are not reasonable if they impose undue administrative and financial burdens on the public housing program.
- The request for an accommodation begins a process. The process may include fluid negotiations on a case-by-case basis. What is reasonable in one situation may not be reasonable in another. The PHA may not be able to exactly meet the specific request, but may offer alternative options.

### **INFORMATION MUST BE ACCESSIBLE**

- Information must be provided in an accessible format, when requested. People must be informed of their right to ask for a reasonable accommodation.

## **CONSIDERATION OF REASONABLENESS OF REQUEST**

- A PHA can deny a request for reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation.
  - In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable, i.e., if it would impose an undue financial and administrative burden on the PHA or it would fundamentally alter the nature of the PHA's operations.
- The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as:
  - The overall size of the PHA's program with respect to the number of employees, type of facilities, and size of budget
  - The type of operation, including the composition and structure of workforce
  - The nature and cost of the requested accommodation
  - The availability of alternative accommodations that would effectively meet the requester's disability-related needs.
- When a PHA refuses a requested accommodation because it is not reasonable, the PHA should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the PHA's operations and without imposing an undue financial and administrative burden.
  - If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the PHA must grant it.

**REQUIREMENT TO KEEP INFORMATION CONFIDENTIAL**

- Under federal privacy laws, a PHA is required to keep confidential any personal information about an applicant or tenant obtained in a confidential manner or from a confidential source.
- An applicant or tenant may sign a consent form to allow the PHA to disclose information in their file, but staff should not talk to anyone about a particular applicant's or tenant's medical status without authorization from the applicant or tenant, preferably in writing.
  - For example, the individual may have a social worker or family member who will help with the annual reexamination and inspection.
- If a PHA receives a verification document that provides a person's diagnosis or details of treatment for a disability or medical condition, the PHA should dispose of it. The PHA should note in the file that a disability (in place of the specific disability information) and any other information requested has 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*

## **VERIFICATION**

- If a person voluntarily discloses a disability and requests an accommodation, a PHA can require third-party verification that accommodation being requested would remove a barrier that is due to the disability.
- The PHA should define what the PHA considers a valid third-party for verification of a disability.
  - Limiting verification to only physicians is not allowed. Depending on the information sought, a social worker, nurse, or other licensed professional might be competent to verify.
  - A suggested definition could be “a professional competent to render the opinion and knowledgeable about the person’s situation.”
- If a person’s disability is obvious or otherwise known to the PHA, and if the need for the requested accommodation is also readily known or apparent, then the PHA may not request any additional information about the requesters disability or the disability-related need for the accommodation.
- A PHA may require documentation of the manifestation of the disability that causes a need for a specific accommodation.
- It is inappropriate and unnecessary for a PHA to receive actual medical records.
  - A verification form should ask for only as much information about an applicant’s or tenant’s disability as is necessary to consider the qualification for a particular reason stated by the PHA.
- A PHA may ask the applicant or tenant for authorization to contact the third-party professional to ask clarifying questions that do not go beyond the specific and necessary information required to make a decision.

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Basic Program Information

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Section 1.7: Reasonable Accommodation Process

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**POP QUIZ**

Becky (age 36) states she is disabled and has submitted this document. Do we need to verify her disability?

Social Security Administration

**Retirement, Survivors, and Disability Insurance**

Notice of Award

Office of Central

Operations

1500 Main Street

Baltimore, Maryland 19191

Date: October 10, 2013

Claim Number: 111-11-1111 HA

Becky Walker

13619 North Blvd

Anytown, USA

You are entitled to a monthly disability benefit beginning April 2012.

**What We Will Pay and When**

You will receive \$941.00 for September 2013 around October 22, 2013.

You will receive \$941.00 for September 2013. After that you will receive \$943.00 on or about the fourth Wednesday of each month.

This and any future payments will go to the financial institution you selected. Please let us know if you change your mailing address, so we can send you letters directly.

### **PROCEDURES FOR VERIFICATION OF DISABILITY**

1. Review the application or recertification form to see if the person checked “yes” or “no” to the question about disability.
2. For participants: If they checked “yes,” check the EIV system to see if they receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Receipt of these benefits is verification that they are disabled. If EIV shows they receive SSI or SSDI, and the participant agrees with the information, then no verification of disability is needed.
3. For applicants: If they checked “yes,” since EIV is not available, require them to bring in an award letter from SSA dated within 60 days of the interview date. This can be obtained online at [www.SSA.gov](http://www.SSA.gov) or by calling (800) 772-1213. Once you receive the award letter showing SSI or SSDI with a dollar amount, no further verification is needed. **NOTE:** The Section of EIV that says disability “yes” or “no” is **not** verification of disability.
4. If they receive social security, verify that the benefit is a disability benefit and not a retirement or spousal benefit. Generally, anyone who receives social security on their record who is under 62 is receiving a disability benefit. On the award letter, pay attention to the codes adjacent to their social security number. These codes are sufficient to verify their disability.
5. If the person does not receive SSI or SSDI, or the specialist cannot verify social security benefits are for a disability, then send a verification of disability to a knowledgeable profession. Follow your verification procedures in your administrative plan if you do not receive a response from the knowledgeable professional within a reasonable time. **NOTE:** Your agency should develop two different forms of verification of disability. One should contain the reasonable accommodation definition of *disability* and one should contain the HUD definition of *disability*.

## Basic Program Information

## Section 1.7: Reasonable Accommodation Process

**MEANING OF THE LETTERS AFTER A SOCIAL SECURITY OR MEDICARE NUMBER**

CODE	IDENTIFICATION	CODE	IDENTIFICATION
A	Primary claimant (wage earner)	E5	Surviving divorced father
B	Aged wife, age 62 or over	F1	Parent (father)
B1	Aged husband, age 62 or over	F2	Parent (mother)
B2	Young wife, with a child in her care	F3	Stepfather
B3	Aged wife, age 62 or over, second claimant	F4	Stepmother
B5	Young wife, with a child in her care, second claimant	F5	Adopting father
B6	Divorced wife, age 62 or over	F6	Adopting mother
BY	Young husband, with a child in his care	HA	Disabled claimant (wage earner)
C1-C9	Child - Includes minor, student or disabled child	HB	Aged wife of disabled claimant, age 62 or over
D	Aged widow, age 60 or over	M	Uninsured – Premium health insurance benefits (Part A)
D1	Aged widower, age 60 or over	M1	Uninsured – Qualified for but refused health insurance benefits (Part A)
D2	Aged widow (second claimant)	T	Uninsured – Entitled to HIB (Part A) under deemed or renal provisions, or fully insured who have elected entitlement only to HIB
D3	Aged widower (second claimant)	TA	Medicare Qualified Government Employment (MQGE)
D6	Surviving divorced wife, age 60 or over	TB	MQGE aged spouse
E	Surviving mother	W	Disabled widow
E1	Surviving divorced mother	W1	Disabled widower
E4	Widowed father	W6	Disabled surviving divorced wife

## Section 1.8      **Reasonable Accommodation Functions**

### **PROGRAM AREAS**

- This section provides practical strategies for implementing the requirements in each function area of the public housing program.
- Per Notice 2002-01(HA), PHAs are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity as that afforded others to fully participate in the program and services of the PHA.
- The PHA should first modify the general program through a self-evaluation and transitional plan.
  - Per Notice PIH 2002-01(HA), all PHAs are encouraged to conduct needs assessments and self-evaluations at least yearly, working with people/residents with disabilities and local advocacy groups.
- Reasonable accommodation pertains to making reasonable adjustments in all functional areas of the public housing program:
  - Applications
  - Admissions
  - Determinations of eligibility
  - Inspections and repairs
  - Leasing
  - Modifications
  - Annual activities
  - Transfers
  - Termination of tenancy
  - Services

Section 1.8: Reasonable Accommodation Functions

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- Some examples in these functions may include:
  - Visiting an applicant in their home for an eligibility interview;
  - Conducting a home visit for an annual reexamination;
  - Not prohibiting an eligible disabled family from accepting a non-accessible unit for which the family is eligible which may become available before an accessible unit;
  - The PHA is required to modify such a non-accessible unit as needed, unless the modification would result in an undue financial and administrative burden.
  - Providing an extra bedroom for a live-in aide;
  - Providing an extra bedroom for special medical equipment;
  - Allowing mitigating factors to be presented in a lease termination grievance;
  - Physically altering a unit;
  - Providing accessible transportation so a tenant may participate in a PHA -sponsored self-sufficiency activity.
- Essential program requirements need not be waived. A reasonable accommodation allows a person with a disability to meet essential requirements of the lease, but it does not require reducing or waiving essential requirements to rules, policies, functions, or physical space.
  - For example, waiving the requirement to pay rent would be waiving an essential program requirement. Knocking out a wall in the public housing unit that would impair the unit's structural integrity is not reasonable.

Section 1.8: Reasonable Accommodation Functions

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- Reasonable accommodations are sometimes costly. Congress anticipated this additional financial commitment and made clear that they intended the federal programs to lay out resources where necessary to ensure equal access to persons with disabilities.
- In determining whether a particular accommodation is an undue financial burden, the public housing budget as a whole is considered.

## ACCESSIBILITY

- Notice PIH 2002-01(HA), issued on January 22, 2002, reiterates that PHAs are required to make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation for tenants or applicants with disabilities.
  - For example, a PHA may be required to:
    - install a ramp to allow a tenant in a wheelchair access to a dwelling unit; or
    - transfer a family to an available accessible unit or one that can be modified without causing an undue financial and administrative burden.
- Public housing offices and any other facilities used by the office in interaction with the public must be accessible to people with a full range of disabilities.
  - These facilities must be accessible, made so, or be relocated, subject only to the undue administrative and financial burden test.
- PIH 2002-01(HA) specifies accessibility standards for PHAs.

Section 1.8: Reasonable Accommodation Functions

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- Required accessible dwelling units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and be available in a sufficient range of sizes and amenities so that people with disabilities have choices of living arrangements comparable to that of other families.
- Per Notice 2002-01(HA), PHAs are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit, the common areas of a dwelling or participate in or access other activities conducted or sponsored by the PHA.
- All PHAs are *required* to send Notice PIH 2002-01(HA) to *all* owners (HCV) and to all contractors (public housing).
  - PHAs must send this entire Notice, now and in the future.
  - It's important for PHAs to put this requirement in their Procurement and Contract Management policy.
- If a PHA is out of compliance with 504 (accessibility), HUD can refuse to fund *any* other funding application, or can withhold other payments, even if it's not related to accessibility at all.

**Request for Reasonable Accommodation or Physical Modification**

*(THIS FORM IS AVAILABLE IN LARGER FONT OR ALTERNATIVE FORMAT UPON REQUEST)*

**PLEASE PRINT CLEARLY**

**Head of Household:** \_\_\_\_\_ **TDD/Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **State/Zip:** \_\_\_\_\_

**Currently, I am:**

- An applicant on the waiting list for**
  - Public Housing**
  - Other PHA-owned property**
- Currently living in Public Housing or other PHA-owned property**

**Household member who needs accommodation:** \_\_\_\_\_

*The household member above has a disability because they have a physical, mental, or emotional impairment that limits one or more major life activities or has a record of having such an impairment.*

**Please fill out all the following information regarding the individual who needs the accommodation(s). Please DO NOT submit medical records or tell us about the nature or severity of your disability.**

The purpose of an accommodation is to remove or relieve a barrier posed by the disability-related limitation. As a result of this disability, I am requesting the following reasonable accommodation(s) from the PHA for the disabled household member listed above.

Please answer the following questions.

## Section 1.8: Reasonable Accommodation Functions

**1.** The person with a disability is requesting a **service or support animal (assistance animal)**.

Please answer the questions below.

## 1.a. Is the animal a dog that is required because of a disability?

Yes. If "Yes", answer question 1.b. below.

No. If "No", skip to question #2.

## 1.b. Has the dog been trained to do work or tasks that assist or help you with the limitation(s) posed by your disability? Some examples include guiding an individual who is blind or has low vision, pulling a wheelchair, fetching items, or alerting persons to impending seizures or other medical crises.

Yes. (If readily apparent, skip question 1.c. If not readily apparent, go to question 1.c.)

No. If "No", go to question #2.

1.c. What work or tasks has the dog been trained to do? Note that the PHA is not asking for proof or certification of training. ***Do not provide medical information about the nature of your disability.***

**2.**  As a result of this disability, the household member needs a support animal. *Please note that verification may be required.*

**3.**  The household member **needs a live-in aide**. *A daily in-home worker or rotating shifts are not equally effective as a reasonable accommodation. Please note that verification may be required.*

**4.** As a result of this disability, the household member needs the following reasonable accommodation(s) from the PHA. Please check one or more boxes below.

Special unit features  Physical modifications to unit  Physical modifications to common areas

Transfer to another unit that meets my disability-related needs  Other \_\_\_\_\_

Extra bedroom for medical equipment. *Please note that, if necessary, a PHA inspector may view the equipment to confirm that all sleeping and living spaces are not adequate as an accommodation.*

If necessary, please explain what you need. ***Do not provide information about the nature of your disability.***

**5.**  The household member needs a change in a rule, policy or procedure. (Note that fundamental requirements must still be met). Please specify the necessary change.

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Basic Program Information

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Section 1.8: Reasonable Accommodation Functions

I understand that the information obtained by the PHA will be kept completely confidential and used solely to make a determination on my reasonable accommodation request.

Under the lease and the PHA's Admissions and Continued Occupancy Policy, the PHA requires that statements made and information provided by the tenant be true and accurate, to the best of the tenant's knowledge.

I certify by signing below that all the information provided above is true, accurate and complete to the best of my knowledge.

---

Signature

---

Date

**For PHA Use ONLY: PHA Certification**

- I certify that this individual's disability is obvious or otherwise known to the PHA and no further verification is required.
- I certify that this individual's need for the accommodation is readily apparent or known to the PHA and no further verification is required.

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Signature of PHA Official

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Date

---

Approval of PHA 504 Coordinator

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Date

---

Basic Program Information

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Section 1.8: Reasonable Accommodation Functions

**AUTHORIZATION**

I/we authorize the PHA to verify that the above-referenced household member has a disability and that the accommodation(s) requested is necessary in order to remove or alleviate barriers to housing. To verify this information, the housing authority may contact the below-named knowledgeable professional (health care professional if the request is for a support animal) who is knowledgeable about my situation. I understand the information the housing authority obtains will be kept completely confidential and used solely to evaluate the request.

This authorization is requested because third-party verification may be needed.

Name of Professional: \_\_\_\_\_

Field of Practice: \_\_\_\_\_ Agency/Clinic/Facility: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: (\_\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

**X**

Signature of household member needing the accommodation (only if 18 years  
of age or older)

\_\_\_\_\_ Date

**\*\* If the household member needing the accommodation(s) is under 18 years of age, are you  
the parent or guardian of household member needing the accommodation?  Yes  No**

**X**

Signature of head of household or authorized guardian \*\*

\_\_\_\_\_ Date

**Please return this form as promptly as possible so that the PHA can make a determination  
on this request.**

Property Manager/PHA Representative

\_\_\_\_\_ Date

Phone

\_\_\_\_\_ Email

## Section 1.9      **Violence Against Women Reauthorization Act (VAWA)**

- VAWA cites congressional findings that assert that women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.
  - These findings also note there is a strong link between domestic violence and homelessness.
- The general purpose of the law is to reduce domestic violence, dating violence, sexual assault, stalking, and human trafficking, and to prevent homelessness.
  - Although the VAWA 2022 statute does not specifically do so, HUD has recently begun including human trafficking as part of the list of victims protected under VAWA, as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24. In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, we have opted to include human trafficking in this text in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.
- The law protects victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who reside in public, assisted, and other types of housing and ensures that such victims have meaningful access to the criminal justice system without jeopardizing such housing.
  - To do so, VAWA amends the 1937 Housing Act. Title VI of VAWA affects the public housing and Housing Choice Voucher (HCV) programs by placing safeguards in the admissions and termination process, including provisions and procedures for certification, confidentiality and notification.
  - HUD encourages PHAs to read the law, inform residents about the requirements of VAWA, and update their PHA Plans accordingly.

*CFR 5.2005 & 5.2007*

## DEFINITIONS

CFR 5.2003

- *Bifurcate* – With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- *Domestic violence* – Includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
  - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
  - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
  - A person with whom the victim shares a child in common
  - A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction

- *Dating violence* – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- *Sexual assault* – Any nonconsensual sexual act proscribed by Federal, tribal, or state law, including when the victim lacks the capacity to consent.
- *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for the person's individual safety or the safety of others; or
  - Suffer substantial emotional distress.
- *Affiliated person* – The tenant's spouse, parent, sibling, or child; or any individual, tenant, or lawful occupant living in the tenant's household; or anyone for whom the tenant acts as parent/guardian of a victim of domestic violence, dating violence, sexual assault, or stalking.
- *Victim* – Any victim of VAWA violence/abuse, regardless of actual or perceived sexual orientation, gender identity, sex, or marital status.

CFR 5.2003

## PHA PLANS

- VAWA requires revisions to the PHA Plan.
- *CFR 903.6*
  - The 5-year plan is now required to include a statement of the goals, objectives, policies or programs that will enable the PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault stalking, or human trafficking.
- *CFR 903.7*
  - The annual plan must describe:
    - A statement of any activities, services, or programs that the PHA offers specifically to help victims of domestic violence, dating violence, sexual assault stalking, or human trafficking to obtain or maintain housing.
    - Any other activities, services, or programs that the PHA offers, either directly or in cooperation with other service providers, to such victims.
    - Any activities, services, or programs that the PHA offers to enhance victim safety in assisted families, and to prevent domestic violence, dating violence, sexual assault stalking, and human trafficking.
  - The law does not require PHAs to offer any activities, services, or programs. But it requires that if such activities, services, or programs are offered, they must be described in the annual plan.
    - Specific information required by VAWA has been integrated into the PHA Plan templates

- VAWA also calls for states and local communities to modify their consolidated plans to incorporate strategies for addressing the housing needs of such victims. Since HUD requires PHAs to ensure that their annual plans are consistent with the consolidated plan for their jurisdictions, PHAs should check to see if their jurisdiction's consolidated plan has addressed this subject before modifying the annual plan.

## **DENIAL OF ASSISTANCE**

*CFR 5.2005*

- VAWA prohibits PHAs from denying assistance to otherwise qualified applicants on the basis of or as a direct result of the fact that they are victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

*CFR 5.2011*

- The law further stipulates that any provision of any federal, state, or local law that provides greater protection to such victims takes precedence over VAWA.
- The congressional findings cited by VAWA state that because abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term permanent housing.
  - The findings also state that victims of domestic violence often return to abusive partners because they cannot find long-term housing.

- Unless the PHA informs all applicants of the special protections afforded by VAWA, the PHA may inadvertently deny assistance to an individual who appears to be unsuitable due to bad credit, poor landlord references, or a history of evictions or crime, but is in fact a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.
  - HUD's Public Housing Occupancy Guidebook encourages PHAs to ascertain whether domestic violence is a factor in an applicant's unfavorable rental and tenancy history, as well as past criminal activity.
  - Notice PIH 2017-08 states that the PHA is prohibited from denying assistance or admission, terminating participation, or evicting a tenant based on adverse factors, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.
  - Adverse factors refers to any factor that can be used as a basis for denying admission, terminating assistance, or evicting a tenant.

## TERMINATION

*CFR 5.2005*

- VAWA discusses the public housing program requirements for the protection of victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking from lease termination.

- An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be “other good cause” for terminating the tenancy or occupancy rights of the victim of such violence. This includes property damage and noise complaints due to abuse.
- Further, criminal activity directly relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of tenancy or occupancy rights, if the tenant or affiliated person of the tenant is a victim or threatened victim of that domestic violence, dating violence, sexual assault, stalking, or human trafficking.
- A PHA may *bifurcate* a lease in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant, and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking:
  - Regardless of whether the household member is a signatory of the lease
  - Without evicting or otherwise penalizing the victim of such criminal activity who is also a tenant or lawful occupant

CFR 5.2009(a)

Section 1.9: Violence Against Women Reauthorization Act (VAWA)

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- Lease bifurcations must be carried out in accordance with requirements and procedures prescribed by federal, state, and local law for termination of assistance or leases, and in accordance with program requirements.

*CFR 966.4(e)(9)*

- The public housing lease must include bifurcation language as well as VAWA definitions under Part 5, VAWA protections, information on documentation, and remedies available to victims.
- PHA policy should state how and under what circumstances bifurcation of the lease will be considered.
- Eviction or removal of the perpetrator may not be necessary in all instances. If the family requests that the PHA give the perpetrator the chance to seek counseling or other treatment the PHA could give the same consideration they would in any other case not involving domestic violence.
- In lease bifurcations for mixed families where the eligible individual is the perpetrator, the PHA must provide any remaining tenant or tenants that were not already eligible a period of 30 calendar days from the date of bifurcation of the lease to establish eligibility in the same or another housing program or find alternative housing. The 90-day time period established in the VAWA Final Rule does not apply to HCV or public housing.

*Notice PIH 2017-08*

- PHAs are encouraged to undertake any permissible and feasible actions under the program to assist individuals that are victims to remain in their units or other units under the same or other program, and to bear the costs of any transfer, if permissible.

*CFR 5.2009(c)*

*CFR 5.2009(b)*

- The law does not limit the authority of the PHA, when notified of a court order to comply with respect to the rights of access or control of property to protect a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking; or the distribution or possession of property among members of a household.
- In the process of terminating the lease for other reasons, PHAs cannot subject a person who is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking to a more stringent or demanding standard than other persons.

*FR Notice 1/4/23*

- PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA.

*CFR 5.2005(d)(3)*

- The law does not limit the PHA's authority to terminate tenancy when there is an actual and imminent threat to other tenants, employees or others providing services to the property.
  - Notice PIH 2017-08 provides several considerations for reducing "actual and imminent" threats.

*CFR 5.2005(d)(4)*

- Any eviction or termination of assistance should only occur when there are no other actions that could be taken to reduce or eliminate the actual and imminent threat, such as transferring the victim to another unit, barring the perpetrator from the property, etc.

*CFR 5.2011*

- As with denial of admission, this law does not supersede any other federal, state, or local law that provides greater protection to such victims.

## NOTIFICATION AND CERTIFICATION

*CFR 5.2005(a)*

- PHAs and owners are required to provide the Notice of Occupancy Rights (HUD-5380) and certification form (HUD-5382) at the time the individual is provided assistance or admission, along with any notice of denial or eviction.
  - The Notice of Occupancy Rights is the official HUD informing notice.
  - The notice must be made available in multiple languages per limited English proficiency (LEP) requirements.
- PHAs are not required to demand official documentation or physical proof of domestic violence, dating violence, sexual assault, stalking, or human trafficking before granting an alleged victim any of the special protections afforded by VAWA.
- The PHA may accept the individual's statement alone.

*Notice PIH 2017-08*

- HUD recommends documenting in a confidential manner when a verbal statement or other evidence is accepted.

*Notice PIH 2017-08*

- If the PHA chooses to request an individual document their status as a victim, the PHA must make such a request in writing. Simply providing the victim with the form HUD-5382 does not constitute a written request for documentation.

Section 1.9: Violence Against Women Reauthorization Act (VAWA)

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- If the PHA requests documentation, the applicant or participant may submit one of the following:
  - A signed HUD-5382
  - A document signed by a “professional” and the applicant or participant that specifies that the professional believes that the occurrence is grounds for VAWA protections
    - A “professional” can be an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional.
  - Federal, state, tribal, territorial, or police or court records
  - A statement or other evidence provided by the individual, at the PHA’s discretion
- Form HUD-5382 may also be filled out and submitted on behalf of a victim.
  - Notice PIH 2017-08 encourages PHAs and owners to advise applicants, tenants, and participants that forms submitted on their behalf will take the place of the victim’s own statement.
- Individuals requesting protection cannot be required to provide additional third-party documentation, although the PHA may require third-party documentation if more than one applicant or tenant provides documentation (e.g., two household members each claiming to be the victim and the other the perpetrator) or the submitted documentation contains information that conflicts with existing information already available to the PHA.
  - In such cases, the applicant has 30 calendar days from the date of the PHA’s request to submit third-party documentation.

- Notice PIH 2017-08 provides several clarifications and considerations with respect to requesting third-party documentation in cases where information conflicts.

*Notice PIH 2017-08*

- In addition, PHAs and owners may not conduct further “fact finding” to verify the validity of victim status, although if the PHA or owner already has or receives reliable conflicting information, they may require additional third-party documentation, as noted above.
- Form HUD-5382 states that victims are not expected and cannot be asked or required to claim, document, or prove victim status or VAWA violence or abuse other than as stated in the Notice of Occupancy Rights, Form HUD-5380.

### **FORM HUD-5382**

- Form HUD-5382 is the Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking.
- The current version makes clear that:
  - Victims of sexual assault are protected by VAWA as well as victims of domestic violence, dating violence, and stalking.
  - The form applies not only to family members but also to affiliated persons of tenant, participant, and applicant families.
    - *Affiliated person* is defined in form HUD-5380.
    - Notice PIH 2017-08 clarifies that guests, unassisted members, and live-in aides are ineligible for VAWA protections, however, as a reasonable accommodation, a tenant or participant can request VAWA protections if a live-in aide is a victim or other reasonable accommodations on a case-by-case basis.

- The form, transmitted as form HUD-5382, includes a space for “your name (if different from the victim’s).”
- The form specifically states that whenever a victim asks for or about VAWA protections, any information provided will be kept confidential.
- HUD’s form leaves space for the family to provide the name of the perpetrator, if known and can be safely disclosed.
- The form contains space for the victim to specify the safest contact method as to not place the victim at risk (the abuser may monitor the mail, email, or phone).
- The PHA must give the individual at least 14 business days to respond to their written request for documentation.
- The PHA may extend the 14-day deadline at its discretion.
- The VAWA certification requirements do not supersede any provision of any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

## CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

**Confidentiality Note:** Any personal information you share in this form will be maintained by your covered housing provider according to the confidentiality provisions below.

**Purpose of Form:** If you are a tenant of or applicant for housing assisted under a covered housing program, or if you are applying for or receiving transitional housing or rental assistance under a covered housing program, and ask for protection under the Violence Against Women Act ("VAWA"), you may use this form to comply with a covered housing provider's request for written documentation of your status as a "victim". This form is accompanied by a "Notice of Occupancy Rights Under the Violence Against Women Act," Form HUD-5380.

**VAWA protects individuals and families regardless of a victim's age or actual or perceived sexual orientation, gender identity, sex, or marital status.**

You are not expected **and cannot be asked or required** to claim, document, or prove victim status or VAWA violence/abuse other than as stated in "Notice of Occupancy Rights Under the Violence Against Women Act," Form HUD-5380.

This form is **one of your available options** for responding to a covered housing provider's written request for documentation of victim status or the incident(s) of VAWA violence/abuse. If you choose, you may submit one of the types of third-party documentation described in Form HUD-5380, in the section titled, "What do I need to document that I am a victim?". Your covered housing provider must give you at least 14 business days (weekends and holidays do not count) to respond to their written request for this documentation.

**Will my information be kept confidential?** Whenever you ask for or about VAWA protections, your covered housing provider must keep any information you provide about the VAWA violence/abuse or the fact you (or a household member) are a victim, including the information on this form, strictly confidential. This information should be securely and separately kept from your other tenant files. This information can only be accessed by an employee/agent of your covered housing provider if (1) access is required for a specific reason, (2) your covered housing provider explicitly authorizes that person's access for that reason, **and** (3) the authorization complies with applicable law. This information will not be given to anyone else or put in a database shared with anyone else, unless your covered housing provider (1) gets your written permission to do so for a limited time, (2) is required to do so as part of an eviction or termination hearing, **or** (3) is required to do so by law.

In addition, your covered housing provider must keep your address strictly confidential to ensure that it is not disclosed to a person who committed or threatened to commit VAWA violence/abuse against you (or a household member).

**What if I require this information in a language other than English?** To read this in Spanish or another language, please contact [\[ \]](#); FOR  
HOPWA PROVIDERS –

. You can read translated VAWA forms at

[https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud5a#4](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4). If you speak or read in a language other than English, your covered housing provider must give you language assistance regarding your VAWA protections (for example, oral interpretation and/or written translation).

**Can I request a reasonable accommodation?** If you have a disability, your covered housing provider must provide reasonable accommodations to rules, policies, practices, or services that may be necessary to allow you to equally benefit from VAWA protections (for example, giving you more time to submit documents or assistance with filling out forms). You may request a reasonable accommodation at any time, even for the first time during an eviction. If a provider is denying a specific reasonable accommodation because it is not reasonable, your

covered housing provider must first engage in the interactive process with you to identify possible alternative accommodations. Your covered housing provider must also ensure effective communication with individuals with disabilities.

**Need further help?** For additional information on VAWA and to find help in your area, visit <https://www.hud.gov/vawa>. To speak with a housing advocate, contact

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,  
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

**1. Name(s) of victim(s):** \_\_\_\_\_

**2. Your name (if different from victim's):** \_\_\_\_\_

**3. Name(s) of other member(s) of the household:** \_\_\_\_\_  
\_\_\_\_\_

**4. Name of the perpetrator (if known and can be safely disclosed):** \_\_\_\_\_

**5. What is the safest and most secure way to contact you? (You may choose more than one.)**

If any contact information changes or is no longer a safe contact method, notify your covered housing provider.

Phone      Phone Number: \_\_\_\_\_

Safe to receive a voicemail:       Yes       No

E-mail      E-mail Address: \_\_\_\_\_

Safe to receive an email:       Yes       No

Mail      Mailing Address: \_\_\_\_\_

Safe to receive mail from your housing provider:       Yes       No

Other      Please List: \_\_\_\_\_

**6. Anything else your housing provider should know to safely communicate with you?**

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## **EMERGENCY TRANSFER PLAN**

- VAWA regulations require PHAs to establish an emergency transfer plan (ETP) as part of their administrative plan or ACOP.
  - The ETP must provide for immediate transfer to a safe unit if one is available, and the client would not have to apply for a different program.
  - The ETP must describe policies for emergency transfers of HCV participants, and the priority of VAWA transfers in relation to other transfers.
  - The ETP must also include policies for transfers when a safe unit is not immediately available, including whether the client would or would not have to apply for a different program.
  - Notice PIH 2017-08 also provides a detailed description of requirements for ETPs and other considerations when establishing ETPs, including examples.
- The ETP must be made available upon request or made publicly available.
- The ETP must state that victims of sexual assault qualify for emergency transfers if:
  - The tenant (or their household member) is a victim of VAWA violence/abuse;
  - The tenant expressly requests the emergency transfer; AND
  - EITHER
    - The tenant reasonably believes that there is a threat of imminent harm from further violence, including trauma, if they or (their household member) stays in the same dwelling unit; OR

- If the tenant (or their household member) is a victim of sexual assault, either the tenant reasonably believes that there is a threat of imminent harm from further violence, including trauma, if the tenant (or their household member) were to stay in the unit, or the sexual assault occurred on the premises and the tenant requested an emergency transfer within 90 days (including holidays and weekend days) of when that assault occurred.

## **CONFIDENTIALITY**

- If a tenant inquires or requests any VAWA protections, or represents that they or a household member is a victim, all information provided to a PHA:
  - Must be retained in confidence
  - Must not be entered into a shared database or provided to any related entity, unless:
    - The individual consents or requests in writing
    - It is required for use in eviction proceedings, or
    - It is otherwise required by applicable law
- For safety and legal reasons surrounding liability to the PHA and harm to a victim, a PHA may want to consider having all VAWA situations handled by a single staff member to limit access and knowledge with regards to the certification process and details regarding the abusive situation.
  - Notice PIH 2017-08 offers guidance and best practices for proper communication with victims, specifically for avoiding inadvertent disclosure of information and ensuring the safety of the victim.

## OTHER INFORMATION

### **WAITING LIST PREFERENCES**

- With the signing of QHWRA (Quality Housing and Work Responsibility Act) into law in 1998, the regulations pertaining to waiting list preferences at 24 CFR 960.206(b)(4) now include: “Preference for victims of domestic violence. The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.”
  - Since Congress had written this into QHWRA, it is a statutory reference
  - VAWA does not require such a preference although Notice PIH 2017-08 provides guidance for establishing such preferences should the PHA wish to do so.

## **BASIC PROGRAM INFORMATION QUIZ**

### **I. Match the following terms with their definitions:**

1. Annual Contributions Contract (ACC) \_\_\_\_\_
2. Admissions and Continued Occupancy Policy (ACOP) \_\_\_\_\_
3. 5-Year Plan \_\_\_\_\_
4. The lease \_\_\_\_\_

- a. The contract between the PHA and the public housing resident family
- b. Includes the PHA's mission and goals and objectives for serving families in their jurisdiction
- c. The written contract between HUD and the PHA under which HUD agrees to provide funding for the program, and the PHA agrees to comply with HUD requirements
- d. A HUD-required written plan that establishes local PHA policies for administering the public housing program

### **II. Roles in Subsidized Housing**

1. Congress \_\_\_\_\_
2. Department of Housing and Urban Development (HUD) \_\_\_\_\_
3. Office of Public and Indian Housing (PIH) \_\_\_\_\_
4. State government \_\_\_\_\_

- a. Sets up PHAs under enabling legislation
- b. Department of HUD that administers and manages the public housing and HCV programs
- c. Allocates funds, develops regulations, contracts with PHAs, monitors PHA performance
- d. Passes authorizing legislation and appropriations bills

### **III. Fair Housing**

1. HUD definition of disability \_\_\_\_\_
2. ADA/504/FHA definition of disability \_\_\_\_\_

- a. Broader definition of disability for purposes of granting a reasonable accommodation request
- b. Narrower definition of a person with disabilities, used for purposes of receiving preferences and deductions

## CHAPTER 2      **Evaluating Eligibility**

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### **LEARNING OUTCOMES**

Upon completion of this chapter, you should be able to:

- Recognize all of the factors of eligibility and how they affect families
- Discuss waiting list management as it applies to application taking and processing, preferences, and removal from the waiting list
- Identify the different family types defined by HUD
- Explain the requirements for disclosure and documentation of social security numbers and the requirements for verification
- Categorize the different types of citizenship status and family types of applicants as well as the resulting types of families and identify how citizenship status affects eligibility and rent
- Use income limit data and describe how those limits play a role in the eligibility process
- Discuss the final eligibility determination stage with an emphasis on the screening and eviction rule

## FACTORS OF ELIGIBILITY

*CFR 960.201*

- An applicant must meet all eligibility requirements in order to receive housing assistance. HUD eligibility factors are:

- The applicant must be a “family”
- The family must be income-eligible

*CFR 5.216(b) and 5.216(g)*

- Social Security numbers must be disclosed and documented for all household members, except noncontending persons.

*CFR 5.506*

- A family will not be considered eligible unless the PHA determines that at least one member of the family is a citizen or has eligible immigration status.

*CFR 960.203*

*CFR 960.204*

- Meeting the PHA’s standards for tenant selection criteria (suitability requirements), including the standards for criminal activity and/or drug abuse.

## Section 2.1 Waiting List Management

### INITIAL APPLICATION

#### APPLICANT STATUS

- An applicant does not have any “right” or entitlement:
  - To be listed on the waiting list
  - To any particular position on the waiting list
  - To be admitted to the program
- Applicants do have a right to bring a judicial action to challenge a PHA violation of a constitutional or statutory requirement.

#### INITIAL APPLICATION FOR ASSISTANCE

*HB 7465.1, para. 2-1(a)(2)*

- All potentially eligible persons who express a desire to participate in the program must be given an equal opportunity to apply for assistance whenever the waiting list is open.

*HB 7465.1,  
para. 1-3(a)(1) & (2)*

- The PHA is responsible for receiving and processing applications in a way which treats all applicants fairly and consistently.

*HB 7465.1, para. 2-1(a)(1)*

- For each applicant, there must be a written application form for placement on the waiting list and admission.

*HUD Guidance*

- HUD recommends that PHAs use a preapplication that collects only the information necessary to make a preliminary eligibility determination. A complete application is then taken just prior to the offer of a public housing unit.

Eligibility

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Section 2.1: Waiting List Management

*HUD Guidance*

- An exception to this procedure is if the waiting list for the applicable bedroom size is short (e.g., families could be selected within six months).
  - The PHA may then bypass the preapplication and take a full application. In addition, the PHA could opt to take full applications for all families, regardless of the wait, but this is time-consuming.

*Industry Practice*

- Applications may be taken by the PHA using any of the following methods:
  - On an ongoing basis
  - At specific hours of the day or days of the week
  - At regularly scheduled intervals (for example, quarterly)
  - For specific bedroom sizes (only when the waiting list does not provide enough applicants to meet the PHA's needs)
  - For a specific time period (for example, two weeks) when the PHA requires additional applicants to meet the PHA's needs

*Industry Practice*

- Applications may be received by mail, e-mail, phone, fax, in person, at the PHA's offices, and/or other methods and locations as determined by the PHA.

*Notice PIH 2012-22*

- Form HUD-92006, Supplement to Application for Federally Assisted Housing, must be provided to families "at the time of application." The form gives the family the option to provide contact information for a friend, family member, organization, or advocate that can assist in providing services or special care to the family, and in resolving any tenancy issues that may arise.
  - The family is not required to provide the information.
  - The PHA should give the family the opportunity to revise or remove contact information at admission, annual reexamination, or at any other time.

Eligibility

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Section 2.1: Waiting List Management

*HB 7465.1, para. 2-1(a)(2)*

- The PHA must accept an application even if an informal discussion reveals the applicant may not be eligible (unless the waiting list is closed).

*HB 7465.1, para. 2-1(b)(10)*

- Families should not be discouraged from applying or be rejected out of hand, based on “apparent ineligibility.”

*HUD Guidance*

- Preapplications are acceptable with formal eligibility determination delayed until the family nears the top of the waiting list.

*CFR 960.208*

- Applicants must be admitted, placed on the waiting list, or rejected.

**CRITERIA FOR WHO MAY APPLY**

- PHA may adopt criteria defining what families may apply under a public notice.
  - For example, the public notice might announce that the PHA is only accepting applications for 1-bedroom units from elderly/disabled families.
- May decide that applications will only be accepted from families who qualify for certain preferences, types of projects, or for certain sizes or types of dwelling units.

Eligibility

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Section 2.1: Waiting List Management

## OPENING AND CLOSING THE WAITING LIST

- The PHA should develop policies on how they plan to inform the public when they open, close or restrict the waiting list.
- PHA may stop accepting new applications when the waiting list is adequate to fill potentially available units within a PHA-determined period of time (e.g., 12 months).
- *Note:* Public Housing Guidebook references CFR section 982 regarding opening and closing the waiting list.
  - Section 982 is applicable to the Housing Choice Voucher program
  - Public housing regulations do not specify procedures for opening and closing the list

## PURGING THE WAITING LIST

*HB 7465.1, para. 2-3(2)*

- Purging of waiting list is up to PHA discretion.
- Waiting list should be sufficient to fill available openings.
- The Public Housing Occupancy Guidebook suggests the PHA should purge the waiting list at least annually.
- Suggestions:
  - Send update forms to advocacy organizations (social services, shelters, homeless providers)
  - Advertise update with instructions on obtaining update forms if not received by mail

Eligibility

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Section 2.1: Waiting List Management

## REMOVAL FROM WAITING LIST

CFR 960.204

- The PHA's ACOP must state criteria for removal from the waiting list; for example, failure to respond to requests for information or updates.

CFR 8.4

- Policy must not violate rights of disabled persons under regulations.
  - Applicants with disabilities who do not respond within stated time frames should be reinstated IF they did not respond due to a *verified reason connected to a disability* and have requested reinstatement.

CFR 8.11

- Must provide reasonable accommodation, such as home visits for those who cannot come to office.

CFR 8.11

- PHA is obligated to make application process available to applicants with a full range of disabilities.

HB 7465.1, para. 1-2(a)

- PHAs must document the reason any applicant's name was removed from the waiting list.

HB 7465.1, para. 2-3(b)(7)

- PHAs should not remove an applicant's name from the waiting list unless:
  - Applicant requests it,
  - Applicant was clearly advised of a requirement to notify the PHA of his/her continued interest by a particular time and failed to do so, or
  - PHA has made reasonable efforts to contact the applicant to determine if there is continued interest, but has been unsuccessful, or
  - PHA has notified the applicant of its intention to remove the applicant's name because of ineligibility

Eligibility

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Section 2.1: Waiting List Management

- The Public Housing Occupancy Guidebook distinguishes between “withdrawing” and “rejecting” applications
- Withdrawing applications:
  - Applicant request
  - No response to purge letter (includes mail returned)
  - No response to PHA request for interview or additional information
    - Give deadline to reschedule
  - No informal hearing rights
- Rejecting applications
  - Denials due to ineligibility or screening
  - Must give written notice
  - Has right to informal hearing

Eligibility

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Section 2.1: Waiting List Management

## ORGANIZING WAITING LISTS

### GENERAL REQUIREMENTS

*CFR 1.4(b)(2)(ii)  
HB 7465.1, para. 5-6(a)(1)*

- PHAs must organize the waiting list(s) to assure that applicant selection takes place according to Program requirements and PHA policy.
- The waiting list must be organized to indicate the following:
  - Family name
  - Family type (elderly, family member(s) with disabilities)
  - Date and time of application receipt
  - Unit size
  - Any admission preferences for which the family may be eligible
  - Whether special unit is needed
  - Racial and ethnic designation of Head of Household
- PHAs may adopt a single community wide waiting list or, if the PHA qualifies and elects to do so in its annual plan, a site-based waiting list system.
- The waiting list must contain enough information to allow selection from the waiting list according to the PHA's Admissions and Continued Occupancy (ACO) Policy.
- Any system the PHA uses to maintain its waiting list must document how and when applicants are selected, in a way that allows for a clear, easy-to-understand HUD management review.

*CFR 960.201(c)*

Eligibility

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Section 2.1: Waiting List Management

*HUD Guidance*

- The waiting list is the beginning of a “paper trail” and must enable a reviewer to immediately determine the selection process to compare with the PHA’s policies.

*HB 7465.1, para. 5-7(a)(1)*

- PHAs must organize their waiting lists in a manner which easily permits them to identify which applicants need which type of project, size and type of unit, and the priority each applicant has for admission based on the preferences and date and time.
- Several sublists (or lists within lists) may be created in order to more easily identify who should be offered an available unit.
  - For example, elderly and disabled families for “mixed population” developments (formerly referred to as “elderly-designated” developments).

**CROSS-LISTING**

*CFR 982.205(b)(2)(i)*

- Applicants must have an opportunity to apply and be considered for the PHA’s housing choice voucher waiting list if it is open to new applicants.

*CFR 982.205(a)(2)(i)*

- If the tenant-based waiting list is open when a family is placed on the public housing waiting list:
  - The PHA must offer to place the family on its tenant-based waiting list.

*CFR 982.205(a)(2)(ii)*

- And if the public housing waiting list is open when a family is placed on the tenant-based waiting list:
  - The PHA must offer to place the family on the public housing waiting list.

Eligibility

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Section 2.1: Waiting List Management

**SITE-BASED WAITING LISTS**

*Federal Register Site-based Waiting List notice, 1/7/97 and CFR 903.7(b)(2)*

- Upon approval by HUD, PHAs may adopt and implement site-based waiting lists.
  - PHA submits application to HUD before submission of PHA Plan, or
  - Includes in PHA Agency Plan
  - Must determine if this is a significant amendment to the PHA Plan
- Purpose of site-based waiting lists:
  - Promote deconcentration of poverty; and
  - Assure that applicants can make informed choices
- PHAs must provide applicants full information regarding any options available with respect to the selection of developments in which to reside.
- Under site-based waiting list systems, applicants may apply directly at the site or designate the project or projects in which they seek to reside.
- PHAs must disclose an estimate of the time period the applicant would likely have to wait to be admitted to each site based on unit differences such as size and accessibility.
- The PHA system for selection from site-based waiting lists must be consistent with all applicable civil rights and fair housing laws and regulations.
- The adoption of site-based waiting lists may not be in conflict with any imposed or pending court order, settlement agreement or complaint brought by HUD.

*CFR 903.7(b)(2)(ii)*

*CFR 903.7(b)(2)*

*CFR 903.7(b)(2)(iii)*

Eligibility

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Section 2.1: Waiting List Management

*CFR 903.7(b)(2)(v)(A)*

- The PHA shall assess any changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based on confirmed and accurate PIC occupancy data.
- At least every three years, PHA must use independent testers to assure that the site-based system is not being implemented in a discriminatory manner.
- HUD will monitor implementations to ensure that racial steering does not occur.
- Admissions and Continued Occupancy Policy, Tenant Selection and Assignment Plan, must be revised and approved.
- When family is admitted, family is taken off other site-based waiting lists

**SPECIAL TARGETING WITHIN LISTS**

*HB 7465.1, para. 5-7(a)(1) & CFR 960.407(b)*

- In public housing, if a family requires an accessible unit, it should be noted so that when that type of unit becomes available, the next family with that need can be quickly located.

*HB 7465.1, para. 5-6(a)(4)*

- A PHA may have one waiting list for projects for the elderly and another for general occupancy, as long as an elderly family is permitted to be listed on either or both if unit size and type are appropriate.

## Section 2.2 Preferences

### ADMISSION PREFERENCES

#### CURRENT REGULATIONS GOVERNING PREFERENCES

*CFR 960.206(a)*

- A PHA may adopt a system of local preferences for selection of families admitted to the PHA's public housing program.
- Adoption and implementation of local preferences is subject to income targeting, deconcentration and income-mixing requirements.
- In public housing, the size and type of unit, and type of project, take precedence over selection preferences.
- Preferences are optional.

*HB 7465.1, para. 5-6*

- A preference overrides date and time of application. The more preferences a PHA has, the less impact date and time will have.

*HUD Guidance*

- Preferences affect only the order of applicants on a PHA's waiting list.
  - They do not make anyone eligible who was not otherwise eligible.

- A PHA's selection preferences must be described in its PHA Plan and ACOP.

*HUD Guidance*

- A PHA should clearly define any preferences that it adopts.

- The definitions should be simple enough so that:

- Families claiming preferences clearly understand what they are claiming
  - Preferences can be easily verified

Eligibility

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Section 2.2: Preferences

*CFR 960.206(a)(4)*

- A PHA must inform all applicants about available preferences and provide them with an opportunity to show that they qualify for available preferences.

*CFR 960.206(a)(3)*

- A PHA may limit the number of applicants that may qualify for any local preference.
- A PHA must inform applicants of the right to change preference status while on the waiting list.

*CFR 960.206(e)(1)*

- A PHA must use either of the following to select among applicants with the same priority for admission:
  - Date and time of application
  - A drawing or other random choice technique

*CFR 960.206(e)(2)*

- The method for selecting applicants must leave a clear audit trail to verify each applicant has been selected in accordance with the method specified in the PHA Plan.

## LOCAL PREFERENCES IN CURRENT REGULATIONS

### RESIDENCY PREFERENCE

*CFR 960.206(b)(4)(i)*

- Residency requirements are prohibited, but residency preferences are allowed.

*CFR 960.206(b)(1)(ii)*

- A residency preference is a preference for admission of persons who reside in a specified geographic area.
  - The specified geographic area may be a county or municipality, but it may not be smaller than the PHA's jurisdiction.

*CFR 960.206(b)(1)(i)*

- A PHA may adopt or implement a residency preference only in accordance with nondiscrimination and equal opportunity requirements listed at 24 CFR 5.105(a).

*HUD Guidance*

- Residency preferences no longer require HUD approval, but they are subject to HUD audit and review for compliance with nondiscrimination and equal opportunity requirements.

Eligibility

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Section 2.2: Preferences

*CFR 960.206(b)(1)(iii)*

- Any residency preference that a PHA adopts must be included in the statement of policies governing eligibility, selection, and admission in the PHA's annual plan.
  - The policies must specify that the residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

*CFR 960.206(b)(1)(iv)*

- A residency preference must not be based on how long an applicant has lived or worked in the preference area.

*CFR 960.206(b)(1)(v)*

- Applicants who work or have been hired to work in a residency preference area must be treated as residents of the preference area.
  - Graduates of or active participants in education and training programs in a residency preference area may be treated as residents of the area if the programs are designed to prepare individuals for the job market.

**PREFERENCE FOR WORKING FAMILIES**

*CFR 960.206(b)(2)*

- A PHA may adopt a preference for working families.
  - A working family is one whose head, spouse, or sole member is employed.
    - A PHA must decide whether this includes a family in training.

*HUD Guidance*

*CFR 960.206(b)(2)*

- If a PHA adopts a preference for working families, it must extend the benefit of the preference to families whose head and spouse, or sole member, is age 62 or older or is a person with disabilities.
- A working family preference cannot be based on the amount of earned income.

*Admissions/Occupancy Final Rule, FR 3/29/00 (preamble)*

Eligibility

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Section 2.2: Preferences

**PREFERENCE FOR VICTIMS OF DOMESTIC VIOLENCE**

*QHWRA Notice, FR 2/18/99  
CFR 960.206(b)(4)*

- HUD urges PHAs to consider adopting a preference for admission of families that include a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.
  - Although the VAWA 2022 statute does not specifically do so, HUD has recently begun including human trafficking as part of the list of victims protected under VAWA, as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24. In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, we have opted to include human trafficking in this text in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.
- In defining this preference, a PHA may wish to consider the following guidelines in line with the old federal preferences:
  - An applicant may qualify for a preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking if the applicant:
    - Vacated a unit because of such violence
    - Lives in a unit with a person who engages in such violence
  - An applicant who qualifies for the preference should certify that the person who engaged in the violence will not reside with the applicant family unless the PHA gives advance written approval.
    - If the family is admitted, the PHA may deny or terminate assistance for breach of the agreement.
  - Public Housing Occupancy Guidebook suggests this preference may be part of a broader preference for families displaced by natural disaster, government action or domestic violence.

Eligibility

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Section 2.2: Preferences

**SINGLES PREFERENCE**

*CFR 960.206(5)*

- A PHA may adopt a preference for single persons who are elderly, displaced, homeless, or disabled over other single persons.
  - If no singles preference is adopted, singles will have equal preference status with everyone else.

**PREFERENCE FOR PERSON WITH DISABILITIES**

*CFR 960.206(3)*

- A PHA may adopt a preference for admission of families that include a person with disabilities.

*CFR 960.407*

**PREFERENCE FOR MIXED POPULATION DEVELOPMENTS**

*HUD Guidance*

- The PHA must give equal preference to elderly families and disabled families in priority for admission to mixed population developments.
- Mixed projects can include a family with children; for example, an elderly person with a minor, or a disabled person and a minor.
- PHAs may not exclude elderly or disabled families with children from projects for the elderly/disabled having units of the appropriate size.
  - If an appropriate size unit exists in both a general occupancy project and a project for the elderly/disabled, the family may be assigned to the general occupancy project.
  - If children will be included in an elderly population, the PHA should consider an orientation program for both groups to help overcome apprehension.

Eligibility

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Section 2.2: Preferences

*CFR 960.407*

- The PHA must not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in mixed population developments.
- In offering available units to elderly families and disabled families, the PHA should first offer units with accessible features to families that include persons with disabilities who require the accessibility features of the unit.

**NEAR-ELDERLY PREFERENCE FOR PUBLIC HOUSING**

*HUD Guidance*

- The PHA may give a preference for “near-elderly” families over “displaced” or “other singles” in a mixed population development.
- The PHA may give a “near-elderly” preference over “displaced” and “other singles” in projects designated for elderly.

- A near-elderly preference is generally given when there are not enough elderly and disabled to fill mixed population developments or not enough elderly to fill designated elderly developments.

*HUD Guidance*

- The PHA must conduct outreach to attract elderly families before adopting this discretionary preference.
- The PHA may admit eligible near-elderly families if there are elderly families on the waiting list but none of them is interested in moving into the project that has the vacancy.

Eligibility

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Section 2.2: Preferences

**PREFERENCE FOR NON-PUBLIC HOUSING OVER-INCOME FAMILIES**

*24 CFR 960.206(b)(6)*

- The PHA may give a preference for admission of non-public housing over-income families who are paying the alternative non-public housing rent and are on a NPHOI lease who become income-eligible and are eligible for admission to the public housing program.
  - These are former public housing families who still reside in the development but are paying the non-public housing rent and are on an NPHOI lease due to having been over-income for 24 consecutive months.

**HCV/PBV PREFERENCE**

- Tenants living in HCV or PBV units that are relocated due to an HQS deficiency must be given a selection preference by the PHA for public housing, where applicable, if the family is unable to lease a new unit within the period provided by the PHA under paragraph 24 CFR 982.404(e)(1) and the PHA owns or operates public housing.
- The PHA must offer, and, if accepted, provide the family a selection preference for an appropriate size public housing unit that first becomes available for occupancy after the time period expires

Eligibility

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Section 2.2: Preferences

## OTHER LOCAL PREFERENCES

- PHAs are not restricted from adopting other local preferences than those described in the regulations.
- PHAs could also adopt as local preferences any or all of the former federal preferences.
  - PHAs could use the definitions and criteria which were part of the former federal preferences, or
  - They could establish their own criteria for meeting the qualifications for the preferences
- For those interested PHAs, the former federal preferences are described below.

## DISPLACEMENT PREFERENCE

- Applicants qualify for an involuntary displacement preference under either of the following conditions:
  - They have been involuntarily displaced and are *not* living in standard permanent replacement housing.
    - *Standard permanent replacement housing* is decent, safe, sanitary housing of adequate size occupied by a family under a lease or occupancy agreement.
    - Standard permanent replacement housing does not include transient facilities, such as motels, hotels, or temporary shelters for homeless families or victims of domestic violence.
  - They will be involuntarily displaced within a time frame established by the PHA from the date of preference status certification.

Eligibility

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Section 2.2: Preferences

- Applicants may be considered involuntarily displaced if they have vacated or must vacate their unit for any of the following reasons:
  - Disaster (e.g., flood, fire, earthquake)
  - Governmental action (e.g., code enforcement, neighborhood redevelopment)
  - Housing owner action
    - The applicant must be unable to prevent the action (e.g., the unit is being sold, converted into a condo, or closed for rehab; the owner is taking the unit off the rental market as a result of a legally authorized act; the owner wants the unit for personal or family use).
    - The action may not be a rent increase.
    - The applicant must have met all previously imposed occupancy conditions.
  - Avoidance of reprisal
    - The applicant family was involuntarily displaced because a member provided information on criminal activities to a law enforcement agency.
    - The PHA may establish appropriate safeguards to conceal the identity of families requiring such protection.
  - Hate crimes
    - The applicant family must have vacated a unit because a member was the victim of one or more hate crimes.
    - *Hate crime* means actual or threatened physical violence or intimidation that is directed against a person or his or her property and is based on a person's race, color, religion, sex, national origin, disability, or familial status.
    - The hate crimes should have occurred recently or be of a continuing nature.

Eligibility

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Section 2.2: Preferences

- Unit inaccessibility

- A member of the applicant family must have a mobility or other impairment that makes the person unable to use critical elements of the unit.
- The owner must *not* be legally obligated to make changes to the unit.

**SUBSTANDARD HOUSING PREFERENCE**

- A PHA may adopt an admission preference for families living in substandard housing.
- Housing may be considered substandard if it meets any of the following criteria:
  - The housing is dilapidated by either of these standards:
    - It does not provide safe and adequate shelter and endangers the health, safety, or well-being of the resident family.
    - It has one or more critical defects or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding, whether the defects involve original construction or are a result of continued neglect or lack of repair from serious damage to the structure.

Eligibility

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Section 2.2: Preferences

- The housing has one or more of the following deficiencies:
  - No operable indoor plumbing
  - No usable flush toilet inside the unit for the exclusive use of the family
  - No usable bathtub or shower inside the unit for the exclusive use of the family
  - No electricity or inadequate or unsafe electrical service
  - No safe or adequate source of heat (see Notice PIH 2018-19 for the requirements for minimum heating standards in public housing units)
  - No kitchen if the unit should have one
- The housing has been declared by a government official to be unfit for habitation.
- Homeless families are considered to be living in substandard housing.
- A *homeless individual or family* is one who lacks a fixed, regular, and adequate nighttime residence and has a primary nighttime residence that is:
  - A supervised public or privately operated shelter designated to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill)
  - An institution that provides temporary residence for individuals intended to be institutionalized
  - A public or private place not designed for or ordinarily used as a regular sleeping accommodation for humans

Eligibility

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Section 2.2: Preferences

*FR Notice 1/4/22*

- Any individual or family who is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of the children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing are also considered homeless under this definition.

**RENT BURDEN PREFERENCE**

- The PHA may provide a preference to an applicant family that is paying a disproportionate amount of its monthly income toward rent.
  - For example, the PHA may offer a preference to applicants who are paying more than 50% of their monthly income towards rent and utilities.
- Rent is the actual monthly amount due under a lease or occupancy agreement between a family and current landlord plus utilities not included in rent (purchased by family).

**PREFERENCE PROHIBITIONS**

- A PHA may not adopt a preference for admission of:
  - Persons with a specific disability
  - Families who agree to participate in the family self-sufficiency program
- A PHA may not give elderly a preference over families with children in general occupancy units.

*CFR 960.206(3)*

*HUD Guidance*

*PH Handbook 7465.1,  
Chapter 5*

## USING PREFERENCES TO SELECT APPLICANTS

### WEIGHING PREFERENCES

*Industry Practice*

- A PHA must develop a system for applying local preferences in selecting applicants. The methods for applying preferences include:
  - Lumping—all applicants who qualify for any preference are treated equally
  - Aggregating—two preferences outweigh one, three outweigh two, etc.
  - Ranking—ordering by number (applicants who qualify for the first preference are assisted first, etc.)

### CERTIFICATION/VERIFICATION OF PREFERENCE

*HUD Guidance*

- At the time of initial application, applicants only need to certify that they are eligible for a preference; they do not have to verify their eligibility.
- Agency policy must describe preference verification procedures and requirements.

## NOTICE OF PREFERENCE DENIAL

- PHAs should document local preference denial and provide the family with a method of disputing the denial.
- When the PHA determines an applicant does not qualify for a local preference, the PHA should provide prompt, written notice of the determination.
- The notice should contain:
  - A brief statement of reasons for the determination, and
  - Notice that the applicant has a right to meet with a PHA representative to review the determination.

Eligibility

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Section 2.2: Preferences

- The PHA may decide which PHA representative will meet with the family to discuss the denial of preference.
- Applicants may exercise other rights if they believe they have been discriminated against.
- *Note:* The Public Housing Occupancy Guidebook states that the PHA “must” offer an informal meeting to an applicant who does not qualify for preference
  - References CFR 5.410(g)
    - This section does not exist
  - No regulatory requirement for this
    - Done by most PHAs

## Section 2.3 Family Type

### HOUSEHOLD

CFR 5.100

- HUD defines *household* as the family and the PHA-approved live-in aide.

### FAMILY

CFR 5.403

- HUD defines *elderly*, *disabled* and *displaced* families. *Family* includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:
  - A single person, who may be an elderly person, disabled person, near-elderly person, or any other single person
  - An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age who has left foster care or will leave foster care within 90 days, and is homeless or at risk of becoming homeless at age 16 or older; or
  - A group of persons residing together and such a group includes, but is not limited to:
    - A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family)
    - An elderly family
    - A near-elderly family
    - A disabled family
    - A displaced family
    - The remaining member of a tenant family
- The PHA determines in PHA policy what groups other than the HUD-defined groups constitute a family.

Eligibility

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Section 2.3: Family Type

*FR Notice 02/03/12*

- *Gender identity* – Actual or perceived gender characteristics.
- *Sexual orientation* – homosexuality, heterosexuality, or bisexuality.

## COHEAD

*50058 Instruction Booklet*

- A person equally responsible for the lease with the head of household.
- There can only be one cohead per household and a family cannot have both a spouse of head and cohead.
- The cohead can never be a dependent. If under 18 years of age, they must be declared an emancipated minor under the state law of the PHA's jurisdiction.

## ELDERLY FAMILY

*CFR 5.403, HUD-50058  
Instruction Booklet, and  
FR Notice 02/02/12*

- Use for purposes of preference and allowances/ deductions.
- An elderly family includes:
  - A family whose head, spouse, cohead or sole member is at least 62 years of age, or
  - Two or more persons at least 62 years of age living together, or
  - One or more persons at least 62 years of age living with one or more live-in aides.
- Nothing in the definition of *elderly family* excludes children.

Eligibility

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Section 2.3: Family Type

### **NEAR-ELDERLY FAMILY**

*CFR 5.403,  
FR Notice 02/03/12*

- A *near-elderly family* is defined as a family whose head, spouse, cohead, or sole member is:
  - At least 50 years old, but under 62 years of age
  - Two or more such persons living together
  - One or more such persons living with one or more live-in aides.

### **DISABLED FAMILY**

*CFR 5.403, HUD-50058  
Instruction Booklet, and  
FR Notice 02/02/12*

- A family whose head, spouse, cohead or sole member is a person with disabilities, or
- Two or more persons with disabilities living together, or
- One or more persons with disabilities living with one or more live-in aides.
- In any case, one of the people with disabilities must be the head or spouse.

Eligibility

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Section 2.3: Family Type

**HUD DEFINITION OF PERSONS WITH DISABILITIES**

*CFR 5.403*

- Note: See full *social security* and *developmental disability* definitions under “Legislative Reference” on the page following.
- The term *person with disabilities* is defined in Section 3(b) of the 1937 Housing Act (42 U.S.C. 1437a(b)).
- 42 U.S.C. 1437a(b) defines *person with disabilities* as a person who:
  - Has a disability as defined in 42 U.S.C. Section 423
  - Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)).
  - Has a physical, mental, or emotional impairment that:
    - Is expected to be of long-continued and indefinite duration,
    - Substantially impedes his or her ability to live independently, and
    - Is of such a nature that ability to live independently could be improved by more suitable housing conditions.
- Persons who have acquired immunodeficiency syndrome (AIDS) or any conditions arising from the AIDS virus are not excluded from this definition.
- Individuals are not considered disabled for eligibility purposes solely on the basis of any drug or alcohol dependence.
- Individuals whose alcoholism or drug addiction is a material factor to their disability are excluded from the definition.
- Individuals are considered disabled if the disabling mental and physical limitations would persist if the drug or alcohol abuse discontinued.

*42 U.S.C. 423(d)(2)(C) and  
42 U.S.C. 1437a(b)(3)(E)  
(the Housing Act as amended  
by the 1998 Public Housing  
Reform Act). See also FR  
7/23/99, One Strike Proposed  
Rule, preamble  
CFR 5.403*

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Eligibility

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Section 2.3: Family Type

**LEGISLATIVE REFERENCE**

1. 42 U.S.C. Section 423 (d)(1)(A) defines *disability* as:

“Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.”
2. The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)) defines *developmental disability* in functional terms as:

“A severe, chronic disability of a person 5 years of age or older which:

  - (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (B) is manifested before the person attains age twenty-two;
  - (C) is likely to continue indefinitely;
  - (D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
  - (E) reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”

## 6/2003: Public Housing Occupancy Guidebook

### Housing Authority

#### DISABILITY VERIFICATION FORM

Public Housing Authorities are required to verify the disability of applicants claiming to be disabled to determine the applicant's eligibility for the housing and to compute rent. The resident has signed a release form below giving you permission to supply us with this information. Please fill out the form below and return it at your earliest convenience.

Sincerely yours, \_\_\_\_\_

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The Department of Housing and Urban Development defines a disabled person in 3 ways:

- (1) A disabled person is one with an inability to engage in any substantial gainful activity because of any physical or mental impairment that is expected to result in death or has lasted or can be expected to last continuously for at least 12 months; or for a blind person at least 55 years old, inability because of blindness to engage in any substantial gainful activities comparable to those in which the person was previously engaged with some regularity and over a substantial period.
- (2) A developmentally disabled person is one with a severe chronic disability that:
  - (a) is attributable to a mental and/or physical impairment;
  - (b) as manifested before age 22;
  - (c) is likely to continue indefinitely;
  - (d) results in substantial functional limitations in three or more of the following areas: capacity for independent living, self-care, receptive and expressive language; learning, mobility, self-direction, and economic self-sufficiency AND
  - (e) requires special interdisciplinary or generic care treatment, or other services which are of extended or lifelong duration and are individually planned or coordinated.
- (3) A disabled person is also one who has a physical, emotional or mental impairment that:
  - (a) is expected to be of long-continued or indefinite duration;
  - (b) substantially impedes the person's ability to live independently;
  - (c) is such that the person's ability to live independently could be improved by more suitable housing conditions.

I, \_\_\_\_\_, hereby certify that \_\_\_\_\_ (person signing the release below should be considered disabled in accordance with definition number \_\_\_\_\_ above.)

Name and Title \_\_\_\_\_ Date \_\_\_\_\_  
Signature \_\_\_\_\_ Phone \_\_\_\_\_

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#### TENANT/APPLICANT RELEASE

I, \_\_\_\_\_, hereby authorize the release of the requested information.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Eligibility

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Section 2.3: Family Type

**CONTINUED QUALIFICATION AS FAMILY WITH DISABILITIES**

*HUD Guidance*

- A family must continue to qualify as a disabled family at reexamination in order to continue receiving any disability-related deductions.
- To qualify as a disabled family, the head and/or spouse must be a person with disabilities.
- After admission, a person with disabilities who “recovers” can remain in assisted housing, but is no longer considered a “person with disabilities,” and cannot qualify for deductions allowed family members with disabilities.

*Industry Practice*

**VERIFICATION OF DISABILITY**

*42 U.S.C. 1437a(b)(3)(E)*

- Verified by a knowledgeable professional source that the person meets this criteria, using the exact wording in the HUD definitions.
- Receipt of Social Security Disability or Supplemental Security Income is verification of disability. If such benefits are not received, the following can provide a basis for verification:
  - Letters regarding qualification for SSI payments
  - Proof of residence in an institution
  - Documents showing hospitalization for a disability
  - Letter from another knowledgeable professional, such as a health or service professional or a social worker
- PHA may not require a statement or verification from a physician when adequate verification is available from other sources.

Eligibility

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Section 2.3: Family Type

**HUD GUIDANCE ON REASONABLE ACCOMMODATION**

*CFR 8.11*

- HUD advises that if a PHA does not make accommodations for a person with disabilities, they are open to a discrimination suit based on 504 if the accommodation is not an undue financial or administrative burden and it would not fundamentally alter the basic nature of PHA responsibilities.
- Remember that the definition of “disabled” for purposes of reasonable accommodation is much broader than the HUD definition used for eligibility and allowances.

**DISPLACED FAMILY**

*CFR 5.403*

- A family in which each member, or sole member, is a person displaced by governmental action.
- A person whose dwelling has been extensively damaged or destroyed as the result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.

**SINGLE PERSONS**

*CFR 5.403*

- All single persons are eligible if they meet other eligibility criteria. A single-person family may be:
  - An elderly person (62 and over)
  - A displaced person
  - A disabled person
  - Any other single person who is not elderly, displaced or disabled, or the remaining member of a tenant family.

Eligibility

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Section 2.3: Family Type

*Industry Practice*

- If single person is pregnant:
  - No allowance for unborn child.
  - Income limit for one-person family is used.
- The PHA is not required to distinguish single pregnant women from any other group of singles.

**LIVE-IN AIDE**

*CFR 5.403*

*CFR 966.4(d)(3)*

- A person who resides with person(s) who are elderly and/or have a disability, and:
  - Is determined by the PHA to be essential to the care and well-being of the person(s).
  - Is not obligated for support of the person(s).
  - Who would not be living in the unit except to provide necessary supportive services.
- Relatives are not automatically excluded. The relative must meet the requirements stated above to qualify.
- Originally HUD anticipated that live-in aides would be single persons and that only one additional bedroom would be required.
- HUD now allows a live-in aide's family members to reside in the unit, provided the presence of the live-in aide's family does not overcrowd the unit.

*HUD Letter, Chicago Office,  
7/3/90*

Eligibility

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Section 2.3: Family Type

*HUD Guidance*

- In making decisions pertaining to the family members of live-in aides, a PHA cannot refuse to approve a particular live-in aide simply because they have children, since this would be familial status discrimination.
- At any time, the PHA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if the person:
  - Commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
  - Commits drug-related criminal activity or violent criminal activity
  - 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.

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Eligibility

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Section 2.3: Family Type

**LIVE-IN AIDE ADDENDUM TO LEASE**

Unit Number: \_\_\_\_\_

**STATEMENT OF LIVE-IN ATTENDANT**

I understand that I am living at \_\_\_\_\_  
and am enjoying the benefits of the public housing program solely because of my  
employment with \_\_\_\_\_.  
(Resident)

I agree to follow all terms in the Public Housing Lease, as well as the rules and  
regulations of the public housing program. It is also my responsibility to maintain the unit  
in a safe and sanitary manner.

I understand that I will be allowed to remain in the unit only as long as I am employed by  
the above-named person. If, under any circumstances, I am found to be in violation of  
the Lease Agreement and/or House Rules, my employer will terminate my services and  
require that I vacate the premises immediately.

I also understand that if my employer moves out of public housing, is evicted, abandons  
the unit, or dies, I am not entitled to any benefits or continued housing.

\_\_\_\_\_  
Live-in Attendant \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Resident \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_

\_\_\_\_\_  
Housing Authority Staff \_\_\_\_\_ Date \_\_\_\_\_

***NOTE: Social Security Card and picture I.D. must be provided***

Eligibility

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Section 2.3: Family Type

## FOSTER CHILDREN AND ADULTS

*CFR 5.603(b)*

*CFR 5.609(b)(4)*

*CFR 966.4(d)(3)(i)*

*HUD Handbook 7465.1, 3.3(b)*

- Families may have foster children or foster adults live with them if it would not result in overcrowding. PHAs should adopt reasonable policies regarding PHA approval for foster children or foster adults to reside in the unit.
- Foster children are counted for occupancy standards.
- HUD defines a foster adult as a member of the household who is 18 years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.
- HUD defines a foster child as a member of the household who meets the definition of a foster child under State law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

## CHILD CUSTODY

*HB 7465.1, para. 3-3(b) and*

*CFR 960.257*

- PHAs should determine whether to count a child as part of the family in these situations:
  - A family member who does not have full custody of the child.
  - A child who lives only part of the time with the family.
- PHA should consider custody and the amount of time the child spends with the family.

Eligibility

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Section 2.3: Family Type

- If the child does not currently reside with the family, the PHA should consider the child part of the family only if there is evidence that the child would reside with the family if they were admitted to public housing.
- The same child cannot be claimed by more than one family (i.e., counted more than once in order to have a bedroom in two separate households).

**REMAINING MEMBER**

*HB 7465.1, para. 3-5(b)(1)(b)*

- The remaining member of a public housing family is a family member listed on the lease who continues to live in the unit after all other family members have left.

*HB 7465.1, para. 3-5(b)(3)*

- If the remaining member signed the lease, the person could continue in the program under that lease.
- If the remaining member did not sign the lease, the PHA would have to determine whether it would be willing to enter into a lease with that person (considering factors such as suitability for tenancy and their ability to uphold a lease).

**ELIGIBLE FAMILIES – IMPORTANT CONSIDERATIONS**

*Public Housing Occupancy Guidebook*

- The PHA must determine eligibility without regard to marital status.
- A child may remain in the unit as a *remaining family member* if the PHA permits an adult to move in as the new head of household.
- PHA refusal to allow a tenant to have a foster child or foster children may violate the Fair Housing Act (familial status).
  - *Note: PHA's Transfer Policy is important here*

## Section 2.4 Social Security Number Requirements

- The regulations governing disclosure and verification of Social Security numbers were revised effective January 31, 2010. The current regulations cover the requirements for disclosure and documentation of SSNs for every applicant and resident household member. While applicants and residents must disclose and document SSNs under the new regulations, the actual “verification” of SSNs is performed by the PHA through HUD's automated systems. The regulations also provide penalties for failure to disclose or document SSNs.

### REQUIRED DISCLOSURE

*CFR 5.216;  
Notice PIH 2018-24*

- All assistance applicants and residents must disclose a complete and accurate SSN for each member of the household, including foster children, foster adults and live-in aides. Children under the age of 6 are no longer exempt from the requirement. However, documentation may be delayed for children under 6 years old who have joined the household within the past 6 months.
- Some household members are exempt from the SSN disclosure requirement. These include:
  - Individuals who do not contend eligible immigration status (“noncontending” family members in a mixed family paying prorated rent).
  - Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements.

*CFR 5.216(a)*

Eligibility

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Section 2.4: Social Security Number Requirements

*CFR 5.216(e)*

- Current residents who had not previously disclosed a SSN, and who were at least 62 years old on January 31, 2010. The exemption applies at all future reexaminations, and continues if the individual transfers to a new unit or receives another form of housing assistance.
- Household members who have already provided a valid SSN prior to January 31, 2010. The new regulations do not require the PHA to re-verify the SSNs of current residents whose SSNs have been validated through HUD's automated systems.
- PHAs are required to create an alternate ID (ALT ID) in HIP for those individuals who have not been assigned an SSN.

*Form HUD-50058 Instruction Booklet*

## REQUIRED DOCUMENTATION

*CFR 5.216(g)*

- Several forms of documentation are now acceptable. For each household member, the applicant or resident family may provide any of the following:
  - An original social security card issued by the Social Security Administration.
  - Documentation issued by the Social Security Administration that contains the name and SSN of the individual (e.g., a benefit award letter, Medicare card, or printout).
  - An original document showing the individual's name and SSN, issued by a federal, state or local government agency. This could include welfare agency documents, military papers, unemployment insurance documents, or any other government-issued documentation.

Eligibility

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Section 2.4: Social Security Number Requirements

- While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the PHA has exhausted all other attempts to obtain the required documentation.
  - If verifying an individual's SSN using this method, the PHA must document why the other SSN documentation was not available.
  - If the tenant's SSN becomes verified in EIV, then no further verification is required.
  - If the tenant's SSN fails the SSA identity match, then the PHA must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.
- Since SSNs for all household members are now matched against SSA records through HUD's automated systems, the PHA must generally accept any of the documents listed above. The PHA may only reject documents which:
  - Are not original
  - Appear to be forged, or
  - Appear to be altered, mutilated, or not legible.
- If the PHA rejects the family's documentation, the PHA should explain why the documents were not acceptable. The PHA should then request acceptable documentation within a specified time frame.

Eligibility

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Section 2.4: Social Security Number Requirements

- The PHA verifies the SSN by making a copy of the original documentation submitted, returning it to the individual, and retaining the copy in the family's file. In addition, the PHA records the SSN on line 3n of form HUD-50058 and transmitting the form to HUD in a timely manner.
  - PHAs are required to submit the form no later than 30 calendar days of receiving the SSN documentation to enable HUD to initiate its computer matching efforts for current program participants.
- HUD allows PHAs, at their discretion, to remove and destroy SSN documentation from the file once the SSN has been validated through the EIV system. The EIV printout will be considered adequate to verify the SSN. Doing so minimizes the risk of exposing the individual's SSN.

**WHEN DISCLOSURE AND DOCUMENTATION ARE REQUIRED**

- The HUD regulations provide differing time frames for SSN disclosure and documentation. The time limits depend upon the assistance program, type of certification, ages of household members and other factors.
- For applicant families, the SSN for each household member (except noncontending persons) must be disclosed and documented when program eligibility is being determined. If otherwise eligible, the family may retain its place on the waiting list pending SSN disclosure and documentation.

*CFR 5.216(b); 5.216(h)*

Eligibility

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Section 2.4: Social Security Number Requirements

- If a child under the age of 6 years has been added to the applicant household within 6 months prior to the date of admission, an otherwise eligible family may be admitted to the program. The family must provide documentation of the child's SSN within 90 days of admission. The PHA must allow an additional 90 days if it determines that failure to comply was outside the control of the resident, or was due to unforeseen circumstances. If documentation is not provided within the time allowed, assistance must be terminated.

*CFR 5.216(e)*

- Current residents who have not previously disclosed a SSN for any non-exempt household member must do so at the next interim or annual reexamination. This includes children under 6 for whom a SSN was not previously provided, family members who certified that they had not been assigned a SSN, and other household members.

*CFR 5.216(e)(2)*

- When adding a new household member to a resident family, the time frames depend upon the age of the new member and whether he or she has been assigned a SSN.
  - If the new household member is at least six years old, or is under 6 and already has a SSN, the SSN must be disclosed and documented at the time of the request, or during processing of the interim reexamination to add the new member. The new member cannot be added to the household until this requirement is met.
  - If the new household member is under the age of 6 and has not been assigned a SSN, the resident must disclose and verify the child's SSN within 90 days of the child's addition to the household. The PHA must allow an additional 90 days if it determines that failure to comply was outside the control of the resident, or was due to unforeseen circumstances. The PHA must include the child as part of the household during this period and must provide the family with any related benefits such as allowances and deductions.

Eligibility

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Section 2.4: Social Security Number Requirements

**PENALTIES FOR FAILURE TO DISCLOSE/DOCUMENT SSNs**

*CFR 5.218;  
Notice PIH 2018-24*

- The PHA must deny assistance for an applicant family if the regulatory requirements for SSN disclosure and documentation are not met. The applicant must disclose and document the SSN for every household member (except noncontending persons) in order to qualify for the program.
- The PHA must terminate tenancy of resident households if the regulatory requirements for SSN disclosure and documentation are not met. Tenancy must be terminated for the entire household if these requirements are not met for every non-exempt household member.
  - The PHA must defer termination for a period not to exceed 90 days if it determines that the resident's failure to meet the requirements was due to unforeseen circumstances outside the control of the family, and if it is reasonably likely that the resident will be able to disclose and document the SSN(s) by the deadline.
- The PHA must deny admission or terminate the family's assistance, or both, if the family submits falsified SSN documentation.
- The head of household may not remove a household member from the family composition in order to avoid these penalties. Prorated assistance is not permitted in this situation.

## Section 2.5      **Restriction on Assistance to Noncitizens**

### EFFECTIVE DATE AND PURPOSE OF RULE

- Based on the requirements of Section 214 of the Housing and Community Development Act of 1980.
- The purpose of the regulation is to:
  - Provide implementation procedures
  - Ensure only citizens, nationals, and certain categories of eligible immigrants are assisted
  - Preserve family status

### DEFINITIONS

CFR 5.504(b)

- *Child*: A member of the family other than the family head or spouse who is under 18 years of age.
- *Citizen*: Citizen/national of the United States.
- *Evidence of citizenship or eligible immigration status*: The documents which must be submitted to establish citizenship or eligible immigration status.
- *Head of household*: The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.
- *Mixed family*: A family including citizens or eligible immigrants, and members without citizenship or eligible immigration status.
- *National*: A person who owes permanent allegiance to the United States; e.g., as a result of birth in a U.S. territory or possession.

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

*HUD Guidance*

- *Noncitizen*: A person who is neither a citizen nor national of the United States.
- *Spouse*: The marriage partner, either a husband or wife, who must be divorced to dissolve the relationship. Includes common law marriages, but not boy/girl friends, significant others or co-heads.
- *USCIS*: The United States Citizenship and Immigration Services (formerly INS: Immigration and Naturalization Service).

## **RULES FOR ADMISSION**

*CFR 5.512(a) and (b)*

- No family applying for federal assistance may receive such assistance prior to the affirmative establishment and verification of eligibility of at least one family member.

*CFR 5.506 (a)  
CFR 5.514(c)*

- However, if a PHA elects not to affirmatively establish and verify eligibility before providing assistance to a family, the PHA must terminate tenancy if the verification process results in a determination that no family member has eligible immigration status.

## **GENERAL PROVISIONS**

*CFR 5.506*

- Financial assistance in HUD's public housing program is restricted to:
  - **Citizens**
  - **Noncitizens who have eligible immigration status**

## **NOTIFICATION REQUIREMENTS**

*CFR 5.508(f)*

- All families must be notified of the requirement to submit evidence of their citizenship status when they apply.
- Where feasible, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

*CFR 5.502*

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**ELIGIBILITY FOR ASSISTANCE**

*HUD Guidance*

- To determine the family type and eligibility status of any family, the eligibility of each individual in the family must be established first.

*CFR 5.500*

- Individuals will fall into one of these categories:
  - Citizens or nationals
  - Eligible immigrants 62 or older
  - Other eligible immigrants
  - Ineligibles, including noncitizen students on student visas

*CFR 5.522*

- Providing housing assistance to noncitizen students is prohibited.
  - This prohibition extends to the ineligible noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student
  - The prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance.

*Notice PIH 2001-27*

- An FAS citizen who is a lawful resident of the United States (including territories and possessions) is eligible for housing assistance.
  - *FAS* stands for 'the Freely Associated States'
    - Republic of the Marshall Islands
    - Federated States of Micronesia
    - Republic of Palau

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**FAMILY CATEGORIES**

*CFR 5.500*

- After the status of each person has been determined, families will fall into one of the categories below:

- All members are either citizens or eligible immigrants.
- Some members are eligible and some are ineligible (mixed family).

*CFR 5.504(b)*

- All members are ineligible immigrants.

*CFR 5.500*

- The determination of family type is based on individual determinations:

*CFR 5.504(b) and 5.506(a)*

- An **eligible** family will be comprised of citizen(s), national(s) or noncitizen(s) with *eligible* immigrant status. Eligible families receive full assistance.

*CFR 5.504(b) and 5.506(a)*

- An **ineligible** family is one in which no member is a citizen, national or eligible immigrant. Ineligible families are denied assistance.

*CFR 5.504(b)*

- **Mixed families** are comprised of citizen(s) or eligible noncitizen(s) and those without citizenship or eligible noncitizen status. Mixed families receive prorated assistance.

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**VERIFICATION REQUIREMENTS**

*CFR 5.508*

- Unlike the third-party verification process for income eligibility, verification of citizenship or national status is provided directly by the family.

*CFR 5.508(b)(1)*

- Persons who claim citizenship or national status by executing a signed declaration (Section 214 Status)

*CFR 5.508(b)(2)*

- Persons 62 and older who claim eligible immigration status by executing a signed declaration and providing proof of age

*CFR 5.508(e)*

- Persons who declare themselves ineligible or don't contend eligibility status

*CFR 5.508(b)(1)*

- PHAs may require verification of either U.S. citizenship or national status in the form of a U.S. passport, resident alien card, registration card, social security card or other appropriate documentation.

*CFR 5.508(b)(3)*

- For noncitizens who claim eligible immigration status (other than persons 62 and older), required verification consists of:
  - A signed declaration of eligible immigration status
  - A United States Citizenship and Immigration Services (USCIS) card or other USCIS document
  - A signed verification consent form

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**PRIMARY VERIFICATION OF ELIGIBLE IMMIGRATION STATUS**

*CFR 5.512*

- Primary verification of the immigration status of the person is conducted by the PHA through the USCIS Automated Status Verification System (ASVS) online. The ASVS provides access to names, file numbers and admission numbers of noncitizens.
- If the ASVS does not verify eligible immigration status, the PHA must request secondary verification within 10 days of receiving the results of the primary verification.
  - Secondary verification is initiated by the PHA forwarding photocopies of the original USCIS documents required for the declared immigration status, attached to the USCIS document verification request form G-845S.

**REQUIRED DOCUMENTATION**

- PHA documents:

*CFR 5.508(b)(3)*

- Declaration of Section 214 Status

*CFR 5.508(b)(3)*

- Verification Consent Form

*CFR 5.508(e)*

- Listing of Non-Contending Family Members

*CFR 5.508(f)*

- Notice of Section 214 Requirements

*HUD Guidebook 7465.7,  
Restrictions on Assistance to  
Noncitizens, Chapter 6*

- Eligible immigration documents [copies of originals only]

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**TIME FRAME FOR SUBMISSION**

- For applicants:

*CFR 5.508(g)(1)*

- At any stage of the application process, but not later than the date the PHA verifies other eligibility factors

*CFR 5.508(g)(3)*

- New occupants joining a resident family:

- At the first interim or regular reexam following the person's occupancy

*CFR 5.508(h)*

- A time extension may be granted in writing by the PHA, if needed, for the individual to obtain the needed documentation.

- Extension for submission of required documents shall not exceed 30 days

*CFR 5.508(g)(5)*

- For each family member this is a one-time requirement. If the family moves between units or between programs and the PHA has previously obtained the required verification, the family is not required to produce the documentation again.

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**FAMILIES ASSISTED AS OF 6-19-95**

- The protections afforded these families relates to whether the PHA implemented the noncitizens rule before or after 11/29/96.<sup>1</sup>
- Families assisted when the noncitizen rule was implemented may have been eligible for full continued assistance.
- For more information refer to Chapter 10 of HUD Guidebook 7465.7, Restrictions on Assistance to Noncitizens, dated July 1995.

**TERMINATION FOR ALLOWING INELIGIBLE INDIVIDUALS TO LIVE IN UNIT**

*CFR 5.514(c)(iii)*

- The PHA must terminate assistance for at least 24 months to a family that knowingly permits an ineligible individual to reside on a permanent basis in the family's unit.
  - Termination does not apply to ineligible individuals already in the household where the family's assistance has been prorated.

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1. On this date, a change in the rule was published and effective. Families who had been provided certain protections prior to that date were not affected, but, after that date, any other families receiving benefits would be considered under the new rule.

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**SAMPLE FORMS FOR NONCITIZENS**

- From HUD Guidebook 7465.7, *Restrictions on Assistance to Noncitizens*, July 1995:
  - Appendix C. Model Declaration of Section 214 Status
  - Appendix D. Model Verification Consent Form
  - Appendix E. Model Listing of Ineligible Family Members
  - Appendix F. Model Notice of Section 214 Requirements

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Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**SAMPLE FORMS FOR NONCITIZENS**

**Declaration of Section 214 Status**

Notice to applicants and tenants: In order to be eligible to receive the housing assistance sought, each applicant for or recipient of housing assistance must be lawfully within the U.S. Please read the Declaration statement carefully and sign and return to the Housing Authority's Admissions Office. Please feel free to consult with an immigration lawyer or other immigration expert of your choosing.

I, \_\_\_\_\_ certify, under penalty of perjury,<sup>1</sup> that, to the best of my knowledge, I am lawfully within the United States because (please check the appropriate box):

- I am a citizen by birth, a naturalized citizen or national of the United States; or
- I have eligible immigration status and I am 62 years of age or older. Attach evidence of proof of age<sup>2</sup>; or
- I have eligible immigration status as checked below (see reverse side of this form for explanations). Attach USCIS document(s) evidencing eligible immigration status and signed verification consent form.
  - Immigrant status under ¶1001(a)(15) or 101(a)(20) of the INA<sup>3</sup>; or
  - Permanent residence under ¶249 of INA<sup>4</sup>; or
  - Refugee, asylum, or conditional entry status under ¶207, 208 or 203 of the INA<sup>5</sup>; or
  - Parole status under ¶212(d)(f) of the INA<sup>6</sup>; or
  - Threat to life or freedom under ¶243(h) of the INA<sup>7</sup>; or
  - Amnesty under ¶245 of the INA<sup>8</sup>.

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(Signature of Family Member)

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(Date)

## Eligibility

## Section 2.5: Restriction on Assistance to Noncitizens

[ ] Check box on left if signature is of adult residing in the unit who is responsible for child named on statement above.

PHA: Enter USCIS/ASVS Primary Verification #:	Date:
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[See reverse side for footnotes and instructions]

**1** **Warning:** 18 U.S. C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any manner within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

The following footnotes pertain to noncitizens who declare eligible immigration status in one of the following categories:

**2** Eligible immigration status and 62 years of age or older. For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995. If you are eligible and elect to select this category, you must include a document providing evidence of proof of age. No further documentation of eligible immigration status is required.

**3** Immigrant status under ¶101(a)(15 or 101(a)(20) of INA. A noncitizen lawfully admitted for permanent residence, as defined by ¶101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by ¶101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively [*immigrant status*]. This category includes a noncitizen admitted under ¶210 or 210A of the INA (8 U.S.C. 1160 or 1161), [*special agricultural worker status*], who has been granted lawful temporary resident status.

**4** Permanent residence under ¶249 of INA. A noncitizen who entered the U.S. before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the U.S. since the, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under ¶249 of the INA (8 U.S.C. 1259) [*amnesty granted under INA 249*].

**5** Refugee, asylum, or conditional entry status under ¶207, 208 or 203 of INA. A noncitizen who is lawfully present in the U.S. pursuant to an admission under ¶207 of the INA (8 U.S.C. 1157) [*refugee status*]; pursuant to the granting of asylum (which has not been terminated under ¶208 of the INA (8 U.S.C. 1158) [*asylum status*]); or as a result of being granted conditional entry under ¶203(a)(7) of the INA (U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity [*conditional entry status*].

**6** Parole status under ¶212(d)(5) of INA. A noncitizen who is lawfully present in the U.S. as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under ¶212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [*parole status*].

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Eligibility

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- 7 Threat to life or freedom under §243(h) of INA. A noncitizen who is lawfully present in the U.S. as a result of the Attorney General's withholding deportation under §243(h) of the INA (8 U.S.C. 1253(h)) [*threat to life or freedom*].
- 8 Amnesty under §245A of INA. A noncitizen lawfully admitted for temporary or permanent residence under §245A of the INA (8 U.S.C. 1255a) [*amnesty granted under INA 245A*].

**Instructions to Housing Authority:** Following verification of status claimed by persons declaring eligible immigration status (other than for noncitizens age 62 or older and receiving assistance on June 19, 1995), the PHA must enter USCIS/ASVS Verification Number and date that it was obtained. A PHA signature is not required.

**Instructions to Family Member For Completing Form:** On opposite page, print or type first name, middle initial(s) and last name. Place an "X" or "✓" in the appropriate boxes. Sign and date at bottom of page. Place an "X" or "✓" in the box below the signature if the signature is by the adult residing in the unit who is responsible for child.

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Eligibility

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## Section 2.5: Restriction on Assistance to Noncitizens

**Verification Consent Form**

**CONSENT:** I consent to allow the \_\_\_\_\_ (name of PHA) \_\_\_\_\_ (PHA) to request and to obtain information from the US Citizenship and Immigration Services (USCIS) for the purpose of verifying my eligibility and level of benefits under HUD's assisted housing programs. I understand that the PHA cannot use it to delay, deny or terminate housing assistance because of the immigration status of a family member except as provided in this Guidebook. In addition, I understand I must be given an opportunity to contest the determination with the USCIS or the PHA, or both.

**Signatures:****ADULT:**

Head of Household	A- Alien Number	Date	Family Member Age 18 or over	A- Alien Number	Date
Spouse	A- Alien Number	Date	Family Member Age 18 or over	A- Alien Number	Date
Family Member Age 18 or over	A- Alien Number	Date	Family Member Age 18 or over	A- Alien Number	Date
Family Member Age 18 or over	A- Alien Number	Date	Family Member Age 18 or over	A- Alien Number	Date

**CHILD:**

Family Member Age Under 18	A- Alien Number	Signature of Adult Residing in Unit Responsible for Child	A- Alien Number <sup>1</sup>	Date
Family Member Age Under 18	A- Alien Number	Signature of Adult Residing in Unit Responsible for Child	A- Alien Number <sup>1</sup>	Date
Family Member Age Under 18	A- Alien Number	Signature of Adult Residing in Unit Responsible for Child	A- Alien Number <sup>1</sup>	Date
Family Member Age Under 18	A- Alien Number	Signature of Adult Residing in Unit Responsible for Child	A- Alien Number <sup>1</sup>	Date

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1. If citizenship declared by adult, leave blank.

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Section 2.5: Restriction on Assistance to Noncitizens

**Who must sign:** In order to be eligible to receive housing assistance, each noncitizen adult or child applying for, or currently receiving, housing assistance must be lawfully within the U.S. Please read the Verification Consent Form carefully and sign and return to the Housing Authority's Admissions Office. Please feel free to consult with an immigration lawyer or other immigration expert of your choosing.

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**Privacy Act Statement:**

The information on this form is being collected by the \_\_\_\_\_ (name of PHA) \_\_\_\_\_ to determine the applicant's or tenant's eligibility for housing assistance. The PHA may release this information, without responsibility for the further use or transmission of the evidence by the entity receiving it to: (1) the Department of Housing and Urban Development (HUD), as required by HUD; and (2) to the US Citizenship and Immigration Services (USCIS) for purposes of verification of the immigration status of each individual and not for any other purpose.

**Penalties for Misusing this Consent:**

HUD, the PHA and any owner (or any employee of HUD, the PHA or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form.

Use of the information collected on this consent form is restricted to the purposes cited on the form. Any person who knowingly or willfully requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than \$5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD, the PHA or the owner responsible for the unauthorized disclosure or improper use.

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## **Listing of Non-Contending Family Members**

I, \_\_\_\_\_ certify, under penalty of perjury,<sup>1</sup> that the persons listed below are members of my household. Each person listed below has elected not to contend that he or she has eligible immigration status.

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(First Name, Middle Initial(s), Last Name)

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(Signature of Head of Household or Spouse)

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(Date)

**1 Warning:** 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000, imprisoned for not more than five years, or both.

**Instructions:** If one or more members of a family elect not to contend that he or she has eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance despite the fact that no declaration or documentation of eligible immigration status is submitted by one or more members of the family. The family, however, must identify to the PHA the family member(s) who will elect not to contend that he or she has eligible immigration status. In the space(s) provided above, type or print the names of the family members who elect not to contend that he or she has eligible immigration status. Listed members of the family do not sign above. However, the Head of Household or Spouse must sign and date the form in the space provided.

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Section 2.5: Restriction on Assistance to Noncitizens

## Notice of Section 214 Requirements

### Notice to Applicants Applying For and Tenants Currently Receiving Section 214 Housing Assistance

**The Law.** Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the Secretary of the Department of Housing and Urban Development (HUD) from making financial assistance available to persons who are other than United States citizens, nationals, or certain categories of eligible noncitizens either applying to or residing in specified Section 214 covered programs. Section 214 was implemented by a final “Noncitizens Rule” entitled, Restrictions on Assistance to Noncitizens, which was published in the *Federal Register*, on Monday, March 20, 1995 (60 FR 14816-4861).

**When The Law Became Effective.** The Noncitizens Rule became effective on June 19, 1995. Until the final rule took effect, the Housing Authority (PHA) was prohibited from taking any action based on the citizenship or eligible immigration status of applicants and tenants.

**What The Law Means To You.** The receipt of financial housing assistance is contingent upon you and your family submitting evidence either of 1) citizenship, or 2) eligible immigration status.

**Type of Programs This Law Applies To.** The Noncitizens Rule applies to the following HUD-assisted housing programs:

- 1) Section 8 Housing Choice Voucher Program
- 2) Section 8 Moderate Rehabilitation Program
- 3) Public and Indian Housing Programs

**What Persons Are Covered By This Law.** Section 214 applies to all applicants who apply for housing assistance, applicants who are already on a waiting list for housing assistance, and tenants who are already receiving housing assistance under a covered program. Section 214 covers: 1) Citizens and 2) Noncitizens who have eligible immigration status.

**What Evidence Will Be Required?** Each family member, regardless of age, is required to submit the following evidence:

**For Citizens or nationals:** A signed declaration of U.S. citizenship (whether by birth or naturalization).

**For Noncitizens who are 62 years of age or older and receiving housing assistance on June 19, 1995:** A signed declaration of eligible immigration status and proof of age.

**For All Other Noncitizens.** The evidence consists of: 1) a signed declaration of eligible immigration status; 2) the US Citizenship and Immigration Services (USCIS) documents listed below on this page; and 3) A signed verification consent form.

Eligibility

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Section 2.5: Restriction on Assistance to Noncitizens

**For All Other Noncitizens, What Immigration Status is Eligible?** Under the Noncitizens Rule, a noncitizen would have eligible immigration status under any one of the following six categories which are determined by the USCIS pursuant to the Immigration and Nationality Act (INA):

**Immigration Status Under §§101(a)(15) or 101(a)(20) of INA.** A noncitizen lawfully admitted for permanent residence, as defined by §101(a)(20) of the INA, as an immigrant, as defined by §101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively [*immigrant status*]). This category includes a noncitizen admitted under §§210 or 210A of the INA (8 U.S.C. 1160 or 1161) [*special agricultural worker status*], who has been granted lawful temporary resident status.

**Permanent Residence Under §249 of INA.** A noncitizen who entered the U.S. before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the U.S. since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under §249 of the INA (8 U.S.C. 1259) [*amnesty granted under INA 249*].

**Refugee, Asylum, or Conditional Entry Status Under §§207, 208 or 203 of INA.** A noncitizen who is lawfully present in the U.S. pursuant to an admission under §207 of the INA (8 U.S.C. 1157) [*refugee status*]; pursuant to the granting of asylum (which has not been terminated) under §208 of the INA (8 U.S.C. 1158) [*asylum status*]; or as a result of being granted conditional entry under §203(a)(7) of the INA (U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity [*conditional entry status*].

**Parole Status Under §212(d)(5) of INA.** A noncitizen who is lawfully present in the U.S. as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under §212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [*parole status*].

**Threat To Life or Freedom Under §243(h) of INA.** A noncitizen who is lawfully present in the U.S. as a result of the Attorney General's withholding deportation under §243(h) of the INA (8 U.S.C. 1253(h)) [*threat to life or freedom*].

**Amnesty Under §245A of INA.** A noncitizen lawfully admitted for temporary or permanent residence under §245A of the INA (8 U.S.C. 1255a) [*amnesty granted under INA 245A*].

**What USCIS Documents Are Acceptable?** The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification with USCIS:

- 1) Alien Registration Receipt Card (for permanent resident aliens);
- 2) Form I-94, Arrival-Departure Record, with one of the following annotations:
  - a) "Admitted as Refugee Pursuant to Section 207";

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- b) "Section 208" or "Asylum";
- c) "Section 243(h)" or "Deportation stayed by Attorney General";
- d) "Paroled Pursuant to Section 212(d)(5) of the INA";

3) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

- a) A final court decision granting asylum (but only if no appeal is taken);
- b) A letter from an USCIS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an USCIS district director granting asylum (if application filed before October 1, 1990);
- c) A court decision granting withholding of deportation; or
- d) A letter from an asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

4) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

5) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

6) A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

7) If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*.

Note: Family members are required to submit the original document(s) providing acceptable evidence of eligible immigration status. The PHA may not retain the original document(s). PHAs must immediately make copies from the original document(s) and return the original documents to the family member.

**When Must Evidence of Eligible Immigration Status Be Submitted?** Evidence of eligible immigration status must be submitted at the times specified below, subject to any extension granted in accordance with the paragraph below which discusses extensions of time to submit evidence of eligible immigration status.

**Applicants.** For applicants, the PHA must ensure that evidence of eligible immigration status is submitted not later than the date the PHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur.

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Section 2.5: Restriction on Assistance to Noncitizens

**Families already receiving assistance on June 19, 1995.** For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

**New occupants of assisted units.** For any new family member(s), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

**Changing participation in a HUD program.** Whenever a family applies for admission to a Section 214 covered program, evidence of eligible immigration status is required to be submitted in accordance with the requirements of the Noncitizens Rule unless the family already has submitted the evidence to the PHA for a covered program.

**One-time evidence requirement for continuous occupancy.** For each family member, the family is required to submit evidence of eligible immigration status only one time during continuously-assisted occupancy under any covered program.

**What Happens If One Or More Family Members Does Not Qualify?**

Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided below. "Family" as used herein refers to both applicants and tenants.

Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

- 1) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;
- 2) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;
- 3) The family member who is determined not to be in an eligible immigration status following USCIS verification has moved from the tenant's dwelling unit;
- 4) The USCIS appeals process has not been concluded;
- 5) For a tenant, the PHA informal hearing process has not been concluded;
- 6) Assistance is prorated;
- 7) Assistance for a mixed family is continued; or
- 8) Deferral of termination of assistance is granted.
- 9) Assistance to an applicant may be delayed after the conclusion of the USCIS appeal process, but not denied until the conclusion of the PHA informal hearing process, if an informal hearing is requested by the family.

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Section 2.5: Restriction on Assistance to Noncitizens

Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures for any of the following events:

- 1) Evidence of citizenship (i.e., the Declaration) and eligible immigration status is not submitted by the date specified or by the expiration of any extension granted; or
- 2) Evidence of citizenship and eligible immigration status is submitted timely; but USCIS primary and secondary verification does not verify eligible immigration status of a family member; and
  - a) The family does not pursue USCIS appeal or PHA informal hearing rights; or
  - b) USCIS appeal and PHA informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

**What Rights of Appeal Are Available?** Three distinct forms of appeal process are available to both applicants and tenants:

- 1) Appeal to USCIS. The following instructions apply to the right of appeal to the USCIS:
  - a) Submission of request for appeal. When the PHA receives notification that USCIS secondary verification failed to confirm eligible immigration status, the PHA shall notify the family of the results of the USCIS verification. The family shall have 30 days from the date of the PHA's notification to request an appeal of the USCIS results. The request for appeal shall be made by the family communicating that request in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of the mailing. For good cause shown, the PHA shall grant the family an extension of the time within which to request an appeal.
  - b) Documentation to be submitted as part of the appeal to USCIS. The family shall forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. The appeal must include a copy of the original Form G-845S received from USCIS annotated at the top center in bold print: **HUD APPEAL**. The appeal must also include two stamped envelopes, one addressed to the applicant or tenant family, and one addressed to the PHA.
  - c) Results of USCIS Appeal.
    - (i) The USCIS will issue the results of the appeal to the family, with a copy to the PHA, within 30 days of its receipt. If, for any reason, the USCIS is unable to issue a response within the 30-day time period, the USCIS will inform the family and the PHA of the reasons for the delay.

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Section 2.5: Restriction on Assistance to Noncitizens

Note: The USCIS response will be indicated in Section B of Form G-845S, Document Verification Request, which is returned to the family and PHA. The USCIS response will be indicated in Section B by a mark in one of the following boxes: 1, 2, 5, 6, 8, 11, 12, 15, or 18.

- (ii) When the PHA receives a copy of the USCIS response, the PHA shall notify the family of its right to request an informal hearing on the PHA's ineligibility determination.
- d) No delay, denial or termination of assistance until completion of USCIS appeal process; direct appeal to USCIS. Pending the completion of the USCIS appeal, assistance may not be delayed, denied or terminated on the basis of immigration status.

2) Informal hearing with PHA.

- a) When request for hearing is to be made. After receiving notification of the USCIS decision on appeal, or in lieu of requesting an appeal to the USCIS, the family may request that the PHA provide an informal hearing. This request must be made either within 14 days of the date the PHA mails or delivers the notice of denial or termination of assistance, or within 14 days of the mailing of the USCIS appeal decision (established by the date of the postmark).
- b) Extension of time to request hearing. The PHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.
- c) Informal hearing procedures.
  - (i) For tenants, the procedures for the hearing before the PHA are set forth in 24 CFR Part 966.
  - (ii) For applicants, the procedures for the informal hearing before the PHA are as follows:
    - (A) Hearing before an impartial individual. The applicant shall be provided a hearing before any person(s) designated by the PHA (including an officer or employee of the PHA), 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;

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- (B) Examination of evidence. The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the applicant'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;
- (C) Presentation of evidence and arguments in support of eligible immigration status. The applicant shall be provided the opportunity to present evidence and arguments in support of eligible immigration status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;
- (D) Controverting evidence of the project owner. The applicant shall be provided the opportunity to controvert evidence relied upon by the PHA and to confront and cross-examine all witnesses on whose testimony or information the PHA relies;
- (E) Representation. The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;
- (F) Interpretive services. The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or PHA, as may be agreed upon by both parties;
- (G) Hearing to be recorded. The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the PHA); and
- (H) Hearing decision. The PHA shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the PHA informal hearing. The decision shall state the basis for the decision.

3) Judicial relief. A decision against a family member under the USCIS appeal process or the PHA's informal hearing does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

## Section 2.6      Income Limits

### INCOME LIMITS AT ADMISSION

*CFR 960.201(a)(2)*

- No family other than a low-income family is eligible for admission to a PHA's public housing program.

*HB 7465.1, para. 3-1(c);  
Federal Register, Vol. 63 #190,  
10/1/98*

- HUD establishes income limits annually (by family size) for the area in which the PHA is located:

*1937 Housing Act, Sec. 3(b);  
HB 7465.1, para. 3-1(a)*

- Low-income limit: 80% of area median
- Very low-income limit: 50% of area median
- Extremely low-income limit: 30% of area median or the federal poverty level, whichever is higher (see Income Targeting)

*CFR 5.603(b)*

- Annual income is compared to the eligibility income limit (80 percent of AMI) and is applied *only at admission* as a test for eligibility.

*HB 7465.1, para. 3-2(a)(9)  
Notice PIH 2019-11*

- Once admitted, a family is no longer subject to initial eligibility income limit requirements in order to retain eligibility, or for unit transfers. After admission, however, the family is subject to the over-income limit, which is calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size.

*HB 7465.1, para. 3-1(a)*

- PHAs must use HUD income limits and may not establish their own.

*HB 7465.1, para. 3-1(b)*

- Because income limits are based on family size, a change in family composition may affect the family's income eligibility for admission.

*HB 7465.1, para. 3-1(b)(2)*

- There is no family minimum income restriction.

*HB 7465.1, para. 3-2(a)(6)*

- Transfers from other programs (other PHAs and Section 8) must be treated as new admissions.

### HUD'S INCOME LIMITS:

- [www.huduser.gov/portal/datasets/il.html](http://www.huduser.gov/portal/datasets/il.html)

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Section 2.6: Income Limits

## INCOME LIMIT RESTRICTIONS

*HB 7465.1, para. 3-1(b)*

- Applicants are subject to the income limits of the area where the project is located and the family is initially assisted.

*CFR 903.7(c)(2)*

*CFR 960.204(a)(2)(i)*

- The PHA may establish criteria for selection of residents designed to produce a mix of incomes in the PHA's public housing developments.

*CFR 960.201(c)*

- PHAs must comply with HUD-prescribed reporting requirements necessary to monitor compliance with income eligibility restrictions.

*HB 7465.1, para. 3-1(a)(2)*

- HUD may establish higher or lower income limits based on prevailing construction costs or unusually high or low family incomes in the area.

## ELIGIBILITY OF “FULL-TIME” COLLEGE STUDENTS

- HUD issued Notice PIH 2005-16 based on a concern that PHAs may be admitting ineligible college students to HUD's public and assisted housing programs.
- The notice provides guidance for determining and verifying the eligibility of full-time college students of non-parental/guardian households.
- PHAs are encouraged (but not required) to adopt policies stating that the following must also be verified:
  - That the student does or does not anticipate receiving income from an outside source, such as a parent
  - That the student has established a household separate from his or her parents or guardian for at least one year prior to applying for admission
  - That the student is not claimed as a dependent by anyone, such as a parent, on that individual's tax return

## Section 2.7      Occupancy Standards

### DEFINITION

- Occupancy standards are criteria established by the PHA for determining the appropriate type of public housing project, and size and type of unit, needed for families of different sizes and compositions.

### TYPES OF PROJECTS/DEVELOPMENTS

#### MIXED POPULATION DEVELOPMENTS

*CFR 960.102*

- 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
  - If it was not so reserved at inception, the PHA has since obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly and disabled families.
- Formerly referred to as “elderly-designated projects”
- PHAs must give elderly and disabled families equal preference in admission to mixed population developments.
- PHAs may not establish a limit on the number of elderly or disabled families to be accepted for occupancy in a mixed population development.
- PHAs may not set a minimum age (like 50 or 55) for the admission of persons with disabilities to mixed population developments.

*CFR 960.407(a) &  
HB 7465.1, para. 5-2(b)(1)*

*HB 7465.1, para. 5-2(b)(2)*

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Section 2.7: Occupancy Standards

**GENERAL OCCUPANCY DEVELOPMENTS**

- Referred to as “family” developments
  - Includes elderly, disabled, and families
- PHAs may not give a preference to one protected class over another for general occupancy developments
  - Example: No elderly preference over families with children

**DESIGNATED ELDERLY DEVELOPMENTS**

- Developments which include only families whose head or spouse is 62 or older
- HUD must approve application

**DESIGNATED DISABLED DEVELOPMENTS**

- Developments which include only families whose head or spouse is disabled
- HUD must approve application

**TYPE OF UNIT NEEDED**

*CFR 960.407*

- In selecting elderly families and disabled families to occupy units in mixed population developments, the PHA must first offer units with special accessibility features for persons with disabilities to families who require the accessibility features of such units.

*HB 7465.1, para. 5-2(a)*

- PHAs must make every reasonable effort to provide units which are specially designed for accessibility to families with members who have disabilities that require such units.

*HB 7465.1, para. 5-2(c)*

- Accessible or barrier-free units are specially designed units which may have ramps, grab bars, lower counters, or special facilities for those persons with mobility problems or sight or hearing impairments.

Eligibility

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Section 2.7: Occupancy Standards

*HB 7465.1, para. 5-2(c)*

- Many people with disabilities do not require a specially-designed unit.
- Some families that do not meet the HUD household definition of disabled may need a specially-designed unit for one of their family members.
- If a unit can be adapted to either disability-accessible or more general usage, the PHA can decide whether to target it for applicants with disabilities or treat it like any other unit.
- If an applicant needs accessibility features and no suitable units are available, PHA should consider modifying unit unless this would impose an undue financial or administrative burden.

**SIZE OF UNIT NEEDED**

*HB 7465-1, para. 5-1(a)(1)*

- HUD does not specify the number of persons who may live in various sizes of units.

*HB 7465.1, para. 5-1(a)(2)*

- PHA must establish occupancy standards which assist as many families as possible without overcrowding the units or project, as well as make every reasonable effort to minimize vacancies.

*HB 7465.1, para. 5-1(a)(3)*

- These standards must comply with any requirements of state or local law.

*HB 7465.1, para. 5-1(a)(5)*

- PHAs may have different standards for certain projects if this would not cause or perpetuate patterns of occupancy which would be inconsistent with Title VI of the Civil Rights Act of 1964 or the Fair Housing Act.

Eligibility

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Section 2.7: Occupancy Standards

- The ACOP should address the following elements:
  - If babies under a specified age may share a bedroom with parents or with two siblings
  - How the PHA will handle foster children in establishing unit size
  - If the size of bedrooms will be a factor in determining the minimum or maximum number of residents in the unit
  - Whether the PHA will permit applicants to be on waiting sub lists for more than one unit size, or whether the PHA requires each applicant to state the size unit for which he/she wishes to be listed
  - Whether the PHA will count an unborn child or a child in the process of being adopted as a family member in determining unit size (the PHA must count children who are added to the family by birth, adoption or court-awarded custody only after these events have occurred).

Eligibility

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Section 2.7: Occupancy Standards

*Public Housing Occupancy Guidebook, Chapter 5, p. 64*

- The *Public Housing Occupancy Guidebook* suggests the following occupancy standards:
  - Generally, two people are expected to share each bedroom, except that units will be so assigned that:
    - Persons of different generations or opposite sex get their own bedroom, except for husband and wife,
    - Two children of the opposite sex will not be required to share a bedroom
    - An unborn child will not be counted as a person in determining unit size. A single pregnant woman may be assigned to a one-bedroom unit.
    - A Live-in-Aide shall be assigned a bedroom, unless the family agrees to accept a smaller unit.
  - A family that qualifies for more than one unit size may be placed on the larger and smaller size waiting lists.
    - A family that chooses to occupy a smaller size unit must agree not to request a transfer until their family size changes.

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Eligibility

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Section 2.7: Occupancy Standards**OTHER HUD GUIDANCE**

- PHA must not establish a policy that has the effect of discriminating against families with children.
  - Example: PHA must allow parent with one child to occupy unit if a married couple would be allowed.
- NOTE: PHA must also include children who are temporarily absent from home due to placement in foster care.
- The following table (or a variation) is an example that may be adopted:

Number of Bedrooms	Min. Number of Persons	Max. Number of Persons
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	6	10

- A family may need a larger unit size than suggested by the guidelines because of a disability of a household member.
- If “reasonable accommodations” are not made by the PHA allowing such a family to apply and obtain such a unit, it may be considered unlawful.

*HB 7465.1, para. 5-1(b)(4)*

- PHA should consider the size of the unit and the size of the bedrooms as well as the number of bedrooms.

*HB 7465.1, para. 5-1(b)(5)*

- PHAs with many efficiencies but few one-bedroom units may want to reserve one- bedroom units for two-person families.

Eligibility

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Section 2.7: Occupancy Standards

*HB 7465.1, para. 5-1(b)(6)*

- PHAs may want to adopt standards which permit a lower level of occupancy in certain projects:
  - To compensate for lack of larger families on waiting lists, or
  - To help market units in hard-to-rent projects.

*HB 7465.1, para. 5-1(b)(10)*

- A PHA may want to provide space for a child who is away at school but who lives with the family during school recesses.

*HB 7465.1, para. 5-1(b)(11)*

- To avoid vacancies, a family may be provided a larger unit than needed. The lease must include a provision that they will move to the right size unit when a larger size family is found and a suitable smaller unit is available.

*HB 7465.1, para. 5-2(d)(3)*

- Non-elderly applicants may be offered a unit if there are not enough elderly applicants.

*HB 7465.1, para. 5-2(d)(1)*

- PHAs should consider the suitability of a project in relation to the family's needs. If appropriate size units exist in both a general occupancy project and a project for the elderly, elderly families with children and young disabled persons may be better housed in the general occupancy project.

## OCCUPANT TYPES

### TENANTS EMPLOYED BY THE PHA

*HB 7465.1, para. 6-3(b)(1)*

- Public housing applicants who work or expect to work for the PHA are subject to the same admission requirements as other applicants.

*HB 7465.1, para. 6-3(b)(1)(a)*

- The work they are to do for the PHA may not be a condition of their admission.

*HB 7465.1, para. 6-3(b)(1)(b)*

- They may not be given a selection preference based on their willingness to work for the PHA.

Eligibility

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Section 2.7: Occupancy Standards

*HB 7465.1, para. 6-3(b)(2)*

- Public housing tenants who work for the PHA are subject to all of the occupancy requirements and have all the same rights and responsibilities as other public housing tenants.
  - The work they do for the PHA may not be a condition of their tenancy.
  - Any amounts they receive for their employment must be counted as income in computing their rent.
  - The PHA may not lower the amount they are required to pay as rent as compensation for their employment.

*HB 7465.1, para. 6-3(b)(3)*

- The PHA does not need HUD authorization in order to employ public housing tenants.

**RESIDENT EMPLOYEES**

*HB 7465.1, para. 6-3(a)(1)*

- Employees who are required to live in public housing as a condition of their job:
  - Are not considered public housing tenants.
  - Are not subject to the same requirements and do not have the same rights as public housing tenants.
- Examples of this are that they:
  - Do not have to qualify as a lower income family
  - Are not subject to the PHA's tenant selection procedures
  - Do not have their rent calculated according to HUD regulations
  - Are not subject to HUD lease and grievance provisions
  - Would not be able to remain in public housing if their employment were terminated

Eligibility

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Section 2.7: Occupancy Standards

*HB 7465.1, para. 6-3(a)(2)*

- PHAs may charge employees who are required to live in public housing, as a condition of their job, some reasonable rent.
- The rent can be a flat amount not related to the person's income. PHAs may also provide the apartment to the employees rent-free.

*HB 7465.1, para. 6-3(a)(4)*

- PHAs must get HUD approval to house PHA employees in any public housing dwelling unit which has been previously designated for use by public housing tenants.

*HB 7465.1, para. 6-3(c)(1)*

- It is advisable for PHAs to have a lease with employees who are required to live in public housing.
- A standard private-market lease would usually be acceptable, although the PHA should add a provision making the person's continued occupancy contingent on their employment.

*HB 7465.1, para. 6-3(c)(2)*

- An employee who resides in public housing may apply to become a public housing tenant, but would have to qualify and be selected like any other applicant.

*HB 7465.1, para. 6-3(c)(3)*

- All the provisions and procedures related to employees who are required to live in public housing also apply in cases where the PHA wants to house persons from public or private agencies to provide tenant-oriented services.

*HB 7465.1, para. 6-3(d)(2)*

- Employees who are required to live in public housing as a condition of their jobs are reported on Form HUD-51234. The PHA does not fill out a Form HUD-50058 for them.

Eligibility

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Section 2.7: Occupancy Standards

**OCCUPANCY BY POLICE**

*CFR 960.505*

- “Police officer” is defined as a person who, during the time of residence in public housing, is employed on a full-time basis as a duly licensed, professional police officer by a federal, state or local government or by any agency of these governments.
- An officer of an accredited police force of a housing agency may qualify.
- For the purpose of increasing security for the residents of public housing, PHAs may allow police officers to reside in public housing.

## Section 2.8 Tenant Selection Policies and Requirements

### TENANT SELECTION POLICIES

*Notice PIH 98-20;  
CFR 960.202(a)(1) and  
CFR 960.201(c)*

- PHAs are required to adopt written policies for admission of tenants, and these policies are subject to HUD review at any time upon request. Admission policies must be designed:
  - To target admissions to extremely low-income families as provided by HUD regulations.
  - For deconcentration of poverty and income-mixing in accordance with HUD regulations.
  - To prevent admission of applicants whose habits and practices would be a detriment to other residents and the PHA environment.
  - To establish policies which are reasonable and objective for selection among otherwise eligible families.
- Tenant selection policies must include:
  - Requirements for applications and waiting lists.
  - Policies for verifying factors pertaining to acceptance or rejection of applicants.
  - Policies for transfer of participants between units, projects, and programs. For example, a PHA could develop criteria such as "...has met all previous obligations under current program, including payment of any and all charges due to the PHA."

Eligibility

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Section 2.8: Tenant Selection Policies and Requirements

**REQUIREMENT TO PUBLICIZE**

*CFR 960.202(c)*

- Selection policies must be duly adopted and publicized by:
  - Posting copies in each office where applications are received, and
  - Furnishing copies to tenants upon request. PHA may furnish for free or provide at the tenant's expense.

**INCOME TARGETING**

*CFR 960.202(b)(1)  
FR Notice 6/25/14*

- In each fiscal year, at least forty percent of a PHA's new admissions to public housing must qualify as "extremely low-income" (ELI) families.
- ELI families have incomes that do not exceed the higher of the federal poverty level or thirty percent of area median income. HUD has published the applicable ELI figures for each jurisdiction at [www.huduser.gov](http://www.huduser.gov).
- *Example:* The following list is in preference order. Select two for income targeting.

1.	Very low-income
2.	Very low-income
3.	Extremely low-income
4.	Very low-income
5.	Low-income
6.	Extremely low-income
7.	Extremely low-income

Eligibility

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Section 2.8: Tenant Selection Policies and Requirements

**FUNGIBILITY**

- “Fungibility” is the term HUD now uses to describe the “credits,” or limited extent to which provisions allow targeting requirements in public housing and tenant-based assistance to be interchangeable or *fungible*.
- *CFR 960.202(b)(2)(i)* Fungibility provisions allow a PHA with both a tenant-based and a public housing program to admit less than forty percent of “extremely low-income” families to public housing in a fiscal year to the extent, in its tenant-based program, the PHA has provided more than seventy-five percent of newly available vouchers, including those resulting from turnover, to extremely low-income families (families with incomes that do not exceed thirty percent of the area median income).
- The PHA may then lower its admission of extremely low-income families into public housing by the number it exceeded its required seventy-five percent tenant-based admissions of extremely low-income families.

**DECONCENTRATION OF POVERTY AND INCOME MIXING**

*CFR 903.1*

- PHAs should design selection to produce a mix of incomes in public housing developments.

*CFR 903.2*

- HUD requires the PHA to establish goals which are designed to bring higher income tenants into lower income public housing projects, and bring lower income tenants into higher income public housing projects.
  - The PHA must determine and compare the relative tenant incomes of each development
  - Develop incentives to attract higher-income families into lower-income developments and lower-income families into higher-income developments
  - PHAs must devote appropriate attention to these goals and make any appropriate changes in their site-based admission policies.

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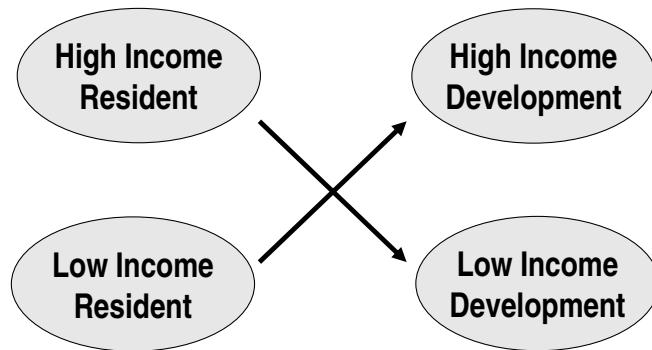
Eligibility

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Section 2.8: Tenant Selection Policies and Requirements

- Cannot concentrate low-income families in general occupancy developments.
- Annual plan must describe strategy and policy changes to HUD.
- Deconcentration policies may affect tenant selection procedures.

**The “X Factor” Concept**



- High income resident to low income development
- Low income resident to high income development
- Deconcentration policies may include:
  - Preference for working families
  - Skipping a family on the waiting list to reach another family in an effort to further the goals of the deconcentration policy

CFR 903.2(c)(1)(v)

Eligibility

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Section 2.8: Tenant Selection Policies and Requirements

**OTHER NOTES ON DECONCENTRATION**

*CFR 903.2(c)(4)*

- A family has the sole discretion whether to accept an offer of a unit made under a PHA's deconcentration policy.
  - The PHA may 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.
  - In accordance with PHA policies, the PHA may uniformly limit the number of offers received by applicants.

*CFR 903.2(c)(5)*

- Nothing in the deconcentration rule relieves a PHA of the obligation to meet the income targeting requirement.

**NOT SUBJECT TO DECONCENTRATION REQUIREMENT**

*CFR 903.2(b)(2)*

- PHAs with under 100 public housing units;
- PHAs which house only elderly persons or persons with disabilities, or both;
- Developments operated by a PHA which consist of only one general occupancy (family) development;
- Developments approved for demolition or for conversion to tenant-based assistance; and
- Developments which include public housing units operated in accordance with a HUD-approved mixed-finance plan using HOPE VI or public housing funds awarded before the effective date of the rule (March 7, 2001).
- Provided that the PHA certifies (and includes reasons for the certification) as part of its PHA Plan that exemption from the regulation is necessary to honor an existing contractual agreement or be consistent with a mixed-finance plan.

## Section 2.9      Evaluating Final Eligibility

### FULL APPLICATION STAGE

- When family is close to top of waiting list (close to unit offer), the PHA conducts an in-depth interview with the family in order to determine if they are eligible for admission to public housing.

*CFR 960.202(a)*

- PHA verifies and/or documents:

- Type of family
- Income/assets of all family members
- Appropriate allowances and/or deductions

*CFR 960.206(a)*

- Local preference claims
- Documentation required by local PHA policy

*CFR 5.216*

- Social Security numbers for all household members except noncontending persons

*CFR 5.512*

- Citizenship or immigration status of all family members

*CFR 960.203(c)*

- In addition, the PHA must determine if the family is “suitable” in accordance with its tenant selection criteria.

*HUD Guidance*

- Because the tenant selection and verification process may take up to 90 days to complete, PHAs should schedule applicant interviews well in advance of when a unit will be available.

*HUD Guidance*

- When selected from the waiting list, the family should be interviewed by the PHA, and a detailed application completed.

*HUD Guidance*

- The PHA should provide applicants enough notice that they can gather any preliminary documentation requested and arrange their schedule to attend the interview.

Eligibility

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Section 2.9: Evaluating Final Eligibility

*HUD Guidance*

- PHAs should state in their ACOP how they will treat applicants who reach the top of the waiting list in one bedroom size, but need a different unit size.

*HUD Guidance*

- Examples:
  - If there has been a change in family composition, place the family on the waiting list of the appropriate bedroom size in the order they would have been on that list based upon the date of application and applicable preferences.
  - If the PHA made a mistake in the original bedroom size designation, the PHA should offer family the next appropriate size unit.

*CFR 8.6*

- PHA should provide materials or assistance for sight-impaired and hearing-impaired persons, when requested.

## APPLICATION INQUIRIES

*CFR 100.202(c)*

- PHA may make inquiries to determine applicant's eligibility, level of benefits, and suitability for tenancy provided such inquiries are made of all applicants whether or not they appear to be persons with disabilities.

- This includes:

- Inquiring whether an applicant is a current illegal abuser or addict of a controlled substance or is currently engaging in the illegal use of drugs.

- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

*CFR 100.202(c)*

Eligibility

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Section 2.9: Evaluating Final Eligibility

## APPLICANT INTERVIEWS

*HUD Guidance*

- The interviewer should:
  - Explain the program to the applicant, including the family's responsibilities while receiving assistance.
  - Collect the documentation the applicant brings to the interview and give clear instructions and deadlines for additional information needed to complete the application process.
  - Assist the applicant in completing the required forms, and obtain the applicant's authorization to verify the information provided.
  - Determine on a preliminary basis whether the applicant is eligible.
  - Inform the applicant that a final eligibility determination will be made when the information provided is verified.
- Applicants who appear to be eligible must sign the necessary verification consent forms and be encouraged to assist in the verification process by asking employers or other parties to return the forms to the PHA in the time period specified by the PHA.

*HUD Guidance*

## PERSONAL DECLARATION FORM

*HUD Guidance*

- The HUD Office of Inspector General (OIG) suggests using a personal declaration form at all (re)certification interviews.
- Such a form is a statement in the tenant's own handwriting
- Head of household should complete prior to (re)certification interview
- Interviewer should review for completeness before continuing with interview

## Section 2.10     Suitability

- The PHA should fairly and objectively determine whether the family will be a suitable tenant.

### STANDARDS FOR PERSONS JOINING A RESIDENT FAMILY

- The same standards of tenant suitability used for applicants should be used for a person or persons joining a family already in occupancy.
- The PHA should determine that the person meets its standards prior to adding that person's name to the family's lease.

*CFR 960.203(a)*

### PROHIBITED SELECTION CRITERIA

- Tenant selection criteria and information to be considered must be reasonably related to individual attributes and behavior of an applicant.
  - NOT related to those which may be imputed to a particular group or category of persons of which an applicant may be a member.
- Admission to the program must never be based on:  
(Note: Regulatory for HCV; safe harbor for PH)
  - The presence of family members that include the following:
    - Unwed parents
    - Recipients of public assistance
    - Children born out of wedlock
  - The family's decision to participate in a Family Self-Sufficiency (FSS) program

Eligibility

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Section 2.10: Suitability

- Admission must never be based upon the following protected classes:
  - Age, race, color, religion, sex or national origin
  - Families with children (familial status)
  - Persons with disabilities
- PHAs may not require that:
  - Applicants have a minimum income
  - Applicants work
  - Eligible families apply for welfare or other benefit programs

*HB 7465.1, para. 3-2(b)*

**ALLOWABLE SELECTION CRITERIA**

- The primary objective of the PHA is to avoid a concentration of families with serious social problems in PHA developments
- Normal screening should look at past conduct as an indicator of future conduct.
  - The PHA should ask itself what the likelihood is that past or present behavior will continue if the family is housed in public housing.
  - Will the family's behavior in present or prior housing have an adverse affect on:
    - The health, safety, or welfare of others
    - The peaceful enjoyment of the premises by others
    - The physical environment of the development
    - The financial condition of the development

Eligibility

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Section 2.10: Suitability

- It is a statutory requirement that PHAs be assessed under PHAS for screening applicants. PHAs that have adopted policies, implemented procedures, and can document that they successfully screen out and deny admission to applicants with certain drug and other criminal histories receive PHAS points.
  - Under the current interim PHAS rule, effective March 25, 2011, this component will be reviewed but not scored until the final PHAS rule is published.
- The PHA should determine whether the family has a history of:
  - Not meeting financial obligations, especially rent
    - A lack of credit history has no bearing on eligibility
  - Disturbing neighbors
  - Destroying property
  - Living or housekeeping habits which could adversely affect the health, safety, or welfare of other tenants
  - Criminal activity, especially involving violence toward persons or property and drug-related criminal activity
- Applicants should be informed about what aspects of their background will be checked.

Eligibility

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Section 2.10: Suitability

**OPPORTUNITY TO DISPUTE ACCURACY OR RELEVANCE OF CRIMINAL RECORDS**

*24 CFR. 5.903(a),  
5.905(d), 960.204(c)*

- If a PHA obtains criminal records and/or sex offender information showing that an adult household member was involved in a crime that constitutes grounds for denial in public housing, the PHA must notify the household of the proposed action to be based on the information. The PHA must provide the subject of the record and the applicant a copy of such information, with the opportunity to dispute the accuracy and relevance of the criminal records before notice of denial is issued.
- Some states prohibit copying criminal records; in this case, the PHA would give the subject of record and applicant the right to view these records.

**DENIAL OF ADMISSION**

- In considering the elements discussed below, the PHA's focus should *not* be on whether the applicant or tenant happens to have a disability.

**SCREENING FOR DRUG ABUSE AND OTHER CRIMINAL ACTIVITY**

- HUD provides PHAs with tools to adopt and implement fair, effective and comprehensive policies for screening out applicants who engage in illegal drug use or other criminal activity.
- HUD clarifies the distinction between denial actions that are mandated and those that are permitted for PHAs.

Eligibility

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Section 2.10: Suitability

**REQUIRED DENIAL OF ADMISSION**

*CFR 960.204(a)*

- PHA denial is *required* for the following persons:

*CFR 960.204(a)(1)*

**1. Persons evicted for drug-related criminal activity**

- PHA standards must prohibit admission of an applicant to public housing for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity.
  - *Drug-related criminal activity* means 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.
- However, the PHA may admit the family if the PHA determines:
  - The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
  - The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

*CFR 960.204(a)(2)*

**2. Persons currently engaged in the illegal use of a drug**

- The PHA must establish standards that prohibit admission of a family to the PHA's public housing program if:
  - The PHA determines that any household member is currently engaging in illegal use of a drug; or
  - The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety or right to peaceful enjoyment of the premises by other residents.

Eligibility

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Section 2.10: Suitability

*CFR 960.204(a)(3)*

**3. Persons convicted of methamphetamine production**

- The PHA must establish standards that permanently prohibit admission to public housing if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

*CFR 960.204(a)(4)*

**4. Persons subject to lifetime sex offender registration requirement**

- The PHA must establish standards that prohibit admission to public housing if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program.
  - PHAs may only create policies that permanently deny admission to sex offenders subject to lifetime registration requirements as per the regulatory requirements, and may not implement policies that automatically deny admission to applicants for the duration of their sex offender registration requirement, regardless of circumstances, if it is less than life.
- In the screening of applicants, the PHA must perform necessary criminal history background checks in the state where the housing is located and in other states where household members are known to have resided.
  - Notice PIH 2012-28 specifies how this requirement can be fulfilled. Which ever method the PHA chooses must be included in its admissions and continued occupancy policy.
- Should the process reveal an applicant's household includes an individual subject to a state lifetime registered sex offender registration, the PHA must offer the family the opportunity to remove that individual from the household.

*Notice PIH 2012-28*

Eligibility

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Section 2.10: Suitability

*CFR 960.204(b)*

**5. Persons that abuse or show a pattern of abuse of alcohol**

- The PHA must establish standards that prohibit admission to public housing if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety or right to peaceful enjoyment of the premises by other residents.
- Remember: Simple abuse of alcohol is not grounds for denial of admission or eviction.

**STANDARDS FOR PHA TENANT SELECTION CRITERIA**

*HB 7465.1, para. 4-1(a)(3)*

- HUD does not impair the authority of the PHA to deny admission for criminal activity other than that specified in the regulations or which has taken place at times other than those specified.
  - However, the PHA must be vigilant that policies do not violate civil rights.

*HB 7465.1, para. 4-1(b)(6)*

- The PHA may also deny admission to applicants who currently owe rent or other amounts to the PHA in connection with public housing or Section 8 programs.
- Collection alternatives may be offered in lieu of denial with a specific timetable for repayment incorporated into the lease.
- PHAs are required to provide applicant the "Debts Owed to Public Housing Agencies and Terminations" form (Form HUD-52675).
  - Notice to applicants for rental assistance programs of debts owed to PHAs and Section 8 landlords
  - Each adult household member must sign the form.
  - Prior to admission, PHA must search for each adult household member in the Debts Owed module in EIV

Eligibility

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Section 2.10: Suitability

*CFR 960.203(d)*

- For denials that are not required by HUD, in the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to:
  - The time, nature and extent of the applicant's conduct including the seriousness of the offense.
  - In a manner consistent with the PHA's policies, procedures and practices of this section, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct, for example:
    - Evidence of rehabilitation; and
    - Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs.

*HB 7465.1, para. 4-1(b)(4)*

- Home visits and interviews provide valuable information for making determination of suitability for tenancy.

*HUD Guidance*

- A family who has a mixed credit record, or one good and one bad prior reference from a landlord, would be an example of when a home visit would be helpful.
- Home visits may not be useful for families who do not live alone while on the waiting list.
- The Public Housing Occupancy Guidebook provides some sample forms for families who are not living independently.
  - Verification of Ability to Comply with Lease Terms (third party completes)
  - PHA Checklist – Ability to Comply with Lease Terms (applicant completes)

Eligibility

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Section 2.10: Suitability

*HUD Guidance*

- The PHA could consider cases in which the family is likely to improve its financial situation because:
  - Its rent will be lower once it is admitted; or
  - It is participating in a job training program or has improved job prospects which will probably result in higher family income.
- Applicant's behavior toward PHA staff should be considered in relation to future behavior toward neighbors
  - Physical or verbal abuse or threats
  - May be basis for denial
- Ability to comply with lease terms
  - Some PHAs require additional check for elderly and disabled families only
    - Unlawful violation of civil rights
    - Assumption based on membership in protected class rather than individual attributes
- The final determination should take into consideration that when a marginal applicant is admitted, an applicant who clearly meets the standards is not admitted.
- In screening with respect to criminal activity:
  - The PHA may require an applicant to exclude a household member in order to be admitted to the housing program, where that household member has participated in or been culpable for actions that warrants denial.
  - The PHA may, where a statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.

Eligibility

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Section 2.10: Suitability

**CONSIDERATION OF REHABILITATION: ILLEGAL DRUG USE OR ALCOHOL ABUSE**

*CFR 960.203(d)(2)*

- In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may 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 may require the applicant to submit evidence or documentation.
- If rehabilitation is not an element of the eligibility determination, the PHA may choose not to consider whether the person has been rehabilitated.

**DRUG USE BY APPLICANTS; OBTAINING INFORMATION FROM DRUG TREATMENT FACILITY**

*CFR 960.205(b)*

**Definitions**

- *Currently engaging in illegal use of a drug:* Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.
  - PHA policy must define “recent”
- *Drug abuse treatment facility:* An entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

Eligibility

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Section 2.10: Suitability

**Authorization by Household Member for PHA to Receive Information from a Drug Abuse Treatment Facility**

*CFR 960.205(c)*

- The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:
  - Requests any drug abuse treatment facility to inform the PHA only whether the facility has reasonable cause to believe that the household member is currently engaging in illegal drug use
  - Complies with the form of written consent
  - Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission to the household member
- The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of the person.

**PHA Request for Information from Drug Use Treatment Facility**

*CFR 960.205(d)*

- The PHA may request that a drug abuse treatment facility disclose whether the facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug.
  - The PHA's request to the facility must include a copy of the consent form signed by the proposed household member.
  - A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this provision if such disclosure is consistent with section 543 of the Public Health Service Act.

Eligibility

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Section 2.10: Suitability

- The PHA is not obligated to request information from a drug treatment facility, and is not liable for damages for failing to request or receive such information.
- A drug abuse treatment facility may charge the PHA a reasonable fee for information provided.

**Prohibition of Discriminatory Treatment of Applicants**

*CFR 960.205(e)*

- A PHA may request information from a drug abuse treatment facility only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:
  - **Policy A – Request for all families:**
    - Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility before admitting any family to public housing. For each such family, the request must be submitted for each proposed household member.
  - **Policy B – request for certain household members:**
    - Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:
      - Whose criminal record indicates prior arrest 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 the destruction of property;
        - Engaged in violent activity against another person; or
        - Interfered with the right of peaceful enjoyment of the premises of other residents.

Eligibility

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Section 2.10: Suitability

**Confidentiality of Information**

*CFR 960.205(f)*

- Each PHA that receives information from a drug abuse treatment facility must establish and implement a system of records management that ensures that any information which the PHA receives from the facility about a person:
  - Is maintained confidentially
  - Is not misused or improperly disseminated
  - Is destroyed, as applicable:
    - Not later than 5 business days after the PHA makes a final decision to admit the person; or
    - If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based on that denial has expired.

**PHA ACCESS TO CRIMINAL RECORDS AND INFORMATION**

- Although the regulations provide a mechanism for obtaining access to criminal records, HUD recognizes that many PHAs use other means of obtaining that information.
- HUD regulations do not affect those other means.
  - HUD cautions PHAs to handle any information obtained about criminal records in accordance with applicable state and federal privacy laws and with the provisions of the consent forms signed by applicants.

Eligibility

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Section 2.10: Suitability

**Special Authority**

*CFR 5.903*

- HUD regulations authorize PHAs to obtain criminal records from a law enforcement agency to screen applicants for admission to public housing.
  - *Law enforcement agency* is defined as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records.
- Other definitions relating to access of records:
  - *Adult* is a person who is 18 years of age or older or who has been convicted of a crime as an adult under any federal, state, or tribal law.
  - *Responsible entity* means a PHA administering a public housing program under an annual contributions contract with HUD.
- To obtain records under the authority of 24 CFR 5.903, PHAs must require that every applicant family submit a consent form and that the form be signed by each adult household member.
- Following a PHA request, a law enforcement agency:
  - Must send promptly to the PHA a certified copy of any criminal conviction records concerning the household member that the law enforcement agency has possession of or control over
  - May charge the PHA a reasonable fee for releasing the criminal conviction records

*CFR 960.204(d)*

- A PHA may not pass along to an applicant the costs of a criminal records check.

Eligibility

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Section 2.10: Suitability

**Permitted Use and Disclosure**

*CFR 5.903(e)*

- PHAs are permitted to use criminal records obtained under the authority of 24 CFR 5.903 only for:
  - Applicant screening
  - Lease enforcement and eviction of public housing residents
- A PHA may disclose the criminal records that it receives from a law enforcement agency under the authority of 24 CFR 5.903 only to:
  - Officers or employees of the PHA
  - Authorized representatives of the PHA with a job-related need to access the information (for example, a PHA hearing officer conducting an administrative grievance hearing concerning a proposed eviction)
- If disclosure of criminal records obtained under the authority of 24 CFR 5.903 is necessary in connection with judicial proceedings, a PHA is not responsible for controlling access to or knowledge of the records after the disclosure.

**Opportunity to Dispute**

*CFR 5.903(f), CFR 960.204(c)*

- If a PHA's decision to deny admission to an applicant, enforce a lease, or evict a tenant is based on criminal record information, the PHA must notify the household of the proposed action and:
  - Supply the subject of the record and the applicant or tenant with a copy of the information
  - Provide the opportunity for the subject and the applicant or tenant to dispute the accuracy and relevance of the information before the denial or eviction action

Eligibility

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Section 2.10: Suitability

**Records Management**

*CFR 5.903(g)*

- PHAs must have a system of records management that ensures that criminal records received from a law enforcement agency under the authority of 24 CFR 5.903 are:
  - Maintained confidentially
  - Not misused or improperly disseminated
  - Destroyed once the purpose for which the records were requested has been accomplished, including expiration of the period for filing a challenge to the PHA action or final disposition of litigation

**Improper Release and Civil Liability**

*CFR 5.903(h)*

- HUD regulations under 24 CFR 5.903 provide for conviction for a misdemeanor and fine of not more than \$5000 for:
  - Any person who knowingly and willfully requests or obtains criminal records information under false pretenses
  - Any person who knowingly and willfully discloses criminal records information to any individual not entitled under law to receive the information
- A PHA may be liable to applicants or tenants affected by:
  - Negligent or knowing disclosure of criminal records information obtained by an officer, employee, or authorized representative if the disclosure is not authorized by the regulations
  - Any other negligent or knowing action inconsistent with applicable regulations
- Applicants or tenants may bring civil action for damages.

Eligibility

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Section 2.10: Suitability

**Special Authority to Access Sex Offender Registration Information**

*CFR 5.905*

- A PHA that administers public housing under an annual contributions contract (ACC) with HUD must carry out background checks necessary to determine whether applicants are subject to a state sex offender registration program.
- The background checks must be carried out in the state where the housing is located and in states where the household members are known to have resided.
  - With regard to this requirement, Notice PIH 2012-28 states explicitly that applicants for admission into HUD-assisted housing programs must provide a complete list of all states in which any household member has resided.
  - Alternatively, PHAs may use a national database covering sex offender registries in all states, such as the Dru Sjodin National Sex Offender Database, in lieu of asking for a complete list of states on the application.
    - The Dru Sjodin National Sex Offender Database can be found on the Web at:  
<http://www.nsopw.gov>
    - The PHA must state which of the two methods listed above it will use in its admissions and continued occupancy policy.
  - The state or local agency that collects and is responsible for sex offender registration information must provide a PHA with requested information in a prompt manner.
  - The state or local agency providing sex offender registration information to a PHA may charge a reasonable fee for the service.

Eligibility

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Section 2.10: Suitability

- The same requirements for access to criminal records apply to sex offender registration information regarding:
  - Records management
  - PHA obligation to notify the household
  - PHA obligation to provide a copy of the information to the subject of the record and the applicant or tenant
  - Household opportunity to dispute the information
- The records management requirements for sex offender registration information do not apply to information that is considered public or that is obtained by a PHA other than under the authority of 24 CFR 5.905.

### **ADMISSION OF APPLICANTS WITH DISABILITIES**

*CFR 100.204(a)*

- Applicants with disabilities who do not meet PHA's criteria for suitability for tenancy must be admitted if applicant can meet PHA's criteria for suitability through "reasonable accommodations."

*HUD Guidance*

- Do NOT require a physical examination as a condition of admission.
- Do NOT impose conditional leases requiring persons with disabilities to participate in supportive activities.
- If applicant cannot provide customary information requested such as landlord references and credit reports, PHA should consider other sources of information:
  - Personal references
  - Institutions where applicant has lived
  - Doctors
  - Therapists and service agency personnel

Eligibility

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Section 2.10: Suitability

*HB 7465.1, para. 4-2(a)(6)*

- Objectionable behavior that impacts on a disabled applicant's ability to fulfill essential lease obligations may be basis for rejection if such behavior cannot be corrected by "reasonable accommodations" even if the behavior is related to the disability. These may include:
  - Failure to pay rent
  - Disturbing neighbors
  - Destroying property
  - Living or housekeeping habits adversely affecting the health, safety, or welfare of other tenants

**NOTICE TO INELIGIBLE APPLICANTS**

- If an applicant is determined ineligible, they must be provided prompt written notice of this determination.
- The notice must state:
  - The reason(s) why ineligible;
  - That the applicant may request an informal hearing.

**INFORMAL HEARINGS**

*HB 7465.1, para. 4-4(a)(3)*

- The grievance procedures for public housing tenants do not apply to PHA determinations affecting applicants.
- Applicants are entitled to an informal hearing.
- Hearings may be conducted in-person or remotely, depending on PHA policy. See Notice PIH 2020-32 for the requirements regarding conducting remote informal hearings. The purpose of the informal hearing is to:
  - Resolve applicant disputes with the PHA without legal action, and
  - Correct PHA errors.

Eligibility

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Section 2.10: Suitability

*CFR 960.208*

- Families must be notified of their right to an informal hearing when the PHA determines they are ineligible for admission.
- Informal hearings should be conducted by a non-involved person.

*CFR 960.208*

- PHAs have latitude in establishing reasonable time frames for families to request an informal hearing as well as the time frame for the PHA's final determination.

*HUD Guidance*

- Examples of reasonable time frames would be to:
  - Allow the family seven to ten calendar or working days to request a review/informal hearing, and
  - Allow the PHA 14 calendar days to issue a final decision following the review/informal hearing.

*HUD Guidance*

- Statements should be:
  - Carefully worded to avoid unnecessary questioning of every PHA decision, and
  - Clearly stated so that the family knows which decisions they have a right to appeal and which they do not.
- Applicants may present oral or written objections to the decision. Applicants may choose to be represented by anyone of their choice, including legal counsel, at their own expense.
- After the informal hearing is completed, the PHA should promptly notify the applicant in writing of the final decision and state the reasons for its determination.
- All requests for an informal hearing, supporting documentation, and copy of the final decision must be retained in the family's file.

Eligibility

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Section 2.10: Suitability

*HB 7465.1, para. 4-4(a)(2)*

- A PHA may determine that:
  - The applicant is ineligible, or
  - The PHA does not have an appropriate size and type of unit in its inventory

## APPLICANT SELECTION PROCEDURES

*HB 7465.1, para. 5-7(a)(1)  
PH Occ GB, Waiting List and Tenant Selection, p. 3*

- The PHA must offer the unit to an applicant needing that size and type of unit in that type of project. PHA policy determines which units to offer to an applicant when more than one unit of the correct size and type is available.

*HB 7465.1, para. 5-7(a)(1)*

- The PHA must make the offer in sequence, until someone accepts it, in order of priority, based on the tenant selection plan and date and time, using the local preference list.
- PHAs can match characteristics of the family with the types of units available (for example, number of bedrooms).
- PHAs must give preference to families that include person(s) with disabilities for units with special accessibility features.

*HB 7465.1, para. 5-7(a)(2)*

- The PHA must adopt procedures limiting the duration of a vacancy, due to turnover, to the minimum amount of time necessary.

*HB 7465.1, para. 5-7(a)(3)*

- Each PHA must follow its tenant selection plan, adopted by the PHA and approved by HUD, which describes the PHA's offer system and the procedures for dropping applicants who refuse the offers to the bottom of the waiting list.
- The PHA must specify an offer system and include it in the Admissions & Continued Occupancy Policy and in the PHA's Agency Plan.

*HUD Guidance received verbally 9/1/99*

Eligibility

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Section 2.10: Suitability

- PHA policy determines the number of days an applicant can consider a unit offer, how many offers an applicant may refuse without good cause, and what is considered good cause for refusing a unit offer.

**SITE-BASED WAITING LISTS**

- The Admissions and Continued Occupancy Policy must define how offers are made on site-based waiting lists.

**NON-SITE-BASED WAITING LISTS**

- The following plans are examples of PHA offer systems.

**Plan A (1 Offer Plan)**

*HB 7465.1, para. 5-7(a)(4)(a)*

- This plan is NOT based on the distribution of vacancies in the PHA's projects.

*HB 7465.1, para. 5-7(a)(4)(a)*

- The applicant is offered a suitable unit. If the applicant refuses it, their name goes to the bottom of the waiting list.

*HB 7465.1, para. 5-7(b)(1)*

- Only under this plan is an applicant given only one offer before their name goes to the bottom of the waiting list.

**Plan B (2-3 Offer Plan)**

*HB 7465.1, para. 5-7(a)(4)(b)*

- This plan is based on the distribution of vacancies in the PHA's projects.

*HB 7465.1, para. 5-7(a)(4)(b)*

- The PHA determines how many locations within its jurisdiction have available units of suitable size and type in the appropriate type or project.

*HB 7465.1, para. 5-7(b)(2)*

- The PHA must offer an applicant at least two suitable units before putting the applicant's name on the bottom of the waiting list.

Eligibility

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Section 2.10: Suitability

*HB 7465.1, para. 5-7(b)(2)*

- The first offer must be rejected before the second offer is made.

*HB 7465.1, para. 5-7(b)(2)*

- If there is only one suitable unit available, and the offer is rejected, the applicant maintains the same position on the waiting list until another suitable unit is offered.

*HB 7465.1, para. 5-7(b)(3)*

- The PHA may have to make three offers to some applicants, but only two offers to others, depending on the availability of units.

*HB 7465.1, para. 5-7(a)(4)(b)*

- If a suitable unit is available in:
  - *3 or more locations*: The applicant may be offered a suitable unit in the location with the highest number of vacancies.
    - If the offer is rejected, the applicant must be offered a suitable unit in the location with the second highest number of vacancies.
    - If that offer is rejected, the applicant must be offered a suitable unit in the location with the third highest number of vacancies.
    - If that offer is rejected, the applicant's name must be put at the bottom of the waiting list.
  - *2 locations*: The applicant must be offered a suitable unit in the location with the higher number of vacancies.
    - If the offer is rejected, the applicant must be offered a suitable unit at the other location.
    - If that offer is rejected, the applicant's name must be moved to the bottom of the waiting list.

Eligibility

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Section 2.10: Suitability

- *1 location:* The applicant must be offered a suitable unit in that location.
  - If the offer is rejected, the applicant must be offered the next suitable unit that becomes available, whether it is at the same location as the first offer or at another location.
  - If the applicant rejects the second offer, the applicant's name must be put at the bottom of the waiting list.

**OFFERS NOT COUNTED**

*HB 7465.1, para. 5-7(b)(6)*

- Any applicant would *not* be considered to have been offered a unit if:

*HB 7465.1, para. 5-7(b)(6)(a)*

- Unit is not of the proper size and type, and the applicant would be able to reside there only temporarily

*HB 7465.1, para. 5-7(b)(6)(b)*

- Unit contains lead-based paint, and accepting the offer could result in subjecting the applicant's children under seven (7) years of age to lead-based paint poisoning

*HB 7465.1, para. 5-7(b)(6)(c)*

- Applicant is unable to move at the time of the offer and presents clear evidence to the PHA's satisfaction, such as:
  - A physician's verification that the applicant has just undergone major surgery and requires a period to recuperate.
  - Court verification that the applicant is serving on a jury which has been sequestered.

*HB 7465.1, para. 5-7(b)(6)(d)*

- Accepting the offer would result in undue hardship to the applicant not related to consideration of race, color, national origin, or language, such as making employment or day care facilities inaccessible, and the applicant presents clear evidence substantiating this to the PHA's satisfaction.

Eligibility

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Section 2.10: Suitability

**FURTHER GUIDANCE**

- *HB 7465.1, para. 5-7(b)(7)*
  - A “location” (site) is not always the same as a project.
  - A location may have more than one project.
  - HUD defines a site as any common geographic area undivided by natural or man-made barriers (such as rivers, highways, railroads, or other major obstructions) that block or impede normal pedestrian traffic.
  - Individual dwelling units in a scattered site project may be grouped and identified as one location if they are within a block of each other.
  - The “highest number of vacancies” means:
    - Vacancies in units of all sizes and types, not just the size and type the applicant needs.
    - The actual number of vacancies, not the number of vacancies as a percentage of all units in that location.
  - The PHA may adopt a policy defining “Bottom of the Waiting List” to mean that the family will be denied any preferences for a specified period of time in order to keep the family from coming back to the top of the waiting list too quickly.
  - Refusal of unit offer
    - According to the Public Housing Occupancy Guidebook, the PHA may either:
      - Drop applicant to bottom of waiting list by changing date and time of application, OR
      - Remove applicant from waiting list and require re-application
    - Differs from previous HUD guidance

Eligibility

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Section 2.10: Suitability

## RETENTION OF DOCUMENTS

*HB 7465.1, para. 1-3(a)(9)*

- PHAs must maintain information on the race, ethnicity, sex, and age of the head of household of all families that submit an application for admission and of all tenants in occupancy.

*HB 7465.1, para. 1-3(a)(9) and 1-2(a)*

- PHAs must keep in the tenant's file a copy of each family's application for admission to public housing.

*HB 7465.1, para. 5-7(a)(5)*

- Documents must be readily available in the applicant file to indicate when and why the applicant was selected.
- The preapplication should indicate the date and time it was received and the applicant's preference status.
- The file should contain a dated notice to the applicant of selection for processing and a clear record of units offered, including location, date, circumstances of each offer and each rejection or acceptance.
- The PHA should document why the offer was rejected.

*HB 7465.1, para. 1-2(a)*

- The PHA must document its determination that an applicant is eligible and meets the PHA's admission standards.

## EIV REPORTS

### DEBTS OWED TO PHAS AND TERMINATIONS

- All adult household members must sign the form HUD-52675 Debts Owed to Public Housing and Terminations one time.
- Prior to admission to the program, the PHA must search for each adult family member in the EIV Debts Owed to PHAs and Terminations module.

Eligibility

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Section 2.10: Suitability

- If a current or former tenant disputes the information in the module, the tenant should contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV.
- Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

**EIV EXISTING TENANT SEARCH**

- Prior to admission to the program, the PHA must search for all household members using the EIV Existing Tenant Search module.
- The PHA must review the reports for any SSA matches involving another PHA or a multifamily entity and follow up on any issues identified.
- The PHA must provide the family with a copy of the Existing Tenant Search results if requested. At no time may any family member receive duplicative assistance.
- If the tenant is a new admission to the PHA, and a match is identified at a multifamily property, the PHA must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

**EIV INCOME REPORT**

- For each new admission, the PHA is required to review EIV Income Report within 120 days of new admission. If discrepancies are identified, the PHA must resolve them within 60 days of report date.

## **PUBLIC HOUSING ELIGIBILITY QUIZ**

### **Part I: Multiple Choice (A question may have more than one correct answer).**

1. Which of the following statements is true in regards to the definition of a family?
  - a. HUD defines "family" as a mother with one or more children
  - b. PHAs must define "families" in their ACOP
  - c. HUD defines "family" as two or more people living together in a family-type relationship
2. To further deconcentration of poverty and income-mixing, the PHA must:
  - a. Only admit extremely low-income families to public housing
  - b. Establish goals designed to bring higher income families into lower income developments, and lower income families into higher income developments
  - c. Drop from the waiting list any higher income families refusing to move into lower income developments
  - d. Develop a system of site-based waiting lists
3. If a mom, her 17 year old son, and 13 year old daughter live in a two-bedroom unit:
  - a. The daughter can share a sleeping room with mom, but not with the son
  - b. The son cannot share a bedroom with the mom
  - c. Anyone can sleep wherever they want - it's a free country
  - d. They'll have to move
4. The income limit that is used to determine eligibility for admission to public housing is:
  - a. Low-income limit (80% of area median income)
  - b. Very low-income limit (50% of area median income)
  - c. Extremely low-income (higher of 30% of area median income or the federal poverty level)
  - d. PHAs may set their own income limits
5. Two families, the Lucky family and the Dozer family, apply for the PHA's public housing program on the same day, at the same time. They happen to be the only families that applied that day, yet the Lucky family is number 15 from the top of the waiting list, while the Dozer family is number 33. The reason that the Lucky family would be so much higher on the waiting list is due to the PHA's:
  - a. Unit availability
  - b. Personnel policies
  - c. Preferences
  - d. Income limit

## Eligibility

## Section 2.10: Suitability

**SOCIAL SECURITY/NON-CITIZENS LEARNING ACTIVITY**

- The Gonzalez family is applying for admission to the program.

**Part I: Gonzalez Family**

Name	Age	SSN	Disabled	Citizenship Status
Jesús Gonzalez	30	Does not have one	N	Ineligible non-citizen
Maria Gonzalez	37	Does not have one	N	Ineligible non-citizen
Juan Gonzalez	7	445-56-5843	Y	Eligible citizen
Elsa Gonzalez	4	445-32-7589	N	Eligible citizen
Inez Gonzalez (Jesús' aunt)	65	445-87-8937	N	Eligible non-citizen
Laura Alvarez (Maria's sister)	40	332-67-8383	N	Eligible non-citizen

- Does this family qualify for the program under the non-citizens rule?
  - Yes, because at least one member meets the requirements under Section 214
  - No, because neither the head or spouse are citizens or eligible non-citizens
  - No, because only the children are citizens
  - Yes, because there is one adult in the family that meets the requirement under Section 214
- What documentation concerning their social security/immigration status would the PHA need in the file?

- Which family members are eligible for the program under the non-citizens rule?
  - Juan and Elsa
  - Inez and Laura
  - No one
  - Juan, Elsa, Laura, Inez

Eligibility

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Section 2.10: Suitability

4. Elsa has lived with the family since birth. If the family refused to disclose Elsa's SSN, what action can the PHA take?
  - a. The PHA must deny the family assistance
  - b. The PHA has no authority to require her to disclose her SSN
  - c. Depends on the PHA's policy

**Part II: True/False (Mark T for True or F for False)**

1.  PHAs are not required to provide reasonable accommodation if it would alter their work load.
2.  To qualify for public housing, the family's annual income must be under 30% of the area median.
3.  Applicants may claim a preference even after they have been placed on the waiting list.
4.  In each fiscal year, at least 40% of the PHA's new admissions to public housing must be extremely low-income families.
5.  If the PHA changes its preference system, the PHA needs to notify only those applicants who will most likely be selected within the following six months.
6.  Although a PHA may establish a residency preference, residency requirements are NOT permitted.
7.  All families must be notified of the requirement to provide declaration of their citizenship status.
8.  HUD approval is always required to adopt a local preference.
9.  If a PHA has established a working preference, it must also extend this preference to families whose head and spouse are elderly or persons with a disability.
10.  A PHA may skip a family on the waiting list to reach a family that will further deconcentration of poverty goals.

Eligibility

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Section 2.10: Suitability

Notes

## CHAPTER 3

## Leasing

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### LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Describe pre-leasing activities
- Analyze the required components of the public housing lease

### Section 3.1 Leasing Procedures

#### PREPARING FOR LEASE-UP

##### *Industry Practice*

##### **PREOCCUPANCY DUTIES**

- A preoccupancy conference should be conducted prior to leasing the unit in order to perform the resident orientation.
- Prior to the conference, manager should:
  - Prepare the lease and other documents
  - Inspect and prepare the unit for occupancy
- When the manager conducts a preinspection of the unit, a checklist should be used that records maintenance needs as well as preventative maintenance requirements.
- The manager is responsible to see that all work has been completed and equipment is in proper working order prior to move-in.
- When the unit is ready for occupancy, the family is notified and the lease-up process takes place.

## RESIDENT ORIENTATION

### *Industry Practice*

- The resident orientation should:
  - Acquaint the family with the provisions of the PHA lease
  - Explain all occupancy requirements
  - Obtain or arrange for payment of the first month's rent and security deposit
  - Orient the family to the environment
  - Establish a good rapport with the family

### *Industry Practice*

## REVIEWING THE LEASE WITH THE FAMILY

- The manager is responsible for ensuring that the family understands the lease provisions prior to signature and occupancy.
- If possible, all members of the family should attend the conference, especially all adult household members.
- A copy of the lease must be provided to the resident. The PHA will retain a copy of the executed lease in the occupancy file.
- The provisions of the lease should be explained thoroughly, including:
  - Responsibilities of the family and PHA
  - Consequences of noncompliance with the lease
  - Grievance and hearing process
  - Annual and interim recertification policy

### **COMMUNITY SERVICE**

- On August 13, 2015, HUD issued Notice PIH 2015-12 to assist PHAs in better understanding and administering the mandated community service and self-sufficiency requirement (CSSR). The notice supersedes all previous guidance.
- This notice states that PHAs must provide resident families with a copy of the PHA policies and HUD requirements regarding community service at the time of initial program participation.
- The notice also states that it is required that all adult members of a resident family sign a certification (Attachments A and B in the notice) that they have received notice of the CSSR requirements, read the requirements, and understand that if they are not exempt, failure to comply with the requirements will result in nonrenewal of their lease.
  - Attachment A is signed at the time of initial lease execution for new families entering the program.
  - Any adults subsequently added to the lease or family members who come of age are also responsible for signing the certification.
  - Attachment B is signed at annual reexamination
- The community service requirement will be covered in greater detail in Chapter 4.

### **SMOKE-FREE PUBLIC HOUSING**

*FR Notice 12/5/16*

- On December 5, 2016 HUD issued the Instituting Smoke-Free Public Housing Final Rule that requires PHAs that operate public housing to amend their PHA plans and tenant leases to implement smoke-free policies no later than July 30, 2018. On February 15, 2017 HUD issued Notice PIH 2017-03 which provides regulatory guidance for instituting the smoke-free final rule.

*24 CFR 966.53(a)*

- Smoke-free policies must ban the use of prohibited tobacco products in all public housing living areas and interior areas and administrative offices as well as all outdoor areas up to 25 feet from public housing and administrative office buildings.

*24 CFR 966.53(c)*

- Prohibited tobacco products are defined as items that involve the ignition of tobacco leaves such as (but not limited to) cigarettes, cigars, pipes and waterpipes (hookahs).
  - Electronic Nicotine Delivery Systems (ENDS), also called e-cigarettes, are not prohibited under the rule but PHAs have the discretion to prohibit them as part of their smoke-free policies
  - PHAs may limit smoking to designated smoking areas outside of restricted areas, may create additional smoke-free areas, or may make their entire grounds smoke-free.
    - Restricted areas include hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures.

Leasing

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Section 3.1: Leasing Procedures

- The rule does not prohibit individual residents from smoking.
  - PHAs should continue to lease to individuals who smoke.
- The rule does not apply to mixed-finance developments or properties that have converted under RAD.

*Industry Practice*

**OTHER MATTERS TO COVER**

- The PHA should provide brochures and other information about unit and equipment maintenance and should help the family enroll in any required or suggested maintenance programs.
- The manager should either collect the security deposit and rent or refer the family to the place where these payments should be made, such as the PHA central office or a bank.
- The PHA should review the following topics with the family:
  - Areas where conflict has arisen with other residents
  - Family choice of rental payment
  - Pet rules
  - How to request maintenance repairs
  - Definition of routine vs. emergency repairs
  - Future unit inspections to be made
  - Location of neighborhood services
  - PHA and other programs available
  - How to make reasonable accommodations for disabled family members (if applicable)
  - Additional questions the family may have

## UNIT INSPECTION

*Notice PIH 98-54;  
CFR 35.92(b)*

*CFR 966.4(i)*

- The PHA must provide lead-based paint disclosure information to the family prior to the execution or approval of any lease for a unit constructed before 1978.
- The prospective tenant and the manager must conduct a joint move-in inspection of the unit. This should be done prior to execution of the lease agreement.
- The specific condition of the unit, as well as equipment and appliances, should be recorded for each room.
- Items which need repair should be scheduled and repaired prior to occupancy.
- The present condition of walls, floors, counter tops and appliances should be noted so that the tenant is not charged at a later date for the pre-existing conditions of such items.
- The manager and the family must both sign the inspection form.

## FINAL STEPS IN THE LEASING PROCESS

*Industry Practice*

- When the unit is ready for occupancy and the family has met its pre-paid obligations, the keys should be issued to the family.
- The manager should assure that the family's questions have been answered and that the family is made to feel welcome to the community.

## Section 3.2 Required Lease Provisions

- A PHA's public housing lease establishes the basis of the legal relationship between the PHA and the tenant.
- The PHA's lease must be in compliance with HUD and other federal regulations as well as with state and local landlord-tenant laws.
  - PHAs should be aware that landlord-tenant laws vary from state to state. Hence a lease provision that is legal and enforceable in one locality may not be so in another.
- PHAs are required by HUD to include certain provisions in their lease, and they are prohibited from including certain others.
  - The HUD regulations governing public housing leases are set forth in 24 CFR Part 966, Subpart A: Dwelling Leases, Procedures, and Requirements.
  - HUD model lease is in Public Housing Occupancy Guidebook, Appendix IV
- PHAs must ensure that their public housing leases contain the updated provisions of 24 CFR Part 5, Subpart L, including:
  - Definitions (24 CFR 5.2003)
  - VAWA protections (24 CFR 5.2005)
  - Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2007)
  - Remedies available to victims of such violence (24 CFR 5.2005 and 5.2009)

*Notice PIH 2017-08*

Section 3.2: Required Lease Provisions

- PHAs are also free to include other provisions in their lease form so long as the provisions are:
  - Considered reasonable
  - Not prohibited by law
  - Fairly applied
- Notice PIH 2017-08 also encourages PHAs to include any addition protections available for victims of domestic violence, dating violence, sexual assault, or stalking.
- Lead Disclosure Rule
  - Requires lead disclosure addendum to lease
  - Regardless of the presence of children

**PARTIES, DWELLING UNIT, AND TERM**

*CFR 966.4(a)(1)*

- The lease must state all of the following:
  - Names of the PHA and the tenant
  - Address of the unit rented
  - Term of the lease
  - Utilities, services, and equipment to be supplied by the PHA at no extra charge
  - Utilities and appliances to be paid for by the tenant
  - Composition of the household, as approved by the PHA
    - The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child.
    - The family must request PHA approval to add any other family member as an occupant of the unit.
      - Families may file a grievance if the PHA denies their request to add someone to the household

Section 3.2: Required Lease Provisions

CFR 966.4(a)(2)

**LEASE TERM AND RENEWAL**

- The lease must have a 12-month term and must be automatically renewed for the same period.
- The PHA may *not* renew the lease if the family continues to violate the requirement for resident performance of community service or participation in an economic self-sufficiency program and if the family is determined to be over the income limit for 24 consecutive months.
  - The lease will convert to month-to-month for families whose tenancies will be terminated within six months for being over-income if this is the PHA's policy.
  - For non-public housing over-income (NPHOI) families who are allowed to execute an NPHOI lease under PHA policy rather than be terminated, leases will not be automatically renewable and renew in accordance with 24 CFR 960.509(b)(2).

**EXECUTION AND MODIFICATION**

CFR 966.4(a)(3)

- The lease must be executed (signed) by the tenant and the PHA.
  - An annual signing process for automatic renewals is not necessary.
- Many PHAs require all adult members to sign the lease.
  - In some states, eviction action can only be brought against persons who signed the lease.
- The lease may be modified at any time by written agreement of the tenant and the PHA.

CFR 966.4(a)(3)

## **PAYMENTS DUE UNDER THE LEASE**

### **TENANT RENT**

*CFR 966.4(b)(1)(i)*

- The tenant must pay the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements.
  - The amount of 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.
  - The PHA must give the tenant written notice stating any change in the amount of tenant rent and when the change is effective.

### **PHA CHARGES**

*CFR 966.4(b)(2)*

*Notice PIH 2004-02 (HA)*

- The lease must provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities.
- A PHA may charge residents who pay flat rents for excess consumption of PHA-provided utilities under the following conditions:
  - The PHA incorporated costs for reasonable levels of consumption into its flat rents.
  - The residents' consumption exceeds the reasonable levels used to determine the flat rents.
  - The excess consumption can be documented through check metering.
  - Residents have been notified of the policy.
- The lease must contain a provision or addendum that tenants will receive notification at least 30 days before an eviction for nonpayment of rent is filed.

Section 3.2: Required Lease Provisions

*CFR 966.4(b)(3)*

- At the option of the PHA, the lease may provide for payment of penalties for late payment.
- The lease must provide that charges assessed for late payment, maintenance and repair, or consumption of excess utilities are not due until two weeks after the PHA gives the tenant written notice of the charges.
  - The notice must meet the requirements governing a notice of adverse action.

*CFR 966.4(b)(4)*

### **SECURITY DEPOSIT**

*CFR 966.4(b)(5)*

- At the option of the PHA, the lease may provide for a security deposit not to exceed one month's rent or a reasonable fixed amount required by the PHA.
  - Interest earned is subject to applicable state laws
- PHA may allow applicant to pay security deposit in installments.
  - Written agreement
  - ACOP

### **REDETERMINATION OF RENT AND FAMILY COMPOSITION**

*CFR 966.4(c)*

- The lease must provide for redetermination of rent and family composition, including:

*CFR 966.4(c)(1)*

- The frequency of regular rental redeterminations

*CFR 966.4(c)(1)*

- The basis for interim redeterminations

*CFR 966.4(c)(2)*

- An agreement by the tenant to furnish applicable information and certifications needed for rent, eligibility, and unit size determinations

*CFR 966.4(c)(3)*

- An agreement by the tenant to transfer to a unit of the appropriate size, based on family composition, upon PHA notice that such a unit is available

Leasing

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Section 3.2: Required Lease Provisions

*CFR 966.4(c)(4)*

- When the PHA determines that a unit transfer or a change in total tenant payment or tenant rent is needed, the PHA must notify the tenant that s/he may:
  - Ask for an explanation of the determination
  - Request a hearing under the PHA's grievance procedures if s/he does not agree with the determination

**FAMILY CHOICE OF RENTAL PAYMENT**

*CFR 960.253(a)(1)*

- The PHA must allow the tenant to elect annually whether to pay income-based rent or flat rent.

*CFR 960.253(e)*

- The PHA must provide the tenant with enough information to make an informed choice.

**TENANT'S RIGHT TO USE AND OCCUPANCY**

*CFR 966.4(d)(1)*

- The lease must provide that the tenant and authorized household members have the right to exclusive use and occupancy of the unit.

*CFR 5.100*

- This right includes reasonable accommodation of guests (i.e., persons temporarily staying in the unit with the consent of a household member)
- Unauthorized occupants are trespassers

*CFR 966.4(d)(2)*

- With the consent of the PHA, household members may engage in legal profit-making activities in the dwelling unit so long as the activities are incidental to the primary use of the unit as a residence.
  - Lease should describe procedure to obtain permission

Section 3.2: Required Lease Provisions

*CFR 966.4(d)(3)*

- With the consent of the PHA a foster child or live-in aide may reside in the unit.
  - The PHA may adopt reasonable policies defining when consent will be given or denied and may take into consideration such factors as:
    - Whether the addition of a new occupant will require a transfer to another unit
    - Whether another unit of the appropriate size is available
    - The PHA's obligation to make reasonable accommodations for persons with disabilities

## PHA OBLIGATIONS

*CFR 966.4(e)*

- The lease must provide for the following PHA obligations:

*CFR 966.4(e)(1)*

- To maintain the premises and project in decent, safe, and sanitary condition

*CFR 966.4(e)(2)*

- To comply with building and housing code requirements and HUD regulations materially affecting health and safety

*CFR 966.4(e)(3)*

- To make necessary repairs to the dwelling unit

*CFR 966.4(e)(4)*

- To keep in clean and safe condition project buildings, facilities, and common areas not otherwise assigned to the tenant for maintenance and upkeep

*CFR 966.4(e)(5)*

- To maintain electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, in good and safe working order

*CFR 966.4(e)(6)*

- To provide and maintain receptacles and facilities for the deposit of ashes, garbage, rubbish, and other waste (except containers for the exclusive use of an individual tenant family)

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Leasing

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Section 3.2: Required Lease Provisions

*CFR 966.4(e)(7)*

- To supply running water and reasonable amounts of hot water and heat at appropriate times of the year except where:
  - The building that includes the dwelling unit is not required to be so equipped by law
  - Heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection

*CFR 966.4(e)(8)*

- To notify the tenant of the specific grounds for any adverse action by the PHA, such as proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance, repair, or excess utility consumption
  - When the PHA is required to afford the tenant the opportunity for a hearing under the PHA's grievance procedures, the notice of proposed adverse action must inform the tenant of his/her right to request such a hearing.
  - In the case of a lease termination, a notice in accordance with the regulatory requirements for lease termination will constitute adequate notice of proposed adverse action.
  - In adverse action other than lease termination, the PHA may not take the proposed action until the time to request a hearing has expired or, if a hearing is requested by the tenant, until the grievance process is completed.

*CFR 966.4(e)(9)*

- To consider lease bifurcation in circumstances involving domestic violence, dating violence, stalking, or human trafficking.

## TENANT OBLIGATIONS

- *CFR 966.4(f)*
  - The lease must provide for the following tenant obligations:
    - Not to assign the lease or to sublease the dwelling unit
    - Not to provide accommodations for boarders or lodgers
    - To use the 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 PHA rules posted in the project office and incorporated by reference in the lease
    - To comply with all tenant obligations required by building and housing codes materially affecting health and safety
    - To keep the dwelling unit and any other areas assigned for the tenant's exclusive use in 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, including elevators
    - To refrain from, and cause household members and guests to refrain from, destroying, defacing, damaging, or removing any part of the dwelling unit or project

Section 3.2: Required Lease Provisions

*CFR 966.4(f)(10)*

- To pay reasonable charges for repair of damages (beyond normal wear and tear) to the dwelling unit or to the project (including damages to project buildings, facilities, or common areas) caused by the tenant, a household member, or a guest

*CFR 966.4(f)(11)*

- To act, and cause household members and guests to act, in a manner that will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in decent, safe, and sanitary condition

*CFR 966.4(f)(12)(i)*

- To assure that no tenant, member of the tenant's household, or guest engages in:
  - Any criminal activity that threatens the health or safety of other residents or their right to peaceful enjoyment of the premises
  - Any drug-related criminal activity *on or off* the premises

*CFR 966.4(f)(12)(ii)*

- To assure that no other person under the tenant's control engages in:
  - Any criminal activity that threatens the health or safety of other residents or their right to peaceful enjoyment of the premises
  - Any drug-related criminal activity *on* the premises

*CFR 966.4(f)(12)(iii)*

- To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health or safety of other residents or their right to peaceful enjoyment of the premises

*CFR 960.603*

- To comply with community service requirements

## **TENANT MAINTENANCE**

*CFR 966.4(g)*

- The lease may require the tenant to perform specified seasonal or other maintenance tasks providing that:
  - The tasks are customarily performed by tenants in dwelling units of similar design and construction
  - The requirement is included in the lease in good faith, not to evade PHA obligations
  - The PHA exempts tenants who are unable to perform the tasks because of age or disability

## **DEFECTS HAZARDOUS TO LIFE, HEALTH, OR SAFETY**

*CFR 966.4(h)*

- The lease must state the rights and obligations of both the tenant and the PHA when damages hazardous to life, health, or safety occur.

*CFR 966.4(h)(1)*

- The tenant must immediately notify project management of any damages to the unit that are hazardous to life, health, or safety.
  - If the damage was caused by the tenant, a household member, or a guest, the reasonable cost of repairs must be charged to the tenant.

*CFR 966.4(h)(2)*

- Regardless of who caused the damage, the PHA is responsible for repairing the unit within a reasonable time (e.g., 24 hours).
  - If the damage was caused by the tenant, a household member, or a guest, the reasonable cost of repairs must be charged to the tenant.

*CFR 966.4(h)(3)*

- If necessary repairs cannot be made within a reasonable time, the PHA must offer the tenant standard alternative accommodations, if available.

Section 3.2: Required Lease Provisions

*CFR 966.4(h)(4)*

- If repairs cannot be made within a reasonable time and alternative accommodations are not provided, the PHA must abate (reduce) the rent for the unit in proportion to the seriousness of the damage and the loss in value as a dwelling.
  - Abatement is not required under either of the following conditions:
    - The tenant rejected alternative accommodations offered by the PHA.
    - The damage was caused by the tenant, a household member, or a guest.

## PREOCCUPANCY AND PRETERMINATION INSPECTIONS

*CFR 966.4(i)*

- The PHA and the tenant or tenant representative are obligated to inspect the dwelling unit prior to occupancy.
  - The PHA must furnish the tenant with a written statement of the condition of the dwelling unit and the equipment provided with it.
    - The statement must be signed by the PHA and the tenant.
    - A copy must be retained by the PHA in the tenant's file.
- The PHA must also inspect the unit when the tenant moves out.
  - Unless the tenant moves out without giving notice, the PHA must provide for the tenant's participation in the inspection.
  - The PHA must furnish the tenant with a statement of any charges to be made for maintenance or repairs beyond normal wear and tear.

*CFR 966.4(i)*

## **ENTRY OF DWELLING UNIT DURING TENANCY**

*CFR 966.4(j)*

- The lease must set forth the conditions under which the PHA may enter the dwelling unit after the tenant takes occupancy.

*CFR 966.4(j)(1)*

- The lease must permit the PHA to enter the dwelling unit during reasonable hours for any of the following nonemergency purposes:
  - To perform routine inspections and maintenance
  - To make repairs or improvements
  - To show the unit for re-leasing

*CFR 966.4(j)(1)*

- Before entering the unit for a nonemergency purpose, the PHA must give the tenant reasonable advance notification.
  - A written statement specifying the purpose of the PHA entry delivered to the unit at least two days before entry is considered reasonable notice.

*CFR 966.4(j)(2)*

- The lease must also permit the PHA to enter the unit without notice if there is reasonable cause to believe that an emergency exists.

*CFR 966.4(j)(3)*

- If no adult household members are present when the PHA enters the unit, the PHA must leave behind a written statement specifying the date, time, and purpose of the entry.

## **NOTICE PROCEDURES**

*CFR 966.4(k)(1)*

- The lease must provide procedures to be followed by the PHA and the tenant in giving notice to each other.

*CFR 966.4(k)(1)(i)*

- Except for notices regarding entry of the dwelling unit, notices to the tenant from the PHA must be in writing and must be either delivered by hand to an adult member of the tenant's household or sent by first-class mail properly addressed to the tenant.

*CFR 966.4(k)(2)*

- If the tenant is visually impaired, all notices must be in an accessible format.

Section 3.2: Required Lease Provisions

*CFR 966.4(k)(1)(ii)*

- Notices to the PHA from the tenant must be in writing and must be either delivered by hand to the project office or PHA central office or sent by first-class mail properly addressed.

## TERMINATION OF TENANCY AND EVICTION

### PROCEDURES

*CFR 966.4(l)(1)*

- The lease must state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.

### GROUNDS FOR TERMINATION

- The PHA is required to include in the lease certain provisions relating to termination of tenancy for criminal activity and alcohol abuse.
- Grounds for termination are discussed in detail in the Terminations chapter.

## EVICTION

*CFR 966.4(m)*

- The lease must give the tenant the right to examine any PHA documents, including records and regulations, directly relevant to a termination of tenancy or eviction before a grievance hearing or court trial concerning the matter.
  - The PHA must allow the tenant to copy any of the documents at the tenant's expense.
  - If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction.

## **GRIEVANCE PROCEDURES**

*CFR 966.4(n)*

- The lease must provide that all disputes concerning tenant or PHA obligations will be resolved in accordance with the PHA's grievance procedures.

*CFR 966.51(a)*

- There is an exception to this requirement for certain criminal activities, including violent and drug-related criminal activities, in due process states.

- The lease must include a description of the PHA's policies for selecting a hearing officer.

*CFR 966.52(b)*

- The lease must include or incorporate by reference the PHA's grievance procedures.

## Section 3.3 Other Lease-Related Requirements

### TENANTS' OPPORTUNITY FOR COMMENT

*CFR 966.3*

- Anytime the PHA proposes to change its lease form, it must provide at least 30 days' notice to tenants and resident organizations.

*CFR 966.3*

- The notice must set forth the proposed changes and provide an opportunity for written comment.

*CFR 966.3*

- The PHA must consider any comments submitted before formally adopting a new lease form.

### POSTING OF POLICIES, RULES, AND REGULATIONS

*CFR 966.5*

- Anything that the PHA incorporates by reference into its lease (e.g., rules, regulations, grievance procedures, schedule of flat rents, schedule of special charges for services, repairs, or utilities) must be:
  - Publicly posted in a conspicuous manner in the project office
  - Furnished to applicants and tenants on request

*CFR 966.5*

*CFR 966.3*

- Changes in anything incorporated by reference into the PHA's lease are subject to the same requirements for tenant review and comment as changes in the lease form itself.

## PROHIBITED LEASE PROVISIONS

CFR 966.5

- The PHA may *not* include in its lease any of the following clauses:
  - Confession of judgment (prior consent by the tenant to any lawsuit the PHA may bring against the tenant and to a judgment in favor of the PHA)
  - Distraint for rent or other charges (agreement by the tenant that the PHA is authorized to take property belonging to the tenant and hold it until the tenant has paid the rent or other charges)
  - Exculpatory clauses (agreement by the tenant not to hold the PHA liable for any acts or omissions)
  - Waiver of legal notice by the tenant prior to actions for eviction or money judgments
  - Waiver of legal proceedings by the tenant
  - Waiver of jury trial by the tenant
  - Clause requiring that the cost of any legal action brought by the PHA against the tenant be charged to the tenant regardless of outcome

## ACCOMMODATION OF PERSONS WITH DISABILITIES

CFR 966.7(a)

- For all aspects of the lease, the PHA must provide reasonable accommodations to tenants with disabilities so that they have an opportunity equal to that of tenants without disabilities to use and occupy their dwelling units.

CFR 966.7(b)

- The PHA must provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a household member's disability so that the tenant can meet the requirements of tenancy and the lease.

## LEASE TERMINOLOGY

### COMMON TERMS USED

- **Abate** - A resident's right to stop paying rent.
- **Accrue** - To be owed to another party.
- **Apartment** - A complete and separate living unit in a building containing other units.
- **Building Codes** - Local regulations that control design, construction, and materials used in construction. Building codes are based on safety and health standards.
- **Common Areas** - Those spaces within a development that can be used by all residents in that development.
- **Community Service** - HUD's requirement that each adult public housing resident, with important exceptions, contribute at least 8 hours per month to community service.
- **Covered Person** - A tenant, any member of the tenant's household, a guest or another person under the tenant's control.
- **Dependent** - Anyone living with and being supported by a resident; also could mean the HUD definition of dependent.
- **Drug** - A controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).
- **Drug-related criminal activity** - 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.
- **Dwelling Unit** - Living quarters occupied, or intended for occupancy, by a household.

## Section 3.3: Other Lease-Related Requirements

- **Eligibility Determination** - A process by which management determines whether an applicant is eligible for low-cost housing and whether a resident continues to be eligible for redetermination.
- **Escrow** - A transaction in which a third party, acting as the agent for the renter and the lessor, carries out instructions of both and assumes the responsibilities of handling all the paperwork and disbursement of funds.
- **Eviction** - Lawful expulsion of an occupant from a unit.
- **Execute** - To carry out what is called for in a situation.
- **Family Choice in Rent** - The annual choice of each public housing unit to choose between income-based and flat rent.
- **Flat Rent** - Rental amount established by the PHA for each public housing unit set at no less than 80 percent of the current fair market rent (FMR), 80 percent of the small area fair market rent (SAFMR), or 80 percent of the unadjusted rent, with utility allowances applied as necessary. The unadjusted rent is the FMR estimated directly from source data that HUD uses to calculate FMRs in nonmetropolitan areas.
- **Grievance** - A dispute or complaint which a resident may have with respect to an action or inaction on the part of management.
- **Guest** - 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 requirements of parts 966 and 982 apply to a guest as so defined.
- **Holdover Resident** - A resident who remains in possession of leased property after expiration of a lease term.

Section 3.3: Other Lease-Related Requirements

- **Household** - The family and PHA-approved live-in aide.
- **Housing Code** - Local standards that ensure that maintenance and improvements of housing meet accepted criteria and that housing is adequate for occupancy.
- **Interest-Bearing Account** - A bank account where escrow is deposited and collects interest over time.
- **Landlord** - The owner or lessor of real property.
- **Lease** - A written document containing the conditions under which the possession and use of real and/or personal property are given by the owner to another, for a stated period, and for a stated consideration (amount).
- **Lessee** - One holding rights of possession and use of property under terms of a lease (resident).
- **Lessor** - One who leases property to a lessee (management or owner).
- **Notice of Rent Adjustment** - notification from management to a resident of a change in rent, based on redetermination.
- **Other person under the tenant's control** - A person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not "under the tenant's control."

Section 3.3: Other Lease-Related Requirements

- **Premises** - The building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.
- **Promulgate** - To make known, to declare openly.
- **Public Housing Authority** - A city or county agency that monitors and implements community housing development needs. Such agencies do not necessarily possess renewal or redevelopment authority.
- **Pursuant** - In accordance with (to comply with a legal ruling).
- **Rent** - Consideration paid for use or occupancy of property, buildings, or dwelling units.
- **Resident** - One who, although not the owner, occupies real property under consent of the owner and in subordination to the owner's title. The resident is entitled to exclusive possession, use, and enjoyment of the property or unit, for the rent specified in the lease.
- **Security Deposit** - Collateral given (a sum of money) to be used by management at the termination of the lease for reimbursement of the cost of any damages to the dwelling unit incurred during a resident's term
- **Sublease** - A lease executed to a person, other than the original renter, for a term no longer than the remaining portion of the original lease.
- **Term of Tenancy** - The period of time between the commencement date and termination date of a note, mortgage, legal document, or other contract (lease).
- **Termination Date** - The last day of the term of the contract (lease).
- **Twelve-month Term of the Lease** - For compliance with community service, the public housing lease is renewed annually.

**WORDS AND PHRASES OPEN TO DIFFERENT INTERPRETATIONS**

- It is the manager's responsibility to clearly define any terms in the lease that are open to different interpretations. One way to help avoid misinterpretations is to clearly define terms through "House Rules" - rules and regulations that clearly explain in simple, nonlegal terms what residents can and cannot do, based on responsibilities implied in the lease. The following are examples of house rules that attempt to convey what the lease states for the benefit of residents.
- Managers should also be familiar with words or phrases that can be misunderstood or interpreted differently by different people.
  - Commonly misinterpreted words and phrases include:

**Redecoration** - What may be merely "redecoration" to a resident may constitute major rehabilitation in the opinion of management.

**Reasonable Care to Prevent Health and Sanitation Problems** - "Reasonable," "health" and "sanitation" can be interpreted differently.

**Normal Wear and Tear** - The interpretation of "normal" can vary.

**Repairs or Defects Hazardous to Life, Health & Safety** - Residents may view minor problems as hazardous and demand immediate repairs or alternative housing.

**Interference with Rights of Others** - "interference" is open to wide interpretation.

**Reasonable Promptness** - The amount of time considered "prompt" can vary.

**Reasonable Charges** - The amount a resident thinks reasonable may fall well under the actual cost of repairing damage.

### **Learning Activity 3-1: Lease Provisions**

#### **Tenant's Opportunity for Comment**

1. Anytown PHA is changing several provisions in their lease. What has to happen before the lease is adopted?

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#### **The Parties, Dwelling Unit, and Terms**

2. Anytown PHA's lease contains the following items. What's missing?

PHA name  
Tenant name  
Address of unit  
Apartment number  
Lease term  
Household composition

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3. Lauren Kapoor wants her adult sister Lindsey to move to her unit next month. Since Lindsey is related to her, is it okay if she moves in without notifying the PHA?

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#### **Lease Term and Renewal**

4. The Morgan family has failed to pay fees for tenant caused damages and has broken a repayment agreement for back rent charges. Anytown PHA decides not to renew the Morgan's lease after the initial 12 month term. Is this allowable under the lease?

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### **PHA Charges**

5. Fred Simpson's son Jackson flushes a toy down the toilet and the PHA is called to fix the damaged toilet. Is Fred responsible for these costs?
  

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6. How does the PHA determine what to charge Fred?

### **Late Payment Penalties**

7. Amanda Carlson's rent is due by the 5th of the month. This month, she pays on the 22nd. Does the PHA have to charge her a late fee?
  

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8. The PHA does charge Amanda Carlson a \$25 late fee for her late rent payment. They send her written notice of the charge. When does the charge become due and collectible?

### **Security Deposits**

9. The lease may provide for a security deposit. How much may the PHA charge?
  

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10. Susan Washington is moving into a unit at Anytown PHA. Susan cannot pay her full security deposit upon move in. Is it okay for the PHA to allow her to gradually accumulate her security deposit?
  

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**Tenant's Right to Use and Occupancy**

11. Barbara Stanley sells Avon. Can she sell products in her unit?

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12. In order to cut down on administrative burden, Anytown PHA has decided to institute a no foster children policy for all of their tenants starting next month. Is this an allowable policy?

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**The PHA's Obligations**

13. The Gilmore family asks the PHA to provide them with trash cans for their kitchen and bathroom. While the PHA does provide a dumpster for all tenants as well as cans in the hall, their policy is not to provide containers for individual tenant families. Is this policy correct?

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14. Anytown PHA's lease states that they will provide tenants with cold running water. Have they met their regulatory requirements?

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15. Amanda Allen lives in a two bedroom unit with her sons Adam and Chris. Amanda's sons move out, and the PHA wants to transfer her to a one bedroom unit. What must the PHA do before transferring her?

---

**Tenant's Obligations**

16. Jamie Bullock wants to move out of state and stay with her mother for a few months. Jamie wants to rent out her unit to Jason McNally while she's gone. May she?

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17. Barbara Davis wants to make some extra income by using one of the bedrooms in her unit as a room for lodgers. Some will stay in the unit for a few days at a time while others may stay a month or more. May she?

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18. Jared Hill refuses to clean his dishes and they are piling up in his sink. As a result, his apartment is full of roaches. His neighbors are complaining roaches are getting into their units. Is he violating his tenant obligations under the lease?

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19. Head of household Wanda Watson's grandson Henry lives in her unit with her. Henry sprays graffiti on his bedroom wall and removes his bedroom windows and doors and sells them. Does this violate Wanda's tenant obligations?

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20. The tenant is responsible for damages beyond normal wear and tear to the dwelling unit or project by which of the following people?

The head and spouse?

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Their 17-year old son?

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A pizza delivery person?

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The brother of the head who visits from out of town for two days

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A FedEx driver delivering a package to the unit?

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21. Shirley Stevens is Barney Fritz's live-in aide. One day Shirley leaves the unit and buys drugs in front of the project. Is this a violation of Barney's tenant obligations under the lease?

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22. Jerome Glassman resides in Denver. He is convicted for drug use in Las Vegas. Can the PHA terminate his tenancy?

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Persons under the tenant's control may not engage in criminal activity that threatens the health, safety or right to peaceful enjoyment of residents or engage in drug related criminal activity on the premises. The following situations happen in the Bradshaw family. Are they violations?

Alana Bradshaw, 45, head of household

Muriel Bradshaw, 82, mother

Jim Bradshaw, 23, son

23. Jim invites a friend over after work and his friend beats up their next door neighbor?

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24. The pizza man does drugs in the building's courtyard after Alana orders a pizza?

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25. Alana gets a package. Afterwards the delivery person buys drugs across town?

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26. Muriel's friend comes over for a few hours and on the way home robs a convenience store?

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27. Miranda Jones drinks large amounts of alcohol quietly in her apartment. Every night at 9 o'clock she passes out in her bed after drinking heavily. Is this allowed?

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28. What if Miranda drinks every night and becomes violent with her neighbors several times a week?

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### Tenant Maintenance

29. Anytown PHA includes a clause in their lease that requires tenants to shovel snow that accumulates on their walkways in front of their units. Sarah Gold is a person with disabilities who is unable to do so. The PHA tells her she may not be exempted from the activity since it's written in her lease. Are they correct?

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### Defects Hazardous to Life, Health, or Safety

30. Julie Cheng's son David throws a baseball through the front window of their unit during a January snow storm. Now what?

Julie must:

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### Pre-Occupancy Inspections

31. The \_\_\_\_\_ and \_\_\_\_\_ are obligated to inspect the unit prior to occupancy

32. The PHA must furnish the tenant with a written statement of:

and

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33. The statement must be signed by \_\_\_\_\_ and \_\_\_\_\_

34. A copy must be retained in \_\_\_\_\_

### **Entry of Dwelling Unit**

35. Amber Hunt, an employee of Anytown PHA, enters the Travis family's unit after reasonable notice to make a repair. Janna Travis, age 15, is home alone. May Amber explain to Janna why she entered the unit and then go back to her office?

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36. Karina del Toro, an employee at Anytown PHA, wants to show a unit to an applicant family. That day, she decides to take them to the Goldman family's unit. Nobody is home, so Karina enters the unit using her key. Is this allowed?

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### **Notice Procedures**

37. Carlo Montoya, an employee of Anytown PHA, sees tenant Barbara Stanley in the hall and informs her she owes the PHA \$25 in fees. Did he follow proper notification procedures?

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### **Posting of Policies, Rules, and Regulations**

38. Anytown PHA has schedules for charges for services, repairs and utilities. They keep them in a drawer in the ED's office and furnish them whenever an applicant or tenant requests them. Has Anytown PHA met their obligations under the regulations?

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**Prohibited Lease Provisions**

39. The PHA charged the Howard family \$1,375 in fees for damage to their unit. The family refuses to pay the fees so the PHA confiscates their television and holds it until the Howards pay. Is this a prohibited lease provision?

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40. Since tenants get grievance rights through the PHA, Anytown PHA places a clause in their lease where tenants waive their right to a trial by jury. Is this a prohibited lease provision?

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## **CHAPTER 4**

## **Annual and Interim Examinations**

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### **LEARNING OUTCOMES**

Upon completion of this chapter, you should be able to:

- Analyze and describe the processes associated with annual activities, including:
  - Determining PHA and family responsibilities regarding annual re-exams and interims, and the effective dates of re-exams
  - Identifying annual and ongoing inspection requirements for public housing units
  - Understanding the requirements for community service and PHA and family responsibilities regarding community service
  - Discussing PHA policy regarding transfers

## Section 4.1 Annual Reexaminations

### FAMILIES PAYING INCOME-BASED RENT

*CFR 960.257(a)(1)*

- For families paying income-based rent, the PHA must conduct a reexamination of family income and composition at least annually.
  - When income is irregular the PHA may wish to establish more frequent reexaminations.
  - Reexaminations may be conducted in-person or remotely under certain circumstances, depending on PHA policy.
- For all non-public housing over-income families, the PHA may not conduct an annual reexamination of family income.

*Industry Practice*

- Families should be notified in writing 90-120 days in advance of the scheduled effective date, so that reexamination can be completed in time to give the family reasonable notice of any rent increase.

*CFR 960.257*

- PHAs use the same procedures for obtaining and verifying information that were used at admission.

*Notice PIH 2018-18*

- PHAs must compare income information in EIV with family-reported information.
- If a substantial difference in income is found, the PHA must take actions outlined in Notice PIH 2018-18.
  - A substantial difference is \$2,400 annually.
  - The family must be provided an opportunity to dispute.

- The PHA may establish policies for streamlining the verification process for assets and/or for fixed sources of income.
  - For families with assets valued at \$5,000 or less, the PHA may accept self-certification of the value of and expected income from assets.
  - For fixed sources of income, such as Social Security benefits and pensions, PHAs opting for streamlining verification policies would use a published cost of living adjustment (COLA) to determine income.
  - In both cases, third-party verification must be obtained at admission and at least once every three years thereafter.
  - Streamlining policies are optional. PHAs may instead require third-party verification at each annual reexamination.

*Industry Practice*

- PHAs should compare the information the family reports to the family's most recent reexamination to identify any discrepancies and ask the family to explain them.
- During the reexamination process, the PHA must give each resident the choice between income-based or flat rent.

**FAMILIES PAYING FLAT RENT**

- For families that are paying flat rents, the PHA will review the income of such families at least once every three years.
- Except for families a PHA determines exceed the over-income limit, after which the PHA must follow the income and examination requirements under 24 CFR 960.507(c).

*Notice PIH 2023-03*

- That is, if the PHA has a policy to do recertifications for flat rent families every three years, if the family goes over income, the PHA must review the family's income at 12 and 24 months-the three-year policy would not apply for such families.

*Industry practice*

- The PHA should document offers of choice of rental payments for each family.
- The flat rent amount is not locked in for three years. The PHA must revise the flat rent annually based on changes in the FMR and must offer the family a choice between their applicable income-based rent and the current flat rent.

### **EFFECTIVE DATE OF ANNUAL REEXAMINATION RESULTS**

*Industry Practice*

- PHAs should give families at least 30 days' notice of any rent increase.
- Families who fail to cooperate with the PHA in providing the necessary information must be treated in accordance with PHA policy.
- When the family causes an unreasonable delay in reexamination processing, the PHA may:
  - If the family's rent decreases, implement the decrease the first of the month following the completion of the reexamination processing.
  - If the family's rent increases, implement the increase retroactive to the family's reexamination effective date.

### **Notification**

*CFR 966.4(c)*

- Families must be notified of the reexamination results and the effective date of the change.

*HUD Guidance*

- Generally, the results of annual reexams are effective on the anniversary date.

*CFR 966.4(c)(4)*

- The PHA's notification to the family must include the PHA's procedures for advising the family of the opportunity for a hearing.

### **OTHER ANNUAL REEXAMINATION ISSUES**

*Public Housing Occupancy  
Guidebook, Chapter 12, p. 156*

- Criminal background check may be run on all adult household members
- Credit check may be run
- Change in head of household
  - New lease must be signed
  - PHA may permit an adult to move in when all remaining family members are children
  - New head of household is responsible for any outstanding debts owed to PHA
    - Family members under 18 not responsible for rent arrearages

*24 CFR 960.253*

### **FAMILY CHOICE OF RENTS**

*24 CFR 960.253(a)(3)*

- Encourages and rewards employment and self-sufficiency.
- PHAs must provide residents with enough information to make an informed choice.
- The PHA must document that families residing in public housing units are provided the choice annually whether to pay income-based or flat rent.
  - PHAs should keep records documenting the dollar amounts of tenant rent under each option.
  - Non-Public housing over-income (NPHOI) families, as defined at 24 CFR 960.102(b), must pay the alternative non-public housing rent, as applicable and are not given a choice between income-based and flat rent.

- For families that are paying flat rents, the PHA will review the income of such family at least once every three years.
  - Except for families a PHA determines exceed the over-income limit, after which the PHA must follow the income and examination requirements under 24 CFR 960.507(c).

24 CFR 960.253(g)

### **SWITCHING RENT DETERMINATION METHODS BECAUSE OF HARSHIP CIRCUMSTANCES**

- If the family has elected to pay the PHA's flat rent, the PHA must immediately allow the family to pay the income-based rent if family is unable to pay the flat rent because of hardship.
- Interim rent reduction should occur no later than the first of the month following the month the family reported the hardship.
- Hardship includes:
  - Income of the family has decreased because of changed circumstances, loss of or reduction of employment, death in the family, and reduction in or loss of income of other assistance
  - An increase, because of changed circumstances, in the family's expenses for medical costs, child care, transportation, education, or similar items
  - Other situations as determined by the PHA.
- The PHA must establish policy on hardships:
  - Verification procedures for hardships
  - Further defining some hardship categories
  - Final rule clarifies that once a family switches to income-based rent due to financial hardship, family must wait until its next annual reexamination to select the type of rent.

## Section 4.2      Interim Reexaminations

*CFR 960.257(b)*

- The family must comply with provisions in the lease regarding interim reporting of income changes.

*CFR 960.257(b)*

- PHAs must process the family's request for an interim reexamination that would result in a decrease in the family's rent.

*CFR 966.4(a)(1)(v)*

- PHAs must require families to report changes in household composition.
  - Family must inform PHA of birth, adoption, or court-awarded custody of a child
  - Family must request PHA approval to add any other person as an occupant of the unit
  - PHA must adopt policies for when and under what circumstances the family must report persons moving from the unit
  - PHA policy determines if these changes would require an interim reexamination

- PHAs may require families to report some, all, or none of the changes that would result in a rent increase.

- PHAs should:

- Consider the administrative cost of processing certain types of interims.
- Concentrate on the types of interim changes that are most likely to result in large increases in the family's rent.
- Develop a policy that is easily explained to and understood by families.

*Industry Practice*

- If the PHA requires only certain kinds of changes to be reported, the policy should address what actions will be taken if the family reports a change they were not required to report.

- The *Housing Choice Voucher Guidebook* recommends that if only certain changes must be reported, the PHA policy should state that no action would be taken if a family reports changes it is not required to report.

*HCV Guidebook*, p. 12-9

- For example, an elderly family reports an increase in Social Security benefits and new earnings of a previously unemployed family member. The PHA's policy requires that increases in earnings be reported at annual reexaminations.
  - However, Social Security increases only need to be reported at annual reexams.

*CFR 960.257(b)*

- Verification procedures are the same as those for annual reexaminations except that only the changes need to be verified.

## **Notification**

- Families must be notified of the reexamination results and the effective date of the change. Generally, for interims:
  - Decreases in the family's TTP are effective the first of the month following the change.
  - Increases are effective the first of the month after reasonable written notice has been given (PHA policy is usually 30 days).

*CFR 966.4(c)(4)*

- The PHA's notification to the family must include the PHA's procedures for advising the family of the opportunity for a hearing.

**EXCERPT FROM SAMPLE INTERIM ADJUSTMENT POLICY**  
**ESTABLISHING RENTS BETWEEN REGULARLY SCHEDULED REEXAMINATIONS**

1. If families elect to pay income-based rent, the TTP Tenant Rent will remain in effect for the period between regularly scheduled reexaminations except:

The tenant **must** report all changes in the household composition.

The tenant **may** report any of the following changes which would result in a decrease in the tenant's rent:

  - Decrease in income.
  - Increase in allowances or deductions.

Decreases in the tenant portion of the rent will be effective the first day of the month following the month in which the change occurs or following the month in which the PHA was notified, whichever comes later.

The tenant **must** report any of the following factors which could result in an increase in rent:

  - A change of source of income, such as moving from welfare benefits to employment income.
  - Change in family (which could either provide additional income to the household or reduce the deductions and allowances for which the family qualifies).
  - Receipt of a deferred payment in a lump sum which represents the delayed start of a periodic payment such as unemployment or social security benefits.

Any other changes reported by tenants electing to pay income-based rent, other than those listed above, will not be processed between regularly scheduled annual reexaminations.
2. For families electing to pay flat rent, the flat rent will remain in effect for the period between regularly scheduled reexaminations.
3. If the family has elected to pay the PHA's flat rent, the PHA shall immediately allow the family to pay the income-based rent if the family is unable to pay the flat rent because of hardship.

In such a case, the rent shall be lowered no later than the first of the month following the month the family reported the hardship.

Hardship includes:

- Income of the family has decreased because of changed circumstances, loss of or reduction of employment, death in the family, and reduction in or loss of income of other assistance.
- Loss of or reduction of employment pertains only to adult members of the household.
- Death in the family pertains to:
  - Death in the immediate family (parents, grandparents, children); or
  - Verification that family paid all or significant part of funeral expenses; or
  - Verification that family paid for travel expenses (airfare, hotel expenses to travel, and/or unpaid leave from employment).
- An increase, because of changed circumstances, in the family's expenses for medical costs, child care, transportation, education, or similar items.
- The increase, because of changed circumstances, in the family's expenses for medical costs, child care, transportation, education, or similar items must exceed 3% of the family's gross annual income.

If the family has switched from flat rent to income-based rent because of hardship, the family shall remain on income-based rent until the next scheduled annual reexamination, at which time the PHA shall allow the family to elect whether to pay flat rent or income-based rent.

## Section 4.3      Community Service

*CFR 960, Subpart F*

### Annual Reexaminations

*CFR 960.605(c)(3)*

- PHAs must determine annually whether public housing residents are in compliance with the community service requirement.

### Overview of the Community Service Requirement

*CFR 960.603*

- Under Section 12 of the U.S. Housing Act of 1937, as amended by the Quality Housing and Work Responsibility Act of 1998 (the Reform Act), every nonexempt resident of public housing must fulfill a community service requirement.

*CFR 960.605*

*CFR 903.7(l)*

*Notice PIH 2015-12*

- PHAs must describe the community service requirement in detail in their agency plans and ACOP.

- *Community service* is defined as the performance of voluntary work or duties that are a public benefit and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community.
  - Community service is *not* employment
  - It may *not* include political activities
- The community service requirement applies to all adult residents of public housing except exempt individuals.

*CFR 960.603(a)*

*CFR 960.603(a)*

- To fulfill the community service requirement, nonexempt adult residents must contribute 8 hours a month doing one or a combination of the following:

- Engaging in community service activities
- Participating in an economic self-sufficiency program

*CFR 5.603(b)*

- An economic self-sufficiency program is defined as any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

*Notice PIH 2015-12*

- Community service may be completed at eight hours each month or may be aggregated across a year.
  - Any blocking of hours is acceptable as long as 96 hours is completed by annual recertification

## **Exemptions**

*CFR 960.601(b)*

- Exemptions to the requirement to perform community service include adult family members in any of the following categories:
  - Elderly persons (62 years or older);
  - Individuals who are blind or disabled, as defined under the law, *and* who certify that they are, as a result of their blindness or disability, unable to comply with the requirement; and
  - Primary caretakers of such blind or disabled individuals

*Notice PIH 2003-17; U.S.  
Housing Act (42 U.S.C. 1437j)*

- Individuals who are engaged in work activities, which include:
  - Unsubsidized employment
  - Subsidized private-sector employment
  - Subsidized public-sector employment
  - Work experience (including work associated with refurbishing publicly assisted housing) if sufficient private-sector employment is not available
  - On-the-job training
  - Job search and job readiness assistance
  - Community service programs
  - Vocational educational training (not to exceed 12 months with respect to any individual)
  - Job skills training directly related to employment
  - Education directly related to employment (if the individual has not received a high school diploma or a high school equivalency certificate)
  - Satisfactory attendance at a secondary school or in a course of study leading to a certificate of general equivalency (if the individual has not received a high school diploma or a high school equivalency certificate)
- Individuals able to meet requirements under a state program funded under the Social Security Act or by any other state welfare program, including the state's welfare-to-work program
- A member of a family receiving assistance, benefits, or services under a state program funded under Part A of Title IV of the Social Security Act, or under any other welfare program of the state, including the state's welfare-to-work program, and including SNAP
  - The family member cannot have been found to be in noncompliance with the program.
  - A member of a non-public housing over-income (NPHOI) family

*Admission and Occupancy  
Final Rule, Federal Register  
3/29/00*

- Because exemptions to the community service requirement are statutory, HUD does not have the authority to approve additional exemptions; therefore, PHAs cannot approve additional exemptions, either.

### **PHA Responsibilities**

*CFR 960.605(a)*

- Each PHA must develop a local policy for administration of the community service requirement for public housing residents.

*CFR 960.605(c)(2)*

- The PHA must give each family a written description of:
  - The community service requirement
  - The process for claiming status as an exempt person and for changing one's status
  - The PHA's process for verifying exempt status

*CFR 960.605(c)(2)*

- The PHA must notify each family of its determination of which family members are subject to the community service requirement and which members are exempt.

*CFR 960.605(c)(3)  
CFR 960.607(a)  
Notice PIH 2017-06*

- The PHA must review family compliance with service requirements and must verify compliance annually at least 30 days before the end of the 12-month lease term.
- The PHA may accept self-certification of compliance or may require certification from a third party.
  - The PHA must validate a sample of self-certifications by contacting the third party for whom the resident performed community service.
  - The PHA must select a random, statistically valid sample.
- PHAs must verify exempt status annually.

*Notice PIH 2015-12*

- Remember, any adults subsequently added to the lease or family members who come of age are also responsible for signing a certification (Attachment A of Notice PIH 2015-12) to certify that they have read the PHA's policy and are aware of the consequences of noncompliance with the requirement.

*CFR 960.605(c)(4)*

- The PHA must retain reasonable documentation of fulfillment of the requirement or verification of exemption in participant files.

*CFR 960.609*

- No PHA may substitute community service activity performed by a resident for work ordinarily performed by a PHA employee.

### **Family Responsibilities**

*Notice PIH 2015-12*

- At lease execution or reexamination, all adult members of a resident family must:
  - Provide documentation that they qualify for an exemption, if they claim to be exempt from the community service requirement
  - Sign a certification that they have received and read the PHA's policy and understand that if they are not exempt, failure to comply with the requirement will result in nonrenewal of their lease
- At each annual reexamination, nonexempt family members must present documentation of the community service activities performed over the previous 12 months.
- If a nonexempt person becomes exempt, it is his or her responsibility to report this to the PHA and provide documentation. Likewise, when an exempt person becomes nonexempt, it is his or her responsibility to report this to the PHA.

## Noncompliance

*CFR 960.603(b)*

- Violation of the community service requirement is grounds for nonrenewal of the lease at the end of the 12-month lease term.
  - The lease is automatically renewable except for failure to comply with this requirement and for families determined to be over the income limit for 24 consecutive months.

*CFR 966.53(c)  
Notice PIH 2015-12*

- PHAs are required to initiate the elements of due process against households failing to comply with lease requirements, including the community service requirement. These elements are described in 24 CFR 966.53(c) and Notice PIH 2015-12.

*CFR 960.607(b)(2)*

- If a PHA determines that a family member has failed to fulfill the community service requirement, the PHA must notify the tenant.
  - The notice must:
    - Briefly describe the noncompliance
    - State that the PHA will not renew the tenant's lease at the end of the 12-month lease term unless:
      - The tenant and any noncompliant family members enter into a written agreement with the PHA to cure the noncompliance and do, in fact, cure the noncompliance
      - The family provides written assurance satisfactory to the PHA that the noncompliant family member no longer resides in the unit
    - State that the tenant may request a grievance hearing on the PHA's determination and may exercise any available judicial remedy to seek timely redress for nonrenewal of the lease because of the determination

- For more information on terminations due to noncompliance, see Section 1 of Chapter 6.
- If the tenant or any other family member has violated the community service requirement, the PHA may not renew the lease upon expiration of the term unless:
  - The tenant and any other noncompliant family member enter into a written agreement with the PHA to cure the noncompliance by making up the required hours over the 12-month term of the new lease
  - All other members of the family who are subject to the requirement are currently complying with it or are no longer residing in the unit

## **COMMUNITY SERVICE QUIZ**

1. Residents paying a flat or ceiling rent are automatically exempt from the community service requirement.
  - a. True
  - b. False
  
2. Choose all of the activities below that may be used to fulfill a resident's community service requirement.
  - a. Volunteering at a child's school
  - b. Participating in a resident council activity
  - c. Volunteering at a local child care center
  - d. Attending a drug and alcohol counseling session
  - e. Volunteering at the public housing complex
  - f. Attending a budgeting class
  - g. Participating in a political activity
  - h. Attending English classes
  - i. Volunteering with a local youth organization
  - j. Volunteering at a local church
  - k. Reading to kids at the local library
  
3. Public housing residents who fail to comply with the community service requirement will automatically have their leases terminated at lease renewal time.
  - a. True
  - b. False
  
4. Public housing residents may combine community service and self-sufficiency activities to meet the eight-hour-per-month requirement.
  - a. True
  - b. False
  
5. Political and religious activities are specifically prohibited for fulfilling the community service requirement.
  - a. True
  - b. False

6. A public housing resident meets her community service requirement, but her nineteen-year-old daughter, who does not qualify for an exemption, has not fulfilled the community service requirement. At lease renewal the PHA should:
  - a. Immediately terminate the lease
  - b. Renew the lease, since the head of the household fulfilled the community service requirement
  - c. Notify the family that not all household members met the community service requirement and offer the family an opportunity to make up the community service during the next recertification period, in lieu of termination of the lease

## Verification of Community Service

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
Tenant: \_\_\_\_\_  
Case No: \_\_\_\_\_

The housing authority is required by federal statute and regulation to administer the community service program in public housing. We are required to confirm and track participation in an economic self-sufficiency or community service activity. We ask your cooperation in supplying the information requested below.

Housing Authority Representative \_\_\_\_\_

Tel. # \_\_\_\_\_ Email: \_\_\_\_\_

I do hereby authorize any agency or entity where community service or self-sufficiency activity took place to furnish the Housing Authority with the information requested.

Signature of participant  Date: 

Participant Name: \_\_\_\_\_

Address: \_\_\_\_\_

**WARNING: Title 18, Section 1001 of the United States Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department or agency of the United States.**

Authorized signature: \_\_\_\_\_ Title: \_\_\_\_\_

Agency: \_\_\_\_\_ Telephone: \_\_\_\_\_

Return to: [Home](#) [Search](#) [Help](#) [Feedback](#)

## Section 4.4 Transfer Policy

- An annual or interim reexamination may result in the family being required to transfer or requesting a transfer.

*CFR 960.202(a)(2)(v)*

- PHAs must establish a transfer policy, as part of their admissions and continued occupancy policy.
- The income limits do not apply to transfers.
- The transfer policy should balance the need to avoid overcrowding or underutilization of the space.

*Industry Practice*

### Transfer vs. Waiting List for Accessible Units

- Before offering a vacant accessible unit to a non-disabled applicant, PHA should offer such units:
  - First, to a current occupant of another unit of the same or other development, having a disability that requires the special features of the vacant unit (in effect, a transfer of the occupant with disabilities from a non-accessible unit to the vacant accessible unit)
  - 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 a non-disabled applicant, the PHA must require the applicant to sign an agreement to move to an available non-accessible unit within 30 days when either a current resident or an applicant with a disability needs the unit. This requirement is also reflected in the lease agreement signed with the applicant.

### **Elements of a Transfer Policy**

- Priority for transfers of overcrowded families over families on the waiting list for admission.
- Mandatory transfers within the project or to projects where suitable dwellings are available in accordance with the lease provisions.
- Transfers for a higher-income family moving into a lower-income development to achieve deconcentration of poverty and income-mixing.
- Transfers for a lower-income family moving into a higher-income development to achieve deconcentration of poverty and income-mixing.
- In the case of transfers to a different project, the PHA should permit the family to postpone the transfer to the end of the school year if the family so desires.
- Families may be reimbursed for their out-of-pocket expenses in connection with PHA-mandated transfers. Use of PHA personnel and vehicles can minimize the cost of such transfers.
- Transfers for the convenience of the tenant may be permitted for reasons of health, proximity to work, etc. The cost of such transfers should be borne by the tenant.
- Transfer from an accessible unit if a family does not have a need for the accessible features and another resident or applicant needs the accessible features of the unit.

**EXCERPT FROM A SAMPLE TRANSFER POLICY**

If, upon reexamination, it is found that the size or composition of a family or household has changed so that the unit occupied by the family contains a number of rooms less or greater than necessary to provide housing that is decent, safe, sanitary and in good repair, management shall reassign or transfer tenants to other dwelling units, as described in the Tenant Selection and Assignment Policy.

All applicable grievance policies and procedures pertain to the Transfer Policy.

1. Residents will be approved for transfer in the following priority order, in date/time sequence (except for cases of emergency) when the resident family is eligible for continued occupancy and at least one of the following conditions exists:
  - a. The resident's unit has been damaged by fire or other cause(s) to such a degree that the unit is not habitable, provided the damage was not the result of intent, carelessness, or negligence on the part of the resident or a member of the resident's household.
  - b. The resident's unit has been damaged by fire or other cause(s) to such a degree that the unit is not habitable, provided that, although the damage was a result of the carelessness or negligence on the resident or a member of the resident's household, the resident has, in writing, accepted responsibility for such damage and has agreed to make restitution to the PHA for the expense of repairing such damage up to a ceiling cost of \$5,000.
  - c. The unit is unsuitable to the resident because of undue medical hardship and units of appropriate size and suitability are available such that a transfer may reasonably be expected to provide relief for the medical needs of the resident. The resident who becomes medically unable to negotiate stairs shall be given first priority to the next available ground floor unit.

- d. The unit size is not appropriate for the resident family and a smaller unit is required, unless that PHA waives the mandatory transfer requirement to avoid a vacancy problem, maintain full vacancy, or prevent a hardship to the family.
- e. The unit size is not appropriate for the resident family and a larger unit is required.

The PHA will skip the names on this category of transfer list to reach higher-income families moving into lower-income developments, or lower-income families moving into higher-income developments, to achieve deconcentration of poverty and income-mixing goals.

Incentives, described in Eligibility and Admissions Chapter, will be offered to higher-income families considering moving into lower-income developments.

- f. The unit is unsuitable to the resident because of undue economic hardship, and units of appropriate size and location are available such that a transfer may reasonably be expected to provide relief from such hardship. A family may be eligible to transfer for the following documented reasons:

Family lives more than 25 miles from the primary location of employment and public transportation is not adequate;  
Family lives more than 25 miles from the location of a relative who will care for the children of a working parent where no household members are able to provide this care.

## CHAPTER 5

## Service Animals, Support Animals, and Pets in Public Housing

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### LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Explain and discuss the rules regarding assistance animals (service animals and support animals), and pets in public housing, including:
  - Understanding that assistance animals include service animals and support animals
  - Differentiating between service animals, support animals, and pets
  - Distinguishing between pet rules for elderly/disabled developments and family developments
  - Establishing ownership conditions and reasonable requirements in the development of pet policies for public housing developments

### Section 5.1 Assistance Animals

#### BACKGROUND

*Notice FHEO 2020-01*

- Notice FHEO 2020-01, published January 28, 2020, provides guidance to help PHAs and other housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by the PHA's pet policies.
  - The notice states that Fair Housing Act (FHA) complaints concerning denial of reasonable accommodation and disability access comprise almost 60 percent of all FHA complaints.

Section 5.1: Assistance Animals

- FHEO 2020-01 makes clear that the notice is guidance and a tool for PHAs and other housing providers to use at their discretion and provides a set of best practices for addressing requests for assistance animals.
  - The notice should be read together with HUD's regulations prohibiting discrimination under the FHA, including the HUD/DOJ Joint Statement on Reasonable Accommodation.

**TWO TYPES OF ASSISTANCE ANIMALS**

- There are two types of assistance animals: (1) service animals, and (2) support animals, which are other animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.
- Assistance animals are not pets. An animal that does not qualify as a service animal or support animal is a pet for purposes of the FHA.
  - A PHA may charge a fee or deposit for pets in its policy, subject to local law, but not for service animals or other assistance animals (support animals).
- While most requests for reasonable accommodations involve one animal, requests sometimes involve more than one animal (for example, a person has a disability-related need for both animals, or two people living together each have a disability-related need for a separate assistance animal). The decision-making process in Notice FHEO 2020-01 should be used for all requests for exceptions or modifications to the PHA's rules, policies, practices, and procedures so that persons with disabilities can have assistance animals in the housing where they reside.

## SERVICE ANIMALS

- PHAs should initially follow the Department of Justice (DOJ) analysis in assessing whether an animal is a service animal under the Americans with Disabilities Act (ADA).
- Under the ADA, service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.
  - As a best practice, housing providers may refer to the questions used for determining whether an animal is a service animal under the ADA as outlined in Notice FHEO 2020-01.
- Performing “work or tasks” means that the dog is trained to take a specific action when needed to assist the person with a disability.
  - If the individual identifies at least one action the dog is trained to take that is helpful to the disability other than emotional support, the dog should be considered a service animal and permitted in housing, including public and common use areas. Housing providers should not make further inquiries.
  - If no specific work or task is identified, the dog should not be considered a service animal but may be a support animal (another type of animal for which a reasonable accommodation may be required). Emotional support, comfort, wellbeing, and companionship are not considered a specific work or task for purposes of analysis under the ADA.

## **SUPPORT ANIMALS (ASSISTANCE ANIMALS OTHER THAN SERVICE ANIMALS)**

- When the animal does not meet the definition of service animal, PHAs and other housing providers may use the relevant questions outlined in Notice FHEO 2020-01 to help them make a decision regarding the reasonable accommodation.
  - If the individual has requested a reasonable accommodation—that is, asked to get or keep an animal in connection with a physical or mental impairment or disability, the PHA would then consider the “Criteria for Assessing Whether to Grant the Requested Accommodation” outlined in the notice.
  - If not, the PHA or other housing provider is not required to grant a reasonable accommodation that has not been requested.

## **CRITERIA FOR ASSESSING WHETHER TO GRANT THE REQUESTED ACCOMMODATION**

If the person has an observable disability or the housing provider (or agent making the determination for the housing provider) already has information giving them reason to believe that the person has a disability, the PHA should determine whether there is a connection between the person's disability and the animal.

- The person requesting the accommodation should provide information that reasonably supports that the person seeking the accommodation has a disability and that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability.

Section 5.1: Assistance Animals

- Information about the disability may include:
  - A determination of disability from a federal, state, or local government agency
  - Receipt of disability benefits or services (Social Security Disability Income (SSDI), Medicare, or Supplemental Security Income (SSI) for a person under age 65, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency)
  - Eligibility for housing assistance or a housing voucher received because of disability
  - Information confirming disability from a health care professional, such as physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse
- Notice FHEO 2020-01 states that health care professionals should use personal knowledge of their patient or client, i.e., the knowledge used to diagnose, advise, counsel, treat, or provide health care or other disability-related services to their patient or client.

**FHEO 2020-01 GUIDANCE ABOUT DOCUMENTATION FROM THE INTERNET**

- Some websites sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee.
- Notice FHEO 2020-01 states that in HUD's experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.

Section 5.1: Assistance Animals

- FHEO 2020-01 also states that many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person's health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual.

**TYPE OF SUPPORT ANIMAL**

The PHA may also consider whether the requested animal is an animal commonly kept in households.

- An *animal commonly kept in households* would be a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes. For purposes of this assessment, reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.
- If the individual is requesting to keep a unique animal not commonly kept in households, then the requester has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal. The individual is encouraged to submit documentation from a health care professional.

## **GENERAL CONSIDERATION OF THE REASONABLENESS OF THE REQUEST**

- The FHA does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.
- A PHA or other housing provider may, therefore, refuse a reasonable accommodation for an assistance animal if the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (e.g., keeping the animal in a security enclosure).
- A reasonable accommodation may include a reasonable accommodation to a land use and zoning law, Homeowners Association (HOA) rule, or co-op rule.
- A person with a disability is responsible for feeding, maintaining, providing veterinary care, and controlling his or her assistance animal. The individual may do this on his or her own or with the assistance of family, friends, volunteers, or service providers.
- Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an animal, the housing provider is encouraged to engage in a good-faith dialogue with the requester called the "interactive process."

## Section 5.2 Pet Rules for All Developments

### EFFECT OF STATE/LOCAL LAWS

*CFR 5.315(d), and  
CFR 960, Subpart G*

- State/local law applies if conflict exists in these areas:
  - Exclusion for animals to assist persons with disabilities
  - Definition of common household pet
  - Pet rule content regulations
  - Inoculations or licensing
  - Sanitary standards
  - Pet restraint
  - Registration and screening of pets
  - Pet and tenant density provisions
  - Pet size and type
  - Financial obligations of pet ownership
  - Standards of pet care
  - Pets temporarily on premises
  - Lease provisions
  - Nuisance and threat to health or safety
- Sections where HUD prevails:
  - Definitions of project for elderly or persons with disabilities
  - Effective date provisions
  - Prohibition against discrimination
  - Procedural guidance
  - Tenant notices
  - Developing Housing Rules
  - Pet rule violations
  - Rejection of units by applicants
  - Implementation of lease provisions

## WHAT ANIMALS QUALIFY?

*CFR 5.306(2),  
5.318(a), and  
CFR 960.707(a)*

- PHAs may define common household pet. See Section 5.3 for more guidance.
- Definition must be reasonable.
- Definition is subject to reasonableness standards for developing House Rules.
- May not exclude dogs or cats.

*No reference*

## RULES

- There are no mandatory rules for PHAs other than the general guidelines provided in 24 CFR 5.318 and 5.350 for elderly/disabled developments and CFR 960, Subpart G for general occupancy developments.

*CFR 5.315(b)(2), and  
CFR 960.707(a)*

- Tenants must be permitted to own and keep pets in units in accordance with lease, regulations and state/local laws regarding pets.

*CFR 5.315(b)(3)*

- PHAs shall not impose any requirement inconsistent with regulations.

- Pet rules in PHA policy:

*CFR 5.315(c)(1)(i)*

- Must be reasonably related to furthering statutory or contractual interest of PHA such as:
  - Providing decent, safe and sanitary living environment for current and prospective residents
  - Protecting and preserving physical condition of project
  - Financial interest in project.

*CFR 5.315(c)(1)(ii)*

- PHAs cannot impose unnecessary burdens and restrictions on pet owners and prospective pet owners.

*CFR 5.315(c)(2), and  
CFR 960.707(b)(4)*

- PHAs may vary content of rules among projects and within individual projects based on size, type, location and occupancy of projects or its units if rules are reasonable and do not conflict with state/local law or regulation.

### **DENSITY OF TENANTS AND PETS**

*CFR 5.318(b), and  
CFR 960.707(b)(2)*

- May place reasonable limits on numbers of pets allowed in each dwelling unit.

### **PET SIZE AND TYPE**

*CFR 5.318(c), and  
CFR 960.707(b)(23)*

- Rules may place reasonable limitation on pet types and size and weight of pets allowed. state/local law applies.

### **STANDARDS OF PET CARE**

*CFR 5.318(e) and  
CFR 960 Subpart G*

*Industry Practice*

- Pet rules may address standards of pet care and handling.
- Rules may prescribe sanitary standards to govern disposal of pet waste such as:
  - Designate areas on project premises for pet exercise and disposal of pet waste;
  - Forbid pet owners from exercising pets or permitting pets to deposit waste on project premises outside the designated areas;
  - Require pet owners to remove and properly dispose of all removable pet waste;
  - Require pet owners to remove pets from premises to permit pet to exercise or deposit waste if no designated area on project premises.
- State/local law applies.

### **LICENSING AND INOCULATION**

*CFR 5.318(f)*

- Pet rules may require pet owners to comply with applicable state or local laws or regulations on licensing and inoculation of pets.
- Pet owners are held responsible for meeting the law, regardless.

### **OTHER ACCEPTABLE RULES**

*CFR 5.318(g), and  
CFR 960 Subpart G*

- Designation of buildings, floors or buildings, or sections of buildings as pet and no-pet areas where pets generally are or are not permitted.
- PHA may direct any necessary initial tenant moves to establish areas.
- PHA may not refuse to admit or delay admission of applicant on grounds that admission would violate pet or no-pet area. May readjust areas or direct additional moves to meet changing needs of existing tenants.
- State/local law applies.

### **PETS TEMPORARILY ON PREMISES**

*CFR 5.318(h)*

- Rules may exclude pets to be kept temporarily on premises.
- Definition of temporary is less than 14 consecutive days and nights.
- PHAs encouraged to permit use of visiting pet program sponsored by nonprofit organization.
- State/local law applies.

*CFR 5.315(d)*

## LEASE PROVISIONS

- Leases for all affected tenants must:
  - Not contain any provisions prohibiting common household pets;
  - Incorporate the pet rules by reference;
  - Provide that the tenant agrees to comply with the rules, including tenant moves required by pet rule;
- State that violation of rules may be grounds for removal of pet or termination of pet owner's tenancy or both (subject to HUD regulations and state/local law).

## IMPLEMENTATION OF LEASE PROVISIONS

*CFR 5.324*

- The lease for each tenant of a project for the elderly or persons with disabilities or mixed projects must contain the PHA's pet lease provisions and may not contain prohibited provisions.

## NUISANCE OR THREAT

*CFR 5.327*

- Nothing in HUD regulations prohibits a PHA or appropriate community authority from requiring the removal of any pet from a project if conduct or condition is determined to constitute a nuisance or threat to health or safety of other occupants or of other persons in the community.

## **Section 5.3 Pet Rules for Public Housing Developments for the Elderly or Persons with Disabilities**

### **INTRODUCTION**

*CFR Part 5, Subpart C*

- As well as pet rules applicable to all developments (Section 5.2, above), following are the statutory regulations, HUD regulations and guidance applicable to developments designated for elderly persons and persons with disabilities.

### **BASIC PREMISE**

*CFR 5.309*

- No owner or manager of federally assisted rental housing for the elderly or for persons with disabilities may prohibit tenants from owning or keeping common household pets in their units.
- Cannot discriminate against persons in connection with admission or continued occupancy because they own pets.
- PHAs must consult with tenants in prescribing the pet rules.

*CFR 5.353(b) & (c)*

### **EFFECTIVE DATES**

- Published as a final rule on December 1, 1986, effective date of March 2, 1987.
- The regulations have been codified under 24 CFR Part 5, Subpart C as of 3/16/96.

## APPLICABLE PROJECTS

*CFR 5.306*

- Projects which are designated for occupancy by elderly or persons with disabilities are included.
- Includes building within mixed use projects if building independently meets designation criteria.

*CFR 5.309(a)*

- Covers any TENANT or PERSON in designated projects, whether or not they are elderly or have a disability.

*CFR 5.306*

- Project meets designation if:
  - Designated for occupancy by elderly or persons with disabilities at inception, or
  - If not designated, if PHA currently gives preference in tenant selection to elderly and those with disabilities (with HUD approval) for all units in the project.
    - PHAs who give preference to ALL units in ALL projects may wish to seek HUD approval for less sweeping preference.

- QUESTION: If I have a mixed use project, and I have a building designated for elderly and persons with disabilities, and another building designated for families, do I have to allow pets in the project?

- ANSWER: In mixed use projects for Public Housing, if the BUILDING is designated elderly or persons with disabilities, it is subject to the pet rules.

### **Additional Obligations**

*CFR 5.318(d)(5)*

- PHA may not impose additional financial obligations on pet owners that are designed to compensate PHA for costs associated with the presence of pets in project including requiring pet owners to:
  - Obtain liability or other insurance to cover damage caused by pet;
  - Be strictly liable for all damages caused by pet where liability is not otherwise imposed by state/local law;
  - Indemnify project owner for related litigation and attorney's fees.
- Pet deposit is not part of rent payable by tenant.
- State/local law applies.

*CFR 5.315(d)*

### **CONSULTATION WITH TENANTS ON PET RULES**

*CFR 5.380*

- PHAs who choose to make or amend pet rules must consult with tenants of applicable projects.
- PHAs must develop specific procedures governing tenant consultation.
- Procedures must be designed to give tenants (or tenant councils, if appropriate) adequate opportunity to review and comment on rules prior to effective issuance.
- PHAs are solely responsible for the content of final rules, but must consider tenant comments.
- PHAs must send final and amended rules and summaries or copies of all tenant comments received to HUD Field Office.

## **NONDISCRIMINATION**

- In projects designated for the elderly or persons with disabilities, PHAs may not:
  - Prohibit or prevent any tenant from owning common household pets or having pets live in tenant's dwelling unit; or
  - Restrict or discriminate against any person in connection with admission or continued occupancy for qualified housing because of pets.

## **PET DEPOSIT**

*CFR 5.309*

- PHAs may require pet owners to pay refundable pet deposit, in addition to any other financial obligations generally imposed on tenants in project.
- PHA may use pet deposit only to pay reasonable expenses directly attributable to presence of the pet in the project including:
  - Cost of repairs and replacement to tenant's dwelling unit; and
  - Fumigation of tenant's dwelling unit.
- PHA must refund unused portion of pet deposit within reasonable time after tenant moves from project or no longer owns or keeps pet in unit.

*CFR 5.318(d)(1)*

- Maximum amount of pet deposit per unit cannot exceed the higher of the Total Tenant Payment or such reasonable fixed amount as the PHA may require.
- Pet rules may permit gradual accumulation of pet deposit.

## Section 5.4      Pets in General Occupancy (Family) Developments

*CFR 960, Subpart G*

- Final rule on Pet Ownership in Public Housing was published in the *Federal Register* on July 10, 2000.
- Provision effective August 9, 2000.

*CFR 960.707(e)*

- PHA Annual Plans required to describe pet policy beginning with PHAs with fiscal years that begin on or after January 1, 2001.
- PHA Annual Plan process is subject to public hearing, Resident Advisory Board consultation, and HUD review.

*CFR 960.703*

- This regulation does not include the rules for elderly or disabled federally-assisted rental housing, which are described in Section 5.3 and located at 24 CFR Part 5, Subpart C.

*CFR 960.705*

- This regulation does not apply to service animals or assistance animals.

## OWNERSHIP CONDITIONS

*CFR 960.707(a)*

- A resident of a dwelling unit in public housing may own one or more common household pets or have one or more household pets in the dwelling unit if the resident maintains each pet:
  - Responsibly;
  - In compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations; and
  - In accordance with PHA policies.

*CFR 5.306(1)*

- PHAs may adopt the definition of common household pet for HUD multifamily programs.
  - A domesticated animal such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pet does not include reptiles (except turtles). If this definition conflicts with any applicable state or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the state or local law or regulation shall apply. This definition shall not include animals that are used to assist persons with disabilities.

## **LAW ALLOWS PHA TO ESTABLISH REASONABLE REQUIREMENTS**

*CFR 960.707(b)*

- Reasonable requirements may include but are not limited to:

*CFR 960.707(b)(1)*

- Requiring payment of:
  - A non-refundable nominal fee to cover the reasonable operating costs to the development relating to the presence of pets;
  - A refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered (such as damage to the unit by a particular pet); or
  - Both of the above.

*CFR 960.707(b)(2)*

- Limitations on the number of animals in a unit, based on unit size;

*CFR 960.707(b)(3)*

- Prohibitions on types of animals that the PHA classifies as dangerous;
  - Provided that such classifications are consistent with applicable state and local law

- Prohibitions on individual animals, based on certain factors, including the size and weight of animals;

- Restrictions or prohibitions based on size and type of building or project or other relevant conditions;

- Registration of the pet with the PHA; and

- Requiring pet owners to have their pets spayed or neutered.

*CFR 960.707(b)(4)*

*CFR 960.707(b)(5)*

*CFR 960.707(b)(6)*

## **RESTRICTION**

*CFR 960.707(c)*

- A PHA may not require pet owners to have any pet's vocal cords removed.

## **PET DEPOSIT**

*CFR 960.707(d)*

- No pet deposit is required.
- A PHA that requires a resident to pay a pet deposit must place the deposit in:
  - An account of the type required under applicable state or local law for pet deposits; or
  - If a state or local law has no requirements regarding pet deposits, for rental security deposits if applicable.
- The PHA must comply with such applicable law as to retention of the deposit, interest, and return of the deposit or portion of the deposit to the resident, and any other requirements.

## **ADDITIONAL INFORMATION**

- Because of variations among local communities regarding the definition of “common household pet”, HUD did not define the term for public housing.
  - Each PHA should define “allowable household pets”, “responsible pet ownership”, “nominal fee” and “reasonable” regulations.
- Provision allowing a PHA to prohibit types of animals classified as dangerous is statutory.
  - In some cases, state or local law may govern the classification. In these cases, PHA pet policy must be consistent with state or local law.
  - Likewise, many states and localities have laws regarding farm and exotic animals.
- HUD regulations state that local legal requirements will govern escrow accounts as to interest and other matters.
- One of the PHA’s reasonable requirements may include:
  - Certification of a licensed veterinarian or a state or local authority that pet has had all its shots required by state or local law; or
  - Information sufficient to identify the pet and to demonstrate that it is a common household pet; and
  - The name, address and phone number of one or more responsible parties who will care for the pet if the owner is unable to do so for any reason.
- Where appropriate to local conditions (including size and type of building), a PHA could institute some pet-free areas.

- However, HUD expects PHAs, consistent with statutory intent, to generally allow pet ownership.
- HUD acknowledges that residents of particular housing could argue to their PHA that there are characteristics of that housing which make various limitations on pet ownership appropriate.
- The PHA may not require evidence of liability insurance.
  - HUD states it is not a “reasonable requirement”.
  - Such a requirement could make it impossible for most residents to have pets, thus frustrating the intent of the statute.

#### **ADDITIONAL GUIDANCE**

##### *Industry Practice*

- Some private sector property managers require two pictures of each pet:
  - One picture is kept in the resident file.
  - The other picture is kept in a “pet” binder, so the manager can identify loose animals.
    - Pictures of pets can be arranged by color, breed, etc.
- In the private sector, many developments find that allowing pets is a very effective marketing strategy.
- Many private property managers state that big dogs do not necessarily create more disturbance or damage than small dogs.
- Some managers as a practice, before approving a dog, show dog owners how to handle a plastic bag when cleaning up outside.

### **SAMPLE PROVISIONS OF PET POLICY**

- Families residing in a public housing unit are allowed to keep common household pets in their apartments as stated in their lease and in accordance with the Code of Federal Regulations. Families may request permission to keep a common household pet.
- Households may keep (only one) (two) (three) common household pet(s).
- Maximum size of a dog is (10 pounds) (20 pounds) (other).
- Households must register a pet with the PHA before it is brought onto the premises.
- Pet registration must be updated each year at annual reexamination.
- Registration includes a certificate signed by a licensed veterinarian stating that the common household pet has received all inoculations currently required by state and local laws.
- Also required is whatever license is mandated by local law.
- Two pictures of each common household pet must be provided at time of registration.
- All animals are to be spayed or neutered.
- Dogs will be prohibited at developments with no green space.
- The resident will be responsible for all reasonable expenses directly related to the presence of the animal or pet on the premises, including the cost of repairs and replacement in the apartment.
- The pet deposit will be (\$400) (\$350) (\$300) (\$250) (\$200) (whichever is greater, the resident's total tenant payment or \$400, \$350, \$300, \$250 etc.) (the resident's total tenant payment) for each pet.
- A common household pet must be effectively restrained and under the control of a responsible person when passing through a common area.
- Any animal or pet waste deposited in any animal or pet animal exercise area must be removed immediately by the pet owner.
- All pets are to be fed inside the apartment. Feeding is not allowed on porches, sidewalks, patios or other outside area.
- Residents will not permit any disturbances by their pets which would interfere with the quiet enjoyment of other tenants; whether by loud barking, howling, biting, scratching, chirping or other such activities.
- The authorization for a common household pet may be revoked at any time subject to the housing authority's grievance procedure if the pet becomes destructive or a nuisance to others, or if the tenant fails to comply with this policy.

## **PUBLIC HOUSING PETS QUIZ**

1. PHAs \_\_\_\_\_ apply or enforce the pet rules to service animals and assistance animals.
  - a. May
  - b. Must
  - c. May not
  - d. May or may not, per PHA policy
2. Which statement below is true about pets in public housing?
  - a. If everyone in a public housing development voted to prohibit pets, the PHA could set a policy to prohibit pets in that development
  - b. PHAs must allow pets in mixed population developments but are not required to allow pets in general occupancy (family) developments
  - c. PHAs must allow pets in mixed population and in general occupancy developments
  - d. PHAs may charge a nonrefundable pet fee in mixed population developments
3. A PHA can require a pet owner residing in public housing to acquire and maintain liability insurance.
  - a. True
  - b. False
4. A PHA may require the following:
  - a. Evidence of liability insurance by a pet owner
  - b. Verification that a pet has had all its shots
  - c. Verification of training or certification of a service animal
  - d. The pet owner to have the pet's vocal chords removed if the animal is causing a disturbance
  - e. That an assistance animal is needed to help someone with physical, but not mental, disabilities

## CHAPTER 6

## Terminations

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### LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Describe and analyze reasons for terminations, including:
  - Discussing the mandatory and the discretionary policy decision points for terminations and evictions
  - Identifying the reasons for termination of tenancy
  - Identifying notice requirements for lease termination actions
- Explain and discuss the procedures for settling grievances and their associated requirements, including informal settlements and grievance hearings

## Section 6.1 Requirements for Evictions and Terminations

### TERMINATION OF THE LEASE

*CFR 966.4(l)*

- PHAs must develop dwelling lease requirements that permit the prompt eviction of tenants who are unable or unwilling to live up to the terms of the lease.
- The lease must state procedures to be followed in termination.

### TERMINATION BY TENANT

*CFR 966.4(k)*

- The lease must specify the length of notice required for the tenant to terminate the lease.
  - A 30-day notice is typical; some PHAs have a 60-day notice requirement.
- Notice to the PHA must be provided in accordance with the provisions of the lease.

### TERMINATION BY PHA

*CFR 966.4(l)(2)*

- A PHA may terminate a public housing tenancy only for serious or repeated violations of material terms of the lease, such as the following:
  - Failure to make payments due under the lease
  - Failure to fulfill household obligations, as described in the lease
  - Having an income in excess of the over-income limit for the program for 24 consecutive months
    - PHAs must indicate in policy whether they will terminate over-income families within six months or provide the option to pay the alternative rent.

*24 CFR 960.507,  
Notice PIH 2023-03*

## Terminations

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### Section 6.1: Requirements for Evictions and Terminations

- If the PHA gives the family the option to pay the alternative rent and the family declines, the PHA must terminate tenancy no more than six months after the end of the 24 consecutive month grace period.
- An over-income family that declines to pay the alternative rent will continue to be a public housing program participant family in the period before termination.
- As a result, PHAs that choose to permit over-income families to remain in public housing units as non-public housing over-income (NPHOI) families must also have a termination policy in the event the family declines to execute a new lease under 24 CFR 960.509.
- Other good cause, which includes, but is not limited to, the following:
  - Criminal activity or alcohol abuse as defined in the lease
  - Discovery after admission of facts that make 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 of a nonexempt family member to comply with community service requirements
  - Failure to accept the PHA's offer of a revision to an existing lease

Terminations

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Section 6.1: Requirements for Evictions and Terminations

## HOW TENANT IS EVICTED

*CFR 966.4(l)(4)(i)  
[in Hawaii 966.4(l)(4)(ii)]*

- A PHA may evict a tenant from a public housing unit only by bringing a court action unless the law of the jurisdiction permits eviction by administrative action.
  - To evict without bringing a court action, the PHA must afford the tenant the opportunity for a preeviction hearing in accordance with the PHA's grievance procedures.

## DEFINITIONS RELATED TO EVICTION

- HUD definitions related to evictions are printed in 24 CFR 5.100:
  - *Covered person* means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.
  - *Drug* means a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).
  - *Drug-related criminal activity* means 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 (21 U.S.C. 802).
  - *Guest* means 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.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

- *Other person under the tenant's control*, for the purposes of the definition of *covered person*, means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as *premises* is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.
  - Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is *not* under the tenant's control.
  - HUD adds this term to clarify that this person is not staying in the unit, to distinguish this person from a guest, who *is* staying in the unit.
  - The “other person under the tenant’s control” is a short-term invitee who is under the tenant’s control only during the period of the invitation and is on the premises because of that invitation.
  - The tenant’s legal control would be limited by the brevity of the visit and would not extend to activity off the public housing premises.
- *Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.
- *Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

**NOTICE OF INTENT TO TERMINATE AND OPPORTUNITY TO DISPUTE**

*24 CFR 5.903(f)*

*24 CFR 966.4(l)(5)(iv)*

- If a PHA's decision to evict a tenant is based on criminal record information, the PHA must notify the household of the proposed action and:
  - Supply the subject of the record and the tenant with a copy of the criminal record(s); and
  - Provide the opportunity for the subject of record and the tenant to dispute the accuracy and relevance of the information before the PHA issues the notice of termination.
- If a PHA obtains sex offender registration information from a state or local agency showing that a household member is subject to a lifetime sex offender registration requirement, the PHA must notify the household of the proposed action to be based on the information and must provide:
  - The subject of the record, and the applicant or tenant, with a copy of such information; and
  - An opportunity to dispute the accuracy and relevance of the information
- This opportunity must be provided before an eviction or lease enforcement action on the basis of such information.
- 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.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

## MANDATORY TERMINATION OF TENANCY

CFR 966.4(l)(5)(i)

### MANDATORY TERMINATION FOR METHAMPHETAMINE CONVICTION

- The PHA lease *must* provide for the immediate termination for persons convicted of the production or manufacture of methamphetamine on the premises of federally assisted housing.
- PHAs are mandated by law to terminate if the PHA determines that any member of the household has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

### OTHER MANDATORY TERMINATIONS

CFR 5.232(c)

- Failure to meet HUD's requirements regarding social security numbers
- Permitting an ineligible noncitizen (who was not considered in the calculation of prorated rent) to reside in the unit on a permanent basis
  - For at least 24 months
- Failure to sign the Form HUD-9886-A or any other release form required under HUD regulation or PHA policy
  - The HOTMA final rule provides PHAs with the discretion to determine whether applicants or recipients are ineligible for benefits if they, or their family members, refuse to provide or revoke the authorization to obtain financial records.
- Noncompliance with community service
  - Lease is not renewed upon expiration of the lease term

Terminations

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Section 6.1: Requirements for Evictions and Terminations

*Notice PIH 2012-28*

- Discovery that a member of an assisted household who was admitted after June 25, 2001, was subject to a lifetime registered sex offender requirement.
  - The PHA must offer the family the opportunity to remove that individual from the household.

**OVER-INCOME FAMILIES**

*Notice PIH 2023-03*

- As set forth in 24 CFR 960.507, families participating in the public housing program must not have incomes that exceed the over-income limit for more than 24 consecutive months.
  - The over-income limit is determined by multiplying the applicable very low-income limit (adjusted for family size) by 2.4.
  - An over-income family is defined as a family whose income exceeds the over-income limit.
  - However, PHAs with fewer than 250 public housing units may continue to lease public housing units to over-income families in accordance with 24 CFR 960.503.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

- As specified in PHA policy, once a family's income has exceeded the over-income limit for 24 consecutive months, the PHA must either:
  - Within 60 days of the PHA's final notification of the end of the 24-month grace period or the next lease renewal (whichever is sooner), execute a new lease that is consistent with 24 CFR 960.509 and charge the family the alternative non-public housing rent, which is equal to the greater of the:
    - Applicable Fair Market Rent; or
    - Amount of monthly subsidy for the unit including amounts from the operating and capital fund; or
  - Terminate the family's tenancy within six months of the PHA's final notification of the end of the 24-month grace period.
    - While the period before termination may be up to six months, it may be less as defined in PHA policy.
- If the PHA determines during an annual or interim reexamination that the family's income exceeds the over-income limit, no later than 30 days after the reexamination, the PHA must make a note in the tenant file and provide written notice to the family stating that they have exceeded the over-income limit and that the family will be subject to the PHA's over-income policies if they continue to exceed the over-income limit for 24 consecutive months.
- The PHA must grant the family an opportunity for a hearing if the family disputes the over-income determination within a reasonable time after notification of the over-income determination.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

- The PHA must conduct an income reexamination 12 months after the initial over-income determination, unless the PHA determines that the family's income fell below the over-income limit since the initial over-income determination. If PHA determines that the family's income has exceeded the over-income limit for 12 consecutive months, the PHA must again notify the family in writing within 30 days of the determination that their income has exceeded the over-income limit for 12 months, and if it continues to do so for the next 12 consecutive months, the family will be subject to the PHA's over-income policies.
  - If applicable under PHA policy, the notice must include an estimate based on current data of the alternative non-public housing rent for the unit.
  - The PHA must conduct this reexamination within 12 months even if the family is paying flat rent and PHA policy only requires income redetermination every three years.
- The PHA must grant the family an opportunity for a hearing if the family disputes the over-income determination within a reasonable time after notification of the over-income determination.
- The PHA must conduct an income reexamination 24 months after the initial over-income determination, unless the PHA determines that the family's income fell below the over-income limit since the second over-income determination. If PHA determines that the family's income has exceeded the over-income limit for 24 consecutive months, the PHA must again notify the family in writing within 30 days of the 24-month over-income determination. The notice must state:
  - That the family has exceeded the over-income limit for 24 consecutive months

Terminations

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Section 6.1: Requirements for Evictions and Terminations

- That the PHA will either terminate the family's tenancy or charge the family the alternative non-public housing rent, as specified in PHA policy
  - If the PHA will terminate tenancy, then the notice must inform the family of the determination and state when tenancy is terminated (no more than six months from the date of the notification).
  - If the PHA will charge the alternative non-public housing rent, the notice must inform the family of this determination. The PHA must also present the family with a new lease that complies with the requirements of 23 CFR 960.509 and inform the family that the lease must be executed within no later than 60 days of the notice or at the next lease renewal, whichever is sooner.
- The PHA must grant the family an opportunity for a hearing if the family disputes the over-income determination within a reasonable time after notification of the over-income determination.
- The PHA must ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, or other disabilities.
- An over-income family continues to be a public housing program participant until their tenancy is terminated or they execute a non-public housing lease, as applicable.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

- If the PHA will terminate assistance, in the period prior to termination, the family remains a participant on the public housing lease (although the lease converts to a month-to-month term), the family must be given a choice between income-based and flat rent as applicable, and the PHA must conduct interim reexaminations of family income as otherwise required. However, the resulting income determination will not make the family eligible to remain on the program beyond the six-month termination period.
- If the PHA will charge the alternative non-public housing rent, the family becomes a non-public housing over income (NPHOI) family upon execution of the new lease. NPHOI families are precluded from participating in any programs that are only for public housing or low-income families, including the public housing resident council; are not subject to the Community Service and Self Sufficiency requirement (CSSR); are not subject to any type of recertification; are not given a choice between income-based and flat rent; and may not receive any federal assistance, including a utility allowance. However, the PHA may at its discretion offer grievance or hearing rights to the family in accordance with PHA policy.
- If at any time during the 24 consecutive-month period the PHA determines that the family's income has fallen below the over-income limit, the PHA's over-income policies no longer apply to the family. If the family subsequently experiences an increase in income over the over-income limit, the family is entitled to a new 24 consecutive month period.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

- The PHA must submit a report annually to HUD that specifies the number of families residing in public housing with incomes exceeding the over-income limit and the number of families on waiting lists for admission to public housing projects and provide the any other information on over-income families HUD requests.
- PHAs must indicate in policy whether they will terminate over-income families within six months or provide the option to pay the alternative rent.
- If the PHA gives the family the option to pay the alternative rent and the family declines, the PHA must terminate tenancy no more than six months after the end of the 24 consecutive month grace period.
- An over-income family that declines to pay the alternative rent will continue to be a public housing program participant family in the period before termination.
- As a result, PHAs that choose to permit over-income families to remain in public housing units as non-public housing over-income (NPHOI) families must also have a termination policy in the event the family declines to execute a new lease under 24 CFR 960.509.
  - See Notice PIH 2023-03 for further clarifications and guidance on the public housing over-income provisions.

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Terminations

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Section 6.1: Requirements for Evictions and Terminations

## ALLOWABLE TERMINATION OF TENANCY

### REQUIRED LEASE PROVISIONS

#### Termination for alcohol abuse, drug-related criminal activity, or violent criminal activity

- The PHA lease *must* provide that termination of tenancy is allowed under all of the following circumstances:
  - Abuse or pattern of abuse of alcohol by a household member that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents
  - Illegal drug use by a household member
  - Pattern of illegal drug use by a household member that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents
  - False or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers furnished by the tenant
  - Drug-related criminal activity by any tenant, member of the tenant's household or guest on or off the premises
  - Drug-related criminal activity on the premises by any other person under the tenant's control
  - Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, PHA management staff residing on the premises, and/or persons residing in the immediate vicinity
- Smoking of prohibited tobacco products in restricted areas or any other areas the PHA has designated as smoke-free by tenants, household members, guests or other persons under the tenant's control.
- PHAs are not mandated to terminate in any or all of the above circumstances. See "Consideration of Circumstances" section that follows.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

**OPTIONAL LEASE PROVISIONS**

**Terminations for fugitive felons or parole violators**

*CFR 966.4(l)(5)(ii)(B)*

- The PHA *may* terminate the lease of a tenant who 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 is a high misdemeanor in the state of New Jersey
  - Violating a condition of probation or parole imposed under federal or state law

**CONSIDERATION OF CIRCUMSTANCES**

*CFR 966.4(l)(5)(vii)(B)*

- In circumstances where the PHA is not mandated to evict, the PHA may consider all circumstances relevant to a particular case such as:
  - The seriousness of the offending action
  - The extent of participation by the leaseholder in the offending action
  - The effects that the eviction would have on family members not involved in the offending activity
  - The extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action
  - The useful purpose that would be served by terminating a tenancy on the basis of a crime committed by a guest or other person with whom the leaseholder had a minimal connection

*Federal Register 5/24/01*

Terminations

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Section 6.1: Requirements for Evictions and Terminations

*CFR 966.4(l)(5)(vii)(D)*

**CONSIDERATION OF REHABILITATION**

- In determining whether to terminate tenancy for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse or for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, the PHA may:
  - Consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program
  - Has otherwise been rehabilitated successfully
- The PHA may require the tenant to submit evidence.

*CFR 966.4(l)(5)(vii)(C)*

**EXCLUSION OF CULPABLE HOUSEHOLD MEMBER**

- The PHA may require a 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.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

**PHA ACCESS TO AND USE OF CRIMINAL RECORDS AND INFORMATION**

**EVIDENCE**

*CFR 966.4(l)(5)(iii)*

- The PHA may evict by judicial action for criminal activity in accordance with the lease if the PHA determines that a covered person has engaged in the activity, *regardless of whether the covered person has been arrested or convicted of the activity.*
- The PHA is not required to satisfy the standard of proof used for a criminal conviction; however, it must prove the elements of crime by the standard of proof used in civil proceedings.
  - The standard of proof used in civil proceedings is generally “a preponderance of the evidence,” not “beyond a reasonable doubt,” as in criminal proceedings.
- As evidence, the PHA may use either of the following:
  - Information that it has obtained independently, including criminal records and first-hand accounts of staff, residents, community members, or law enforcement officers
  - Criminal conviction records that it has obtained from a law enforcement agency under the authority of 24 CFR 5.903

## Terminations

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### Section 6.1: Requirements for Evictions and Terminations

#### **LEASE TERMINATION NOTICE REQUIREMENTS**

*CFR 966.4(l)(3)(i),  
24 CFR 966.8;  
Notice PIH 2021-29*

*FR Notice 12/13/24*

- The PHA must give written notice of lease termination of 30 days in the case of failure to pay rent.
- The PHA must not:
  - Provide tenants with a termination notice prior to the day after the rent is due
  - Proceed with filing an eviction if the tenant pays the alleged amount of rent owed within the 30-day notification period
- In addition to normal requirements for notices of lease termination, all notices of lease termination for nonpayment of rent must also include the following:
  - Instructions on how the tenant can cure the violation, including:
    - Itemized amount separated by month of alleged rent owed by the tenant;
    - Any other arrearages
    - Date by which the tenant must pay before an eviction for can be filed
  - Information on how the tenant may recertify their income, request a minimum rent hardship exemption, or a request to switch from flat rent to income-based rent.
- A reasonable period of time considering the seriousness of the situation, but not to exceed 30 days, in any of the following cases:
  - The health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened.
  - Any member of the household has engaged in any drug-related criminal activity or violent criminal activity.
  - Any member of the household has been convicted of a felony.

Terminations

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Section 6.1: Requirements for Evictions and Terminations

- 30 days in any other case unless state or local law allows a shorter notice period

*CFR 966.4(l)(3)(ii)*

- The notice of lease termination to the tenant must:
  - State specific grounds for termination
  - Inform the tenant of the tenant's right to:
    - Reply
    - Examine PHA documents directly relevant to the termination or eviction
- If the PHA is required to afford the tenant the opportunity for a grievance hearing, then:

*CFR 966.4(l)(3)(ii)*

- The notice of lease termination must also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedures

*CFR 966.4(l)(3)(iv)*

- The PHA may not terminate the tenancy until the time to request a grievance hearing has expired or, if the tenant requests a hearing in a timely manner, until the grievance process has been completed

*CFR 966.4(l)(3)(v)*

- When the PHA is *not* required to afford the tenant the opportunity for a grievance hearing, the notice of lease termination must:

*CFR 966.4(l)(3)(v)(A)*

- State that the tenant is not entitled to a grievance hearing on the termination

*CFR 966.4(l)(3)(v)(B)*

- Specify the judicial eviction procedure to be used by the PHA

*CFR 966.4(l)(3)(v)(B)*

- State that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process

Terminations

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Section 6.1: Requirements for Evictions and Terminations

*CFR 966.4(l)(3)(v)(C)*

- State whether the eviction is for:

*CFR 966.51(a)(2)(i)(A)*

- A criminal activity that threatens the health or safety of other residents or PHA employees or their right to peaceful enjoyment of the premises

*CFR 966.51(a)(2)(i)(B)*

- Any violent or drug-related criminal activity on or off the premises

*CFR 966.4(l)(3)(iii)*

- A notice to vacate required by state or local law may be combined with, or run concurrently with, a notice of lease termination.

*CFR 966.4(l)(3)(iv)*

- Expiration of such a notice does not nullify any federally required right the tenant may have to a grievance hearing prior to termination of tenancy.

**NONDISCRIMINATION LIMITATION**

*CFR 966.4(l)(5)(vii)(F)*

- Actions carried out by PHAs relating to evictions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

**NOTICE TO THE POST OFFICE**

*CFR 966.4(l)(5)(iii)(B)*

- When a PHA evicts an individual or family from a public housing dwelling unit for criminal activity, the PHA must notify the local post office serving the unit that the individual or family is no longer residing there.
  - The intent here is to remove the need for evicted tenants to return to the premises of public housing to pick up their mail.

## Section 6.2      **Grievance Procedures and Requirements**

### **DEFINITIONS**

*CFR 966.53(a)*

- **Grievance** - any dispute that a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations that adversely affect the individual tenant's rights, duties, welfare, or status.

*CFR 966.53(f)*

- **Tenant** - the adult person (or persons) (other than a live-in aide) who resides in the unit and satisfies either of the following conditions:
  - S/he executed the lease with the PHA as lessee of the dwelling unit.
  - S/he is the remaining head of household of the tenant family residing in the dwelling unit.

*CFR 966.53(b)*

- **Complainant** - any tenant whose grievance is presented to the PHA or at the project management office.

*CFR 966.53(c)*

- **Elements of due process** - an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  1. Adequate notice to the tenant of the grounds for the eviction action or termination of tenancy
  2. Right of the tenant to be represented by counsel
  3. Opportunity for the tenant to refute the evidence, including the right to confront or cross-examine witnesses and present any affirmative legal or equitable defense that the tenant may have
  4. A decision on the merits

Terminations

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Section 6.2: Grievance Procedures and Requirements

*CFR 966.53(e)*

- **Hearing officer** - an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training. PHAs must describe their policies for selection of a hearing officer in their lease forms.

*CFR 966.53(e)*

- **Hearing panel** - a panel selected in accordance with the regulations to hear grievances and render a decision with respect thereto.

*CFR 966.53(g)*

- **Resident organization** - includes a resident management corporation.

## PURPOSE AND APPLICABILITY OF GRIEVANCE PROCEDURES

*CFR 966.50*

- Grievance procedures assure that a PHA tenant is afforded an opportunity for a hearing within a reasonable time regarding any PHA action or failure to act involving:
  - The tenant's lease with the PHA
  - PHA regulations that adversely affect the tenant's rights, duties, welfare, or status

*CFR 966.51(b)*

- Grievance procedures are not applicable to:
  - Disputes with nontenants
  - Disputes between tenants
  - Disputes between a live-in aide and the PHA
  - Disputes not involving the PHA
  - Certain disputes in due process states
  - Class grievances

## Terminations

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### Section 6.2: Grievance Procedures and Requirements

- Grievance procedures are not intended to be a forum for initiating or negotiating PHA policy changes.
- The PHA must meet regulatory due process requirements, as well as any additional requirements under federal, state, or local law.
  - Grievance hearings may be conducted in-person or remotely. Should the hearing be conducted remotely, the PHA must also meet the requirements for conducting remote grievance hearings specified in Notice PIH 2020-32.

### DUE PROCESS STATES

*CFR 966.51(a)(2)*

- In states where HUD has determined that a court provides the elements of due process, PHAs may bypass their grievance procedures in cases involving termination of tenancy for:
  - Any criminal activity that threatens the health or safety of other residents or employees of the PHA or their right to peaceful enjoyment of the premises
  - Any violent or drug-related criminal activity on or near the premises
  - Any criminal activity that resulted in a felony conviction of a household member

*CFR 966.51(a)(2)(iv)*

- PHAs may evict occupants through judicial eviction procedures without providing the opportunity for a hearing under their grievance procedures.

*CFR 966.4(l)(3)(v)*

- If a hearing is not required, the PHA must notify the tenant.

Terminations

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Section 6.2: Grievance Procedures and Requirements

**ADOPTING GRIEVANCE PROCEDURES**

*CFR 966.52(c)*

- If the PHA proposes to adopt or change its grievance procedures, the PHA must:
  - Provide at least 30 days' notice, setting forth the proposed changes, to tenants and resident organizations
  - Provide an opportunity for tenants and resident organizations to present written comments
  - Consider comments submitted before adopting any changes

*CFR 966.52(d)*

- The PHA must furnish a copy of its grievance procedures to each tenant and to resident organizations.

**EXPEDITED GRIEVANCE PROCEDURE**

*CFR 966.53(d)*

- A PHA's grievance procedures may include an expedited procedure for any grievance concerning a termination of tenancy or eviction that involves:
  - Any criminal activity that threatens the health or safety of other residents or PHA employees or their right to peaceful enjoyment of the premises
  - Any drug-related criminal activity on or off the premises

*CFR 966.56(G)*

**LIMITED ENGLISH PROFICIENCY**

- The PHA must comply with HUD's final rule concerning provision of language services for LEP persons.

## Terminations

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### Section 6.2: Grievance Procedures and Requirements

#### **ACCOMMODATION OF PERSON WITH DISABILITIES**

*CFR 966.7(a)*

- For all aspects of its grievance procedures, the PHA must provide reasonable accommodation to the extent necessary for persons with disabilities.

*CFR 966.56(h)(1)*

- Reasonable accommodations that enable persons with disabilities to participate in a grievance hearing may include qualified sign language interpreters, readers, attendants, or accessible locations, including conducting the hearing remotely.

*CFR 966.56(h)(2)*

- If a tenant filing a grievance is visually impaired, all notices required under HUD regulations must be in an accessible format.

#### **INFORMAL SETTLEMENT OF GRIEVANCES**

The informal settlement is the first step in the grievance process. At many PHAs, the informal settlement is conducted by the property manager.

*CFR 966.54*

- Grievances must be personally presented by tenants, either orally or in writing, to the PHA office or project office so that they can be discussed informally and settled without a hearing.

*CFR 966.54*

- When a tenant presents a grievance to a PHA, the PHA must prepare and send to the tenant within a reasonable time a summary of the informal discussion.

*CFR 966.54*

- The summary must specify:
  - The names of the participants
  - The dates of meeting
  - The nature of the proposed disposition of the tenant's complaint
  - The reasons for the proposed disposition
  - The procedures for obtaining a hearing if the tenant is not satisfied

## Terminations

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### Section 6.2: Grievance Procedures and Requirements

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## PROCEDURES GOVERNING THE HEARING

FR 3/8/16

- HUD's streamlining final rule, published March 8, 2017, made major changes to the regulations governing grievances. Many provisions which were covered by regulation are now controlled by PHA policy. These include requirements for:
  - Requesting a hearing
  - Selecting a hearing officer
  - Failure to request a hearing
  - Conducting the hearing
- Notice PIH 2020-32, issued November 20, 2020, also made changes to the requirements governing grievance hearings as they pertain to hearings that are conducted remotely. These include requirements for:
  - Identifying and resolving technological barriers prior to conducting the remote hearing
  - Presenting documents prior to a remote hearing
  - Updating the PHA's grievance procedure should the PHA opt for remote hearings

## TENANT'S RIGHTS

The complainant shall be afforded a fair hearing, which shall include:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. The tenant shall 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.
  - If the hearing is to be conducted remotely, this may involve providing documents via mail, email, or on a secure website or cloud-based server.

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Section 6.2: Grievance Procedures and Requirements

- 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;
- 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; and
- A decision based solely and exclusively upon the facts presented at the hearing.

**SCHEDULING OF HEARINGS**

*CFR 966.56(a)*

- A hearing requested in accordance with HUD regulations and PHA grievance procedures must be promptly scheduled for a time and place reasonably convenient to both the tenant (also called the complainant) and the PHA.

**REQUESTING A TRANSCRIPT**

*CFR 966.56(g)*

- Either the tenant or the PHA may arrange in advance for a transcript of the hearing at the expense of the arranging party.
- Any interested party may purchase a copy of the hearing transcript.

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Section 6.2: Grievance Procedures and Requirements

## OTHER PROCEDURAL REQUIREMENTS

*CFR 966.56(c)*

- If the tenant or the PHA representative does not appear at a scheduled hearing, the hearing officer or panel may do either of the following:
  - Postpone the hearing for no more than five business days
  - Decide that the missing party has waived his/her right to a hearing
- If the hearing is to be conducted remotely, the PHA must determine whether any technological barriers exist and attempt to resolve those barriers prior to the remote hearing.
  - If the tenant does not have proper technological access that will allow them to fully participate in the hearing, then the remote hearing should be postponed or an in-person alternative must be provided

*Notice PIH 2020-32*

## EVIDENCE

### STANDARD OF PROOF - EVIDENCE

An eviction is a civil action, even if the termination/eviction is for criminal activity.

Ordinarily, the party seeking the change in the status quo has the burden of proof. The standard of proof in a civil case is 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.

Terminations

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Section 6.2: Grievance Procedures and Requirements

**DECISION OF THE HEARING OFFICER**

*CFR 966.57(a)*

- The hearing officer (or panel) must give the tenant and PHA a written decision, stating the reasons for the decision, within a reasonable time after the hearing.
  - The PHA must retain a copy of the decision in the tenant's file.
  - The PHA must also maintain a log of all hearing officer decisions and must make the log available to hearing officers, prospective complainants, and representatives of prospective complainants.

*CFR 966.57(b)*

- The decision is binding on the PHA unless the PHA's board of commissioners determines within a reasonable time, and promptly notifies the tenant, either of the following:
  - That the grievance does not concern PHA action or failure to act in accordance with the lease or PHA regulations that adversely affect the tenant's rights, duties, welfare, or status
  - That the decision is contrary to applicable federal, state, or local law; HUD regulations; or requirements of the annual contributions contract between HUD and the PHA

*CFR 966.57(c)*

- A decision favorable to the PHA does not waive or otherwise affect any right the tenant may have to pursue the matter through appropriate judicial proceedings.
- If the hearing decision upholds the PHA's termination and the tenant does not move out of the unit, the PHA will pursue the eviction action in court.

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Terminations

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Section 6.2: Grievance Procedures and Requirements

**TERMINATION AND EVICTION PROCESS**

**Issue 30-Day Notice**

(Notice to terminate tenancy combined with notice to vacate,  
pursuant to state laws)

**Grievance Procedure Applies**

**Informal Hearing**

**Formal Hearing**

**Determination Issued**

**Notice to Vacate**

(If required)

**Court Appearance**

**Trial, if Requested**

**Vacate Order Issued by Judge**

**Sheriff's Eviction**

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Terminations

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Section 6.2: Grievance Procedures and Requirements

**TERMINATION AND EVICTION PROCESS**

**Causes Not Requiring Hearing Because of Due Process Determination**

**Issue Notice Pursuant to State Law**

(3 days, 5 days, 10 days, or 30 days)



**No Grievance Required**



**Court Appearance**

**Trial, If Requested**



**Vacate Order Issued by Judge**



**Sheriff's Eviction**



**Notify Post Office**

Terminations

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Section 6.2: Grievance Procedures and Requirements

## REPAYMENT AGREEMENT POLICY

*Notice PIH 2018-18*

- If residents were charged less rent than required due to underreporting or failure to report, they are required to reimburse the PHA for the difference between what should have been charged and the rent that was charged. If the resident refuses to enter into a repayment agreement, the PHA must terminate the family's tenancy. Amnesty or debt forgiveness programs are not authorized by HUD. The PHA must determine the retroactive rent amount as far back as the PHA has records of the family's reported income. The monthly retroactive payment plus the tenant rent should be affordable for the family and should not exceed 40 percent of the family's monthly adjusted income, although the PHA has the discretion to set the repayment amount. Tenants have the option to pay the balance in monthly installments, a lump sum, or a combination of the two.
- Repayment agreements must:
  - Be in writing
  - Be dated
  - Be signed by both the tenant and the PHA
  - Include the total amount of retroactive rent owed
  - Include the amount of the lump sum payment made at the time of execution (if any)
  - Include the monthly rent amount

Terminations

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Section 6.2: Grievance Procedures and Requirements

- Before implementing any tenant repayment agreements, a PHA should have in place a payment agreement policy and procedures. At a minimum, repayment agreements must contain the following provisions:
  - Reference to the applicable lease section that states that residents who fail to report or underreport income may be subject to termination
  - The monthly retroactive rent amount as well as the family's regular rent amount
  - Information on how the terms of the agreement may be renegotiated if there is an increase or decrease in family income
  - Late or missed payments may result in termination

## **Termination Actions for Drug Related and Criminal Activity**

	<b>PHA ACTION</b>			
	<b>May Include in Lease</b>	<b>Must Include in Lease</b>	<b>May Evict</b>	<b>Must Evict</b>
Alcohol abuse by household member that threatens the health, safety, or peaceful enjoyment of residents	X	X	X	X
Illegal use of drugs by household member	X	X	X	X
Pattern of drug use by household member that threatens or interferes with the health, safety or peaceful enjoyment of residents	X	X	X	X
Household member furnishing false or misleading information about illegal drug use, alcohol abuse, or rehab of illegal drug user or alcohol abuser	X	X	X	X
Drug crime on or off premises by tenant, household member, or guest	X	X	X	X
Drug crime on premises by other person under tenant's control	X	X	X	X
Criminal activity by tenant, household member, guest, or other person under tenant's control that threatens the health, safety, or peaceful enjoyment of residents, PHA staff, or persons residing in immediate vicinity	X	X	X	X
Conviction for manufacturing or producing methamphetamine on premises of federally assisted housing	X	X	X	X
Parole violation by tenant	X	X	X	X
Tenant fleeing to avoid prosecution for a felony	X	X	X	X
Discovery that a member of the assisted household was subject to a lifetime sex offender registration requirement	X			

## Terminations

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### Section 6.2: Grievance Procedures and Requirements

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#### DOCUMENTATION

- Consistent, accurate documentation of file is extremely important. Such documentation:
  - Demonstrates that the PHA is aware of problems
  - Demonstrates what steps or measures the PHA has taken to remedy the situation
  - Provides history in case of family transfers or when there are staff changes
  - Can be used as evidence in advocacy of the family
  - Can be used as evidence in court.
- Documentation should be objective. ***Behaviors*** and ***events*** should be described, ***not*** opinions or judgments.
  - For example, “The So-and-So family are bad tenants” is not helpful documentation.
  - An accurate description of events might be, “The office has received four complaints in the last month from two neighbors who state that the Miller family played loud music until 2:00 am.”
- Staff should document the date and time (or general time, such as “in the morning”) of any reported complaint, occurrence, or reported occurrence.
- Document names and unit numbers of any witnesses and/or complainants. Include telephone numbers when possible.
- Ask complainants if they would be willing to testify at a hearing or in court.

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Section 6.2: Grievance Procedures and Requirements

**PUBLIC HOUSING LEASE AND TERMINATIONS QUIZ**

Circle the letter of the correct answer.

1. Charges assessed for damages, late payments, and excess utility consumption are not due and collectible until:
  - a. Two weeks after the PHA gives written notice of the charges
  - b. The first of the month after the PHA gives written notice of the charges
  - c. The first of the second month after the PHA gives written notice of the charges
  - d. Thirty days after the PHA gives written notice of the charges
2. A live-in aide:
  - a. Must be a licensed health care professional
  - b. Can never be a relative of the assisted family
  - c. Can never work outside the home
  - d. Must be necessary for the care and well-being of a family member who is either elderly or disabled
  - e. All of the above
3. PHAs must develop lease requirements which permit the eviction of tenants who commit serious or repeated violations of the terms of the lease.
  - a. True
  - b. False
4. Which of the following actions does not constitute grounds for termination of the lease?
  - a. Consistently being late with the rent for several months
  - b. Tenant persists in creating a health and sanitation problem through improper disposal of waste and garbage
  - c. Tenant was arrested for illegal drug activity across town
  - d. Tenant consumed large quantities of alcohol in their unit
5. The PHA has the right to deny the addition of any adult to the lease of an existing resident family if the PHA has evidence that the admission of that person would pose a serious threat to other resident families.
  - a. True
  - b. False

Terminations

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Section 6.2: Grievance Procedures and Requirements

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6. When deciding whether or not to permit the addition of a new occupant to an existing resident family, consideration may be given to:
  - a. Whether they owe money to the PHA from a previous tenancy
  - b. Whether they have a history of drug-related or other criminal activity
  - c. Whether they have a history of causing neighborhood disturbances
  - d. All the above can be considered
  - e. Only b and c above
7. The HUD definition of a guest is:
  - a. A person in the unit with the consent of an adult household member
  - b. A short-term invitee on the premises with the consent of a family member
  - c. A person temporarily staying in the unit with the consent of a household member
  - d. The PHA must define the term “guest” in its ACOP
8. “Other person under the tenant’s control” always includes a person on the premises solely for legitimate commercial purposes (e.g. tenant ordered a pizza delivered to the unit).
  - a. True
  - b. False
9. The PHA may allow legal profit-making activity in the unit.
  - a. True
  - b. False
10. The PHA must offer alternative accommodation if it would be dangerous to remain in the damaged unit.
  - a. Unless the damage was caused by the family
  - b. Unless the damage was caused by the family or their guests
  - c. Unless the PHA intends to evict the family
  - d. Under all circumstances
11. A PHA may not require, as a lease obligation, tenants to perform any maintenance tasks under any circumstances.
  - a. True
  - b. False

Terminations

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Section 6.2: Grievance Procedures and Requirements

12. The lease must state that notices from the PHA to the tenant will be:
  - a. Communicated through the tenant newsletter posted in the central and/or project offices
  - b. Verbally presented to the tenant or an adult household member
  - c. In writing, delivered to the tenant or an adult household member or sent prepaid first-class mail properly addressed to the tenant
  - d. All of the above
13. If a person is visually impaired, any notice must be:
  - a. Read to them
  - b. Given to them in the form of a tape recording
  - c. Provided in Braille
  - d. In an accessible format
14. In which of the following grounds for eviction might a tenant not be entitled to a grievance hearing?
  - a. Non-payment of maintenance charges
  - b. Tenant caused damages to unit
  - c. Drug-related criminal activity
  - d. Failure to abide by pet rules
15. The PHA must notify the post office any time a family:
  - a. Moves in
  - b. Moves out
  - c. Is evicted for criminal activity
  - d. Is evicted for any violation
16. A family has the right to request a hearing for all of the following except:
  - a. Required transfer
  - b. Charges for damages beyond normal wear and tear
  - c. PHA policy change to more strict reporting requirements
  - d. Termination of lease
  - e. All are adverse actions
17. Besides the tenant, another person who may grieve would be:
  - a. Remaining family member, but only if an adult
  - b. The live-in aide
  - c. Any dependent
  - d. A service animal

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Section 6.2: Grievance Procedures and Requirements

18. A tenant is defined as:
  - a. The head of household
  - b. All adult family members who sign the lease
  - c. All adult family members
  - d. All family members
19. The PHA may evict for criminal activities not specified in the regulations, as long as it is stated in the lease and ACOP.
  - a. True
  - b. False
20. A PHA can terminate the lease for non-compliance with community service requirements six months into the lease term, if they have clear cut evidence of the non-compliance.
  - a. True
  - b. False

Date: \_\_\_\_\_  
**To:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Subject:** **Resident Responsibilities**  
**Housing Rep.:** \_\_\_\_\_

**Everytown Housing  
Authority  
and  
Community Services  
Agency of Lone  
County**

The conditions checked below are evident in your home. These lease violations are your responsibility to correct. You must contact your Housing Representative at \_\_\_\_\_ within five (5) working days to verify that the deficiencies have been corrected or to set up a reinspection. Failure to correct these conditions, or to contact your Housing Representative, will result in further action by the Housing Authority. A copy of this form will be given to your housing representative.

**Kitchen:** ? Dirty Stove ? Dirty Refrigerator ? Roaches ? Excessive dirty dishes  
? Unsanitary conditions: Explain: \_\_\_\_\_

**Bathroom:** ? Unsanitary conditions ? Damage Explain: \_\_\_\_\_  
\_\_\_\_\_

**Yard:** Lawn needs: ? mowing ? weeding ? trimming ? watering; ?  
Debris  
? Patio \_\_\_\_\_ ? Garage areas \_\_\_\_\_ ? Other: \_\_\_\_\_

**Pets:** (Evidence) ? Dog ? Cat ? Food ? Dishes ? Odor ? Other \_\_\_\_\_  
Description of animal \_\_\_\_\_

**Unauthorized**

**Person** (Evidence) ? Clothes in closet ? Other: \_\_\_\_\_

**Vehicles:** ? Parked improperly ? On grass ? On walkway ? Inoperable ? Other \_\_\_\_\_  
Description of Car: Make \_\_\_\_\_ Color \_\_\_\_\_  
License # \_\_\_\_\_ Expiration date \_\_\_\_\_

**Damage:** ? Interior ? Exterior Explain: \_\_\_\_\_

General Comments \_\_\_\_\_  
\_\_\_\_\_

**Observed and Prepared by** \_\_\_\_\_ Date \_\_\_\_\_

**Forward Completed Form to Occupancy Supervisor** Project # \_\_\_\_\_ Unit # \_\_\_\_\_

Supervisor: Review date: \_\_\_\_\_ Comment: \_\_\_\_\_

Forward to representative (name) \_\_\_\_\_ Date \_\_\_\_\_

Resident response: Date \_\_\_\_\_ MEMO: \_\_\_\_\_

Rep. follow-up (Date): Letter \_\_\_\_\_ Phone \_\_\_\_\_ Personal \_\_\_\_\_ Inspection \_\_\_\_\_

Comments \_\_\_\_\_  
\_\_\_\_\_

Housing Representative: \_\_\_\_\_ Date \_\_\_\_\_

Return copies 3 and 4 to supervisor after completing follow-up

**INCIDENT DOCUMENTATION FORM**

Your Name:
Address:
Phone #:

Date & time of incident: \_\_\_\_\_

Were the police called? \_\_\_\_\_

If so, Police Department & Officer: \_\_\_\_\_

**Description of Incident** (Please describe what happened, who was involved, where they live, where it occurred, vehicle plate numbers, or other important information).

**Facts only:**

Who was involved?

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Where do they live?

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Where did it happen?

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What happened? (facts only, no opinions)

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Did you actually witness the incident?  Yes  No. If not, who did? \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Housing Authority Logo**

**Housing Authority Name**  
Address  
City, State, Zip  
Phone  
TDD or TTY

Date

Resident Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

**NOTICE OF INTENT TO TERMINATE LEASE BASED ON CRIMINAL RECORDS**

Head of Household: [Resident Name],  
Subject of Record: [Name]

Dear [Resident Name]:

The Housing Authority of [Jurisdiction] (acronym, or “the PHA”) intends to terminate your public housing lease and tenancy based on criminal record database(s). This notice is being sent to the head of household and the subject of record, if the subject of record is other than the head of household.

You signed a consent form authorizing the release of criminal records to the PHA. A copy of that consent form is enclosed.

The PHA has obtained criminal records showing that the adult household member named above was involved in a crime that constitutes grounds for termination of tenancy. This is the PHA’s notification of its intention to terminate your lease and tenancy based on this information.

Enclosed is a copy of the criminal record(s) upon which the PHA is basing this decision. In compliance with 24 CFR §5.903, you have the right to dispute the accuracy and relevance of the criminal record(s) used to make the determination to terminate your lease. If you do not dispute the accuracy and relevance of the criminal record(s) within 10 business days, or if the PHA upholds its decision to terminate, the PHA will send you a notice of termination. You will then be informed of your right, if any, to appeal our decision, with instructions on how to do so at that time.

If you have any questions, please call: \_\_\_\_\_ [name of caseworker] \_\_\_\_\_ Phone: \_\_\_\_\_

PHA Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Authorizing Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Cc:

# REQUEST TO DISPUTE CRIMINAL RECORDS

I am requesting a meeting with the PHA to dispute the accuracy and relevance of the criminal record(s) upon which the PHA intends to terminate my tenancy.

Date: \_\_\_\_\_

Signature of Head of Household: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Adult Household Member, if other than Head of Household:

IF the PHA does not receive a request for a meeting within 10 business days, you will receive a notice of termination.

Your Right to an Interpreter		You have the right to an interpreter at no cost to you. An interpreter will be called. Please wait.	
<b>Chinese - Simplified</b> <b>中文</b>  中国  美国  日本  德国  英国  法国  澳大利亚  加拿大  墨西哥  西班牙  意大利  巴西  韩国  泰国 <p>你有权利要求一位免费的传译员。请指出你的语言。传译员将为你服务，请稍候。</p>		<b>Chinese - Traditional</b> <b>中文</b>  中国  美国  日本  德国  英国  法国  澳大利亚  加拿大  墨西哥  西班牙  意大利  巴西  韩国  泰国 <p>你有權利要求一位免費的傳譯員。請指出你的語言。傳譯員將為你服務。請稍候。</p>	
<b>German</b> <b>Deutsch</b> <p>Sie haben kostenlose Anspruch auf einen Dolmetscher im. Bitte deuten Sie auf Ihre Sprache. Ein Dolmetscher wird gerufen. Bitte warten Sie.</p>	<b>Italiano</b> <p>Avete diritto ad un interprete. Il servizio è gratuito. Indicate la vostra lingua e attendete; un interprete sarà chiamato al più presto.</p>	<b>Japanese</b> <b>日本語</b> <p>翻訳を無料でご利用になれます。該当する言語を指示して下さい。翻訳を手配いたしますのでお待ち下さい。</p>	<b>Hindi</b> <b>हिन्दी</b> <p>आपको बिना खुल्हे किसी भी भाषा का अनुवाद मिल सकता है। आपको अपनी भाषा का अनुवाद मिल सकता है। आपको अपनी भाषा का अनुवाद मिल सकता है।</p>
<b>Hmong</b> <b>Hmoob</b> <p>Koj muaj cai txais key pab tohais lus dawb tsis them nyiaj. Thov taw tsis rau koj hom lus nov. Mam hu ns tohais lus. Thov nyob tsos.</p>	<b>Hebrew</b> <b>עֲרִירָת</b> <p>יש לך הזכות לモתרגון ללא כל עלות. לך. אנא נזבב על השפה שלך. המתרגון ייקרא. אנא המתן.</p>	<b>Korean</b> <b>언어</b> <p>여러분은 무료로 전문 통역자의 도움을 받을 권리가 있습니다. 원쪽의 “한국어”를 손가락으로 가르켜 주십시오. 전문 통역자에게 연결될 것입니다. 잠시만 기다려 주십시오.</p>	<b>Persian</b> <b>فارسی</b> <p>شما حق دارید که یک متوجه داشته باشید بدون اینکه بولی بیلت آن بدید. لطفاً به زبان خود اشاره کنید. یک متوجه بر اینکه درخواست شما داشت. لطفاً منتظر بمانید.</p>
<b>Spanish</b> <b>Español</b> <p>Usted tiene derecho a un intérprete gratis. Por favor, señale su idioma y llamaremos a un intérprete. Por favor, espere.</p>	<b>Tagalog</b> <b>Tagalog</b> <p>Ikaw ay may karapatan na magkaroon ng tagapag-alalang walang bayad. Ito ang iyong wika. Ang tagapag-alalang ay tatawagin. Maghintay.</p>	<b>Vietnamese</b> <b>Tiếng Việt</b> <p>Quý vị có quyền được một thảng dịch viên miễn phí. Xin chỉ vào ngôn ngữ của quý vị. Chúng tôi sẽ gọi một thảng dịch viên. Xin lỗi chờ trong giây lát.</p>	

Terminations

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Section 6.2: Grievance Procedures and Requirements

Notes

## CHAPTER 7

## Quiz Answers

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### CHAPTER 1: BASIC PROGRAM INFORMATION QUIZ

I. 1. c 2. d 3. b 4. a	II. 1. d 2. c 3. b 4. a	III. 1. b 2. a
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### CHAPTER 2: PUBLIC HOUSING ELIGIBILITY QUIZ

#### Part I

1. b 2. b 3. c	4. a 5. b
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### Social Security/Non-Citizens Learning Activity

1. a
2. Non-contending statements submitted by both Jesús and María  Documentation of Juan's, Elsa's, Laura's and Inez's SSN  Signed declaration of eligible immigration status by Inez and proof of her age  Declaration 214 for Laura, verification consent form and immigration services card
3. d 4. a

**Part II**

1. F	5. F	9. T
2. F	6. T	10. T
3. T	7. T	11. T
4. T	8. F	

**CHAPTER 4: COMMUNITY SERVICE QUIZ**

1. b	
2. a, b, c, d, e, f, h, i, j, k	
3. b	5. b
4. a	6. c

**CHAPTER 5: PUBLIC HOUSING PETS QUIZ**

1. c	3. b
2. c	4. b

**CHAPTER 6: PUBLIC HOUSING LEASE AND TERMINATIONS QUIZ**

1. a	6. d	11. b	16. c
2. d	7. c	12. c	17. a
3. a	8. b	13. d	18. b
4. d	9. a	14. c	19. a
5. a	10. d	15. c	20. b

## CHAPTER 8

## Eligibility & Occupancy Study Guide

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### PROGRAM DOCUMENTS

#### Define the following terms:

1. Annual contributions contract (ACC):

2. Admissions and continued occupancy policy (ACOP):

3. Annual Plan:

### FAIR HOUSING

#### Define the following terms:

4. Reasonable accommodation definition of disability:

5. HUD definition of disability:

6. Which of the following *may* a PHA ask a person with disabilities
  - a. The nature and extent of their disability
  - b. If a person is applying for housing designated for disabled individuals, whether that individual meets the definition of disability
  - c. To disclose their confidential medical records
7. It is permissible for the PHA to adopt a policy in their ACOP limiting verification of a disability to attending physicians only.  
 True       False
8. List two reasons a PHA may deny a reasonable accommodation request:

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9. List the three criteria for approval of a live-in aide:

- 1)
- 2)
- 3)

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## **ELIGIBILITY**

### **Define the following terms:**

10. Elderly family:

11. Disabled family:

12. Cohead:

13. 30% of area median income is the \_\_\_\_\_ income limit  
50% of area median income is the \_\_\_\_\_ income limit  
80% of area median income is the \_\_\_\_\_ income limit  
Each PHA fiscal year, at least \_\_\_\_\_ of the PHA's new admissions must be to extremely low income families.

14. Decide whether the following families are eligible for assistance (E), ineligible for assistance (IE) or would receive prorated assistance (P):

- 1) Head: eligible citizen, age 64  
Spouse: ineligible noncitizen, age 60 \_\_\_\_\_
- 2) Head: ineligible noncitizen, age 25  
Spouse: ineligible noncitizen, age 26  
Child: eligible citizen, age 3 \_\_\_\_\_
- 3) Head: eligible noncitizen, age 61 \_\_\_\_\_
- 4) Head, ineligible noncitizen, age 37  
Spouse: eligible citizen, age 35 \_\_\_\_\_

15. List the three exemptions to the Social Security number requirements:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

### **WAITING LIST MANAGEMENT**

16. Decide whether the PHA **may** or **may not** perform the following actions:

- 1) If the PHA's public housing and HCV waiting lists are open, the PHA  
make eligible families choose on which list they  
would like to be placed.
- 2) Once a family reaches the top of the public housing waiting list, the PHA  
automatically remove the family from the HCV waiting list.

17. A PHA may never skip a family on the waiting list for any reason.

True       False

18. Applicants may change their preference status at any time.

True       False

19. List two facts about the residency preference:

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20. List two facts about the working preference:

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## **DENIALS**

21. Give two examples of prohibited denials of assistance:

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22. List two of the five mandatory denials for criminal activity:

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## **OCCUPANCY**

### **Define the following terms:**

23. Mixed population development:

24. General occupancy development:

25. Resident employee:

26. Tenant employed by the PHA:

27. HUD requires that all PHAs adopt occupancy standards of two persons per bedroom for all of their developments.

True

False

28. Number the following in the order the PHA must offer a vacant accessible unit:

To an eligible qualified applicant that requires the special features \_\_\_\_\_

To a non-disabled applicant who does not require the special features \_\_\_\_\_

To a current occupant of another unit in the same or other development  
that requires the special features \_\_\_\_\_

## LEASING

29. When a PHA proposes to change its lease, it must first:

30. The PHA must abate or repair defects hazardous to life, health, and safety within \_\_\_\_\_ hours.

31. Which of the following is allowable under the public housing lease?

- a. Legal profit making activities
- b. Allowing a relative to move in without notifying the PHA
- c. Renting rooms to boarders or lodgers
- d. Subleasing the unit

32. Reasonable advance notice \_\_\_\_\_ (is/is not) needed to enter a unit for nonemergency purposes such as routine inspections and maintenance.

Reasonable advance notice \_\_\_\_\_ (is/is not) needed to enter a unit if there is cause to believe that an emergency exists.

33. When a unit has been damaged and is dangerous, and the PHA cannot repair it quickly, the PHA must offer the family alternative accommodations:

- Only if the family did not cause the damage
- Only if the damage was the result of a natural disaster
- Only if the PHA does not plan on terminating the family's assistance
- In all cases

#### **ANNUAL ACTIVITIES**

34. For residents paying flat rent, the PHA will review the income of such families at least once every \_\_\_\_\_ years.

35. Families paying a flat rent \_\_\_\_\_ (may/may not) switch to income based rent between annual recertifications.  
Families paying income based rent \_\_\_\_\_ (may/may not) switch to flat rent between annual recertifications.

36. If a nonexempt family member has violated the community service requirement, the PHA may not renew the lease upon the expiration of the lease term unless:

#### **PETS**

37. A PHA's pet policy applies to:

- Pets only
- Pets and service animals only
- Pets and emotional support animals but not service animals

38. List three examples of reasonable limits a PHA may place on common household pets in their pet policy.

## TERMINATIONS

39. List two examples of factors a PHA may consider when deciding whether or not to terminate a family's assistance for discretionary terminations:

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40. List three examples of mandatory terminations:

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41. All of the following statements are true about terminating tenancy, *except*:

- Tenancy does not terminate until the right to a grievance hearing has expired, with the exception of certain evictions in due process states
- The PHA may terminate for criminal activity in accordance with the lease regardless of whether there has been an arrest or conviction
- In most cases the PHA may terminate based on a preponderance of evidence, except for criminal terminations which always require evidence beyond a reasonable doubt
- Generally, the PHA may evict a tenant only by bringing court action

42. In order to terminate the lease for nonpayment of rent,  
the PHA must give a \_\_\_\_\_ notice

In order to terminate the lease for other good cause,  
the PHA must give a \_\_\_\_\_ notice

In order to terminate the lease when the health or  
safety of other residents, PHA employees, or persons  
residing in the immediate vicinity is threatened, the  
PHA must give a \_\_\_\_\_ notice

- Reasonable period of time considering the seriousness of the situation, not to exceed 30 days
- 30-day, unless state or local law allows a shorter period
- 30-day notice

43. List the types of terminations under which PHAs may bypass the grievance procedures in due process states:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

44. For each of the following household members, indicate whether they MAY or MAY NOT request a grievance hearing:

- 1) Live in aide \_\_\_\_\_
- 2) Remaining adult family member \_\_\_\_\_
- 3) Service animal \_\_\_\_\_
- 4) Head of household \_\_\_\_\_
- 5) Thirteen-year-old son of the head of household \_\_\_\_\_
- 6) Twenty five-year-old other adult who has signed the lease \_\_\_\_\_

45. When a family is evicted for criminal activity, the PHA must notify the local post office that the family is no longer residing in the unit.

True       False

## CHAPTER 9

## Answers to Eligibility & Occupancy Study Guide

### PROGRAM DOCUMENTS

#### Define the following terms:

1. Annual contributions contract (ACC):

**The written contract between HUD and the PHA under which HUD agrees to provide funding for the program, and the PHA agrees to comply with HUD requirements.**

2. Admissions and continued occupancy policy (ACOP):

**A HUD-required written plan that establishes local PHA policies for administering the public housing program.**

3. Annual Plan:

**Provides a framework for local accountability and a source for residents and members of the public to locate basic PHA policies, rules and requirements. It contains the discretionary policies concerning the operations, programs, and services of the PHA.**

### FAIR HOUSING

#### Define the following terms:

4. Reasonable accommodation definition of disability:

**The broader of the two definitions of disability, used when a person with disabilities requests a reasonable adjustment to remove a barrier to program participation or use of their unit or PHA facilities.**

5. HUD definition of disability:

**The more narrowly defined of the two definitions of disability, used for purposes of determination of eligibility as a disabled family and qualifying for waiting list preferences and HUD allowances. HUD incorporates the Social Security Administration definition of disability in its definition.**

6. Which of the following *may* a PHA ask a person with disabilities
  - a. The nature and extent of their disability
  - b. If a person is applying for housing designated for disabled individuals, whether that individual meets the definition of disability \*\*
  - c. To disclose their confidential medical records
7. It is permissible for the PHA to adopt a policy in their ACOP limiting verification of a disability to attending physicians only.

True       F False

8. List two reasons a PHA may deny a reasonable accommodation request:

- 1) **It would cause an undue administrative or financial burden**
- 2) **The request was not made by or on behalf of a person with disabilities**
- 3) **There is no disability-related need for the accommodation**
- 4) **It would fundamentally alter the nature of the PHA's operations (wave essential program requirements)**
- 5) **The person's disability poses a direct threat or substantial risk of harm to others, that cannot be controlled with a reasonable accommodation**

9. List the three criteria for approval of a live-in aide:

- 1) **Essential to the care and well being of an elderly person, near-elderly person, or person with disabilities**
- 2) **Not legally obligated to provide support to that person**
- 3) **Would not be living in the unit except to provide supportive services**

## ELIGIBILITY

### Define the following terms:

10. Elderly family:

**A family whose head, spouse, cohead or sole member is at least 62 years of age.**

11. Disabled family:

**A family whose head, spouse, cohead or sole member is a person with disabilities.**

12. Cohead:

**A person equally responsible for the lease with the head of household. There can only be one cohead per household, and a family cannot have both a spouse and a cohead. A dependent may never be cohead, and the cohead must have legal capacity to enter into a lease.**

13. 30% of area median income is the extremely low income limit  
50% of area median income is the very low income limit  
80% of area median income is the low income limit  
Each PHA fiscal year, at least 40% of the PHA's new admissions must be to extremely low income families.

14. Decide whether the following families are eligible for assistance (E), ineligible for assistance (IE) or would receive prorated assistance (P):

1) Head: eligible citizen, age 64 Spouse: ineligible noncitizen, age 60	<u>P</u>
2) Head: ineligible noncitizen, age 25 Spouse: ineligible noncitizen, age 26 Child: eligible citizen, age 3	<u>P</u>
3) Head: eligible noncitizen, age 61	<u>E</u>
4) Head, ineligible noncitizen, age 37 Spouse: eligible citizen, age 35	<u>P</u>

15. List the three exemptions to the Social Security number requirements:

1) <b>Noncontending household members</b>
2) <b>Current program participants who were at least 62 on or before 1/31/10 and have not previously disclosed a SSN</b>
3) <b>Household members who have already provided a SSN verified through EIV do not need to reverify</b>

## **WAITING LIST MANAGEMENT**

16. Decide whether the PHA **may** or **may not** perform the following actions:

- 1) If the PHA's public housing and HCV waiting lists are open, the PHA **may not** make eligible families choose on which list they would like to be placed.
- 2) Once a family reaches the top of the public housing waiting list, the PHA **may not** automatically remove the family from the HCV waiting list.

17. A PHA may never skip a family on the waiting list for any reason.

True       F False

18. Applicants may change their preference status at any time.

T True       False

19. List two facts about the residency preference:

- 1) **Residency requirements are prohibited**
- 2) **May not be based on how long an applicant has lived or worked in the preference area**
- 3) **Applicants who work or have been hired to work in a residency preference area must also be given the preference**

20. List two facts about the working preference:

- 1) **If a PHA adopts a working preference, it must extend the preference to families whose head and spouse or sole member is either elderly or a person with disabilities**
- 2) **The preference cannot be based on the amount of income earned**
- 3) **A PHA may specify a number of hours worked to qualify for the preference**
- 4) **A working family is one whose head, spouse, or sole member is employed**

## DENIALS

21. Give two examples of prohibited denials of assistance:

- 1) **They are a member of a protected class (age, race, color, religion, sex, national origin, familial status, or disability)**
- 2) **They are a victim of domestic violence, sexual assault, stalking, or human trafficking**
- 3) **Denial based on actual or perceived sexual orientation, gender identity, or marital status**
- 4) **They do not meet a minimum income requirement**

22. List two of the five mandatory denials for criminal activity:

- 1) **Must prohibit admission for three years from the date of eviction if a household member has been evicted for drug-related criminal activity**
- 2) **Any member of the household is subject to a lifetime registration requirement as a sex offender**
- 3) **Reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol or use or pattern of use of illegal drugs rises to the level of a threat**
- 4) **Any household member is currently engaged in illegal use of a drug**
- 5) **Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing**

## OCCUPANCY

### Define the following terms:

23. Mixed population development:

**A development, or portion of a development, that is reserved for elderly families and disabled families.**

24. General occupancy development:

**Referred to as a "family" development. PHAs may not give a preference to one protected class over another in these developments.**

25. Resident employee:

**An employee of the PHA who, is required to live in public housing as a condition of their job, is not considered a public housing tenant, and is therefore not subject to the same requirements as public housing tenants.**

26. Tenant employed by the PHA:

**A public housing resident who works for the PHA and is subject to all of the occupancy requirements, rights, and responsibilities of other public housing tenants.**

27. HUD requires that all PHAs adopt occupancy standards of two persons per bedroom for all of their developments.

True

False

28. Number the following in the order the PHA must offer a vacant accessible unit:

To an eligible qualified applicant that requires the special features	<u>2</u>
To a non-disabled applicant who does not require the special features	<u>3</u>
To a current occupant of another unit in the same or other development that requires the special features	<u>1</u>

## LEASING

29. When a PHA proposes to change its lease, it must first:

**Provide at least 30 days notice to tenants and resident organizations.**

**Set forth the proposed changes and provide an opportunity for written comment.**

**Consider any comments submitted before adopting the new lease.**

30. The PHA must abate or repair defects hazardous to life, health, and safety within 24 hours.

31. Which of the following is allowable under the public housing lease?

- Legal profit making activities \*\*
- Allowing a relative to move in without notifying the PHA
- Renting rooms to boarders or lodgers
- Subleasing the unit

32. Reasonable advance notice is (is/is not) needed to enter a unit for nonemergency purposes such as routine inspections and maintenance.

Reasonable advance notice is not (is/is not) needed to enter a unit if there is cause to believe that an emergency exists.

33. When a unit has been damaged and is dangerous, and the PHA cannot repair it quickly, the PHA must offer the family alternative accommodations:

- Only if the family did not cause the damage
- Only if the damage was the result of a natural disaster
- Only if the PHA does not plan on terminating the family's assistance
- In all cases \*\*

#### **ANNUAL ACTIVITIES**

34. For residents paying flat rent, the PHA will review the income of such families at least once every three years

35. Families paying a flat rent may (may/may not) switch to income based rent between annual recertifications.  
Families paying income based rent may not (may/may not) switch to flat rent between annual recertifications.

36. If a nonexempt family member has violated the community service requirement, the PHA may not renew the lease upon the expiration of the lease term unless:

**The tenant and any other noncompliant member enter into a written agreement to cure the noncompliance by making up the required hours over the next 12-month lease term, or the family provides written assurance that the tenant or other noncompliant member no longer resides in the unit.**

#### **PETS**

37. A PHA's pet policy applies to:

- Pets only \*\*
- Pets and service animals only
- Pets and emotional support animals but not service animals

38. List three examples of reasonable limits a PHA may place on common household pets in their pet policy.

- 1) **Limits on the numbers of pets allowed in the unit**
- 2) **Limits on the size and weight of pets**
- 3) **Payment of a refundable pet deposit**
- 4) **Payment of a nonrefundable pet fee (in general occupancy developments only)**
- 5) **Prohibitions on types of animals the PHA classifies as dangerous**
- 6) **Prohibitions based on the size and type of unit**

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#### **TERMINATIONS**

39. List two examples of factors a PHA may consider when deciding whether or not to terminate a family's assistance for discretionary terminations:

- 1) **The seriousness of the offense**
- 2) **The effects on other noninvolved family members**
- 3) **Whether the individual has been rehabilitated successfully**
- 4) **The extent of participation of the leaseholder**
- 5) **The extent the leaseholder has shown personal responsibility and taken steps to prevent or mitigate the offending action**
- 6) **The useful purpose that would be served by terminating tenancy**

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40. List three examples of mandatory terminations:

- 1) **SSN disclosure requirements not met**
- 2) **Failure to accept the PHA's offer of a lease revision to an existing lease**
- 3) **Any family member fails to sign and submit required consent forms**
- 4) **Noncompliance with community service requirements (provided PHA has given opportunity to cure and family fails to cure or remove noncompliant member)**
- 5) **The PHA determines that a family member has knowingly permitted an ineligible noncitizen to reside in the unit as an unauthorized boarder**
- 6) **Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing**

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41. All of the following statements are true about terminating tenancy, *except*:

- a. Tenancy does not terminate until the right to a grievance hearing has expired, with the exception of certain evictions in due process states
- b. The PHA may terminate for criminal activity in accordance with the lease regardless of whether there has been an arrest or conviction
- c. In most cases the PHA may terminate based on a preponderance of evidence, except for criminal terminations which always require evidence beyond a reasonable doubt \*\*
- d. Generally, the PHA may evict a tenant only by bringing court action

42. In order to terminate the lease for nonpayment of rent,

the PHA must give a

**c** notice

In order to terminate the lease for other good cause,

the PHA must give a

**b** notice

In order to terminate the lease when the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity is threatened, the

PHA must give a

**a** notice

- a. Reasonable period of time considering the seriousness of the situation, not to exceed 30 days
- b. 30-day, unless state or local law allows a shorter period
- c. 30-day notice

43. List the types of terminations under which PHAs may bypass the grievance procedures in due process states:

- 1) **Any criminal activity that threatens health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA**
- 2) **Any violent or drug-related criminal activity on or off the premises**
- 3) **Any criminal activity that resulted in a felony conviction of a household member**

44. For each of the following household members, indicate whether they MAY or MAY NOT request a grievance hearing:

1) Live in aide	<b>may not</b>
2) Remaining adult family member	<b>may</b>
3) Service animal	<b>may not</b>
4) Head of household	<b>may</b>
5) Thirteen-year-old son of the head of household	<b>may not</b>
6) Twenty five-year-old other adult who has signed the lease	<b>may</b>

45. When a family is evicted for criminal activity, the PHA must notify the local post office that the family is no longer residing in the unit.

**T** True       False