Chapter 7

VERIFICATION

[24 CFR 960.259, 24 CFR 5.230, Notice PIH 2010-19]

INTRODUCTION

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

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

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by the PHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259, 24 CFR 5.230]

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 960.259(a)(1)].

Consent Forms

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

Penalties for Failing to Consent [24 CFR 5.232]

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

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

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

PHA Policy

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

Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system

Up-front Income Verification (UIV) using a non-HUD system

Written Third Party Verification (may be provided by applicant or resident)

Written Third-party Verification Form

Oral Third-party Verification

Self-Certification

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

Requirements for Acceptable Documents

PHA Policy

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

Print-outs from web pages are considered original documents.

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

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

File Documentation

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

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

Reported family annual income

Value of assets

Expenses related to deductions from annual income

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

When the PHA is unable to obtain third-party verification, the PHA will document in the family file the reason that third-party verification was not available . [24 CFR 960.259(c)(1); Notice PIH 2010-19]

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

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

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through the PHA's informal review/hearing processes. (For more on UIV and income projection, see section 6-I.C.)

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

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

EIV Income Reports

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

PHA Policy

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

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6.I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

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

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

EIV Discrepancy Reports)

The EIV discrepancy report is a tool for identifying families who may have concealed or under-reported income. Data in the discrepancy report represents income for past reporting periods and may be between 6 months and 30 months old at the time reports are generated.

Families who have not concealed or under-reported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members.

Income discrepancies may be identified through use of the EIV "Income Discrepancy Report" or by review of the discrepancy tab for the individual family.

PHA Policy

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

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

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

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

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

EIV Identity Verification

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to Public and Indian Housing Information Center (PIC) data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2010-3].

When identity verification for a resident fails, a message will be displayed within the EIV system and no income information will be displayed.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

The PHA will identify residents whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The PHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the tenant. When the PHA determines that discrepancies exist as a result of PHA errors such as spelling errors or incorrect birth dates, it will correct the errors promptly.

Upfront Income Verification Using Non-HUD Systems (Optional)

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

PHA Policy

The PHA will inform all applicants and residents of its use of the following UIV resources during the admission and reexamination process:

HUD's EIV system

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

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

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

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

The PHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

PHA Policy

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

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, the PHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income ($2400 annually or more) and there is no UIV or tenant-provided documentation to support the income discrepancy.

PHAs may mail, fax, or e-mail third-party written verification form requests to third-party sources.

PHA Policy

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

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

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

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

PHA Policy

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

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

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

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

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

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

Primary Documents

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

Inputted Assets

The PHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

The PHA may determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

PHA Policy

The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

7-I.E. SELF-CERTIFICATION

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

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

PHA Policy

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

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

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

PHA Policy

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

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

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

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

Legal identity will be verified on an as needed basis.

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

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

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

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

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

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

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

PHA Policy

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

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

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

PHA Policy

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

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

PHA Policy

The PHA will verify each disclosed SSN by:

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

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

Once the individual's verification status is classified as "verified," the PHA should remove and destroy copies of documentation accepted as evidence of social security numbers by no later than the next reexamination.

PHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, the PHA will remove and destroy copies of documentation accepted as evidence of social security numbers by no later than the next reexamination.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

7-II.C. DOCUMENTATION OF AGE

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

PHA Policy

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

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

7-II.D. FAMILY RELATIONSHIPS

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

PHA Policy

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

Marriage

PHA Policy

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

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

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

Separation or Divorce

PHA Policy

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

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

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

Absence of Adult Member

PHA Policy

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

Foster Children and Foster Adults

PHA Policy

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

7-II.E. VERIFICATION OF STUDENT STATUS

PHA Policy

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

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

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

7-II.F. DOCUMENTATION OF DISABILITY

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the tenant file. Under no circumstances will the PHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' Website at www.os.dhhs.gov.

The PHA may make the following inquiries, provided it makes them of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- Inquiry about whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiry about whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of receipt disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

PHA Policy

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

Family Members Not Receiving SSA Disability Benefits

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

PHA Policy

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

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

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

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

PHA Policy

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

Eligible Immigrants

Documents Required

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

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

PHA Verification [HCV GB, pp 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this ACOP. No further verification of eligible immigration status is required.

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

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

7-II.H. VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant.

PHA Policy

The PHA offers a preference for working families, described in Section 4-III.B.

The PHA may verify that the family qualifies for the working family preference based on the family's submission of the working member's most recent paycheck stub indicating that the working member works at least 20 hours per week. The paycheck stub must have been issued to the working member within the last thirty days.

The PHA may also seek third party verification from the employer of the head, spouse, cohead or sole member of a family requesting a preference as a working family.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

PHA Policy

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

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

PHA Policy

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

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

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

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

The PHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the PHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

Social Security/SSI Benefits

PHA Policy

To verify the SS/SSI benefits of applicants, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member who receives social security benefits. If a family member is unable to provide the document, the PHA will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213, or by requesting one from www.ssa.gov. Once the family has received the original benefit verification letter it will be required to provide the letter to the PHA.

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

7-III.D. ALIMONY OR CHILD SUPPORT

PHA Policy

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

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

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

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

Third-party verification form from the person paying the support

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

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

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

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

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

PHA Policy

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

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

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

Example 1: An elderly resident reported a $10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this $10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

PHA Policy

The family must provide:

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

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

PHA Policy

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

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

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

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

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

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

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

PHA Policy

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

7-III.I. ZERO ANNUAL INCOME STATUS

PHA Policy

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART IV: VERIFYING MANDATORY DEDUCTIONS

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

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

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The PHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The PHA will verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

PHA Policy

Medical expenses will be verified through:

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

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

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

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

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. The PHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the PHA's policy on what counts as a medical expense.

Unreimbursed Expenses

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

PHA Policy

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

Expenses Incurred in Past Years

PHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the PHA will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Attendant Care

PHA Policy

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

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

Expenses for attendant care will be verified through:

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

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

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

Auxiliary Apparatus

PHA Policy

Expenses for auxiliary apparatus will be verified through:

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

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

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

In addition, the PHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

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

PHA Policy

The PHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

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

Unreimbursed Expenses

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

PHA Policy

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

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, the PHA must verify that:

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

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The PHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense

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

PHA Policy

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

Pursuing an Eligible Activity

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

PHA Policy

Information to be Gathered

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

Seeking Work

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

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

In the event third-party verification is not available, the PHA will provide the family with a form on which the family member must record job search efforts. The PHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The PHA will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. This documentation may be provided by the family.

Gainful Employment

The PHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. This documentation may be provided by the family.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

PHA Policy

The PHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The PHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable child care costs can be deducted.

PHA Policy

The actual costs the family incurs will be compared with the PHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Exhibit 7-1: Summary of Documentation Requirements for Noncitizens
[HCV GB, pp. 5-9 and 5-10)

<table>
<tr><td colspan="2">

- **All** noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

</td></tr>
<tr><td colspan="2">

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

</td></tr>
<tr><td colspan="2">

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

</td></tr>
<tr><td>

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - "Admitted as a Refugee Pursuant to Section 207"
  - "Section 208" or "Asylum"
  - "Section 243(h)" or "Deportation stayed by Attorney General"
  - "Paroled Pursuant to Section 221 (d)(5) of the USCIS"

</td><td>

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

</td></tr>
<tr><td>

- Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".

</td><td>

Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

</td></tr>
<tr><td colspan="2">

- 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
- Other acceptable evidence. 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*

</td></tr>
</table>

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 8

LEASING AND INSPECTIONS

[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

INTRODUCTION

Public housing leases are the basis of the legal relationship between the PHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD's regulations.

HUD rules also require the PHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the PHA may require additional inspections in accordance with PHA policy.

This chapter is divided into two parts as follows:

Part I: Leasing. This part describes pre-leasing activities and the PHA's policies pertaining to lease execution, modification, and payments under the lease.

Part II: Inspections. This part describes the PHA's policies for inspecting dwelling units.

PART I: LEASING

8-I.A. OVERVIEW

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that the PHA may not renew the lease if the family has violated the community service requirement [24 CFR 966.4(a)(2)].

Part I of this chapter contains regulatory information, when applicable, as well as the PHA's policies governing leasing issues.

8-I.B. LEASE ORIENTATION

PHA Policy

After unit acceptance but prior to occupancy, a PHA representative will provide a lease orientation to the family. All adult household members are required to attend. The PHA may grant an exception if the situation warrants it.

Orientation Agenda

PHA Policy

When families attend the lease orientation, they will be provided with:

A copy of the lease

A copy of the PHA's grievance procedure

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

A copy of the house rules

A copy of the PHA's schedule of maintenance charges

A copy of the pamphlet *Protect Your Family From Lead in Your Home*

A copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

A copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19

Topics to be discussed will include:

Applicable deposits and other charges

Review and explanation of lease provisions

Unit maintenance and work orders

The PHA's reporting requirements

Explanation of occupancy forms

Community service requirements

Family choice of rent

8-I.C. EXECUTION OF LEASE

The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease [24 CFR 966.4(a)(3)].

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one PHA unit to another.

The lease must state the composition of the household as approved by the PHA (family members and any PHA-approved live-in aide) [24 CFR 966.4(a)(1)(v)]. See Section 8-I.D. for policies regarding changes in family composition during the lease term.

PHA Policy

The head of household, spouse or cohead, and all other adult members of the household will be required to sign the public housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and the PHA will retain a copy in the resident's file.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to PHA assistance. The live-in aide is only approved to live in the unit while serving as the attendant for the participant family member.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

8-I.D. MODIFICATIONS TO THE LEASE

The lease may be modified at any time by written agreement of the tenant and the PHA [24 CFR 966.4(a)(3)].

Modifications to the Lease Form

The PHA may modify its lease from time to time. However, the PHA must give residents 30 days advance notice of the proposed changes and an opportunity to comment on the changes. The PHA must also consider any comments before formally adopting the new lease [24 CFR 966.3].

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy [24 CFR 966.4(l)(2)(iii)(E)].

PHA Policy

The family will have 30 days to accept the revised lease. If the family does not accept the offer of the revised lease within that 30 day timeframe, the family's tenancy will be terminated for other good cause in accordance with the policies in Chapter 13.

Schedules of special charges and rules and regulations are subject to modification or revision. Because these schedules are incorporated into the lease by reference, residents and resident organizations must be provided at least thirty days written notice of the reason(s) for any proposed modifications or revisions, and must be given an opportunity to present written comments. The notice must be delivered directly or mailed to each tenant; or posted in at least three conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within the project. Comments must be taken into consideration before any proposed modifications or revisions become effective [24 CFR 966.5].

After the proposed revisions become effective they must be publicly posted in a conspicuous manner in the project office and must be furnished to applicants and tenants on request [24 CFR 966.5].

PHA Policy

When the PHA proposes to modify or revise schedules of special charges or rules and regulations, the PHA will post copies of the notice in the central office, in each project office, and in at least 3 conspicuous places in each project that contains dwelling units.

Other Modifications

PHA Policy

The lease will be amended to reflect all changes in family composition.

If, for any reason, any member of the household ceases to reside in the unit, the lease will be amended by drawing a line through the person's name. The head of household and PHA will be required to initial and date the change.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

If a new household member is approved by the PHA to reside in the unit, the person's name and birth date will be added to the lease. The head of household and PHA will be required to initial and date the change. If the new member of the household is an adult, s/he will also be required to sign and date the lease.

Policies governing when and how changes in family composition must be reported are contained in Chapter 9, Reexaminations.

8-I.E. SECURITY AND SMOKING DEPOSITS [24 CFR 966.4(b)(5)]

At the option of the PHA, the lease may require security deposits. The amount of the security deposit cannot exceed one month's rent or a reasonable fixed amount as determined by the PHA. The PHA may allow for gradual accumulation of the security deposit by the family, or the family may be required to pay the security deposit in full prior to occupancy. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant after vacating the unit, or used for tenant services or activities.

PHA Policy

Residents must pay a security deposit to the PHA at the time of admission. The amount of the security deposit will be a set payment at the time of move-in, and must be paid in full prior to occupancy. Security Deposit schedule will be as follows:

1-Bedroom	$200.00
2-Bedroom	$250.00
3 – Bedroom	$300.00
4 – Bedroom	$350.00

Residents that are smokers, must also pay a smoking deposit at the time of admission. The amount of the smoking deposit will be a set payment at the time of move-in, and must be paid in full prior to occupancy. Smoking Deposit schedule will be as follows:

1-Bedroom	$100.00
2-Bedroom	$150.00
3 – Bedroom	$200.00
4 – Bedroom	$250.00

The PHA will hold these deposits for the period the family occupies the unit. The PHA will not use the security deposit for rent or other charges while the resident is living in the unit.

Within 30 days of move-out, the PHA will refund to the resident the amount of any security/smoking deposit (including interest earned, if applicable), less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear, and other charges due under the lease. The PHA will use smoking deposits only for damages associated with smoking in the unit (i.e., nicotine damage to walls, burns in floor coverings, etc.)

The PHA will provide the resident with a written list of any charges against the security and smoking deposits within 14 calendar days of the move-out inspection. If the resident

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

disagrees with the amount charged, the PHA will provide a meeting to discuss the charges.

If the resident transfers to another unit, the PHA will transfer the security and smoking deposits to the new unit. The tenant will be billed for any maintenance or other charges due for the "old" unit.

8-I.F. PAYMENTS UNDER THE LEASE

Rent Payments [24 CFR 966.4(b)(1)]

Families must pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and the PHA must give written notice stating any change in the amount of tenant rent and when the change is effective.

PHA Policy

The tenant rent is due and payable at the PHA-designated location on the first of every month. If the first falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.

If a family's tenant rent changes, the PHA will notify the family of the new amount and the effective date by sending a "Notice of Rent Adjustment" which will become an attachment to the lease.

Late Fees and Nonpayment

At the option of the PHA, the lease may provide for payment of penalties when the family is late in paying tenant rent [24 CFR 966.4(b)(3)].

The lease must provide that late payment fees are not due and collectible until two weeks after the PHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under the PHA grievance procedures. The PHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

PHA Policy

If the family fails to pay their rent by the fifth day of the month, and the PHA has not agreed to accept payment at a later date, a 14 day Notice to Vacate will be issued to the resident for failure to pay rent, demanding payment in full or the surrender of the premises.

In addition, if the resident fails to make payment by the end of office hours on the fifth day of the month, a late fee of $25.00 will be charged. Notices of late fees will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

the required timeframe, the PHA may not take action for nonpayment of the fee until the conclusion of the grievance process. If the resident can document financial hardship, the late fee may be waived on a case-by-case basis.

When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of $25.00 will be charged to the family. The fee will be due and payable 14 days after billing.

Excess Utility Charges

If the PHA charges the tenant for consumption of excess utilities, the lease must state the basis for the determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if the charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances [24 CFR 966.4(b)(2)].

Schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for excess utility consumption are not due and collectible until two weeks after the PHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under the PHA grievance procedures. The PHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

PHA Policy

When applicable, families will be charged for excess utility usage according to the PHA's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the PHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction.

Maintenance and Damage Charges

If the PHA charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges [24 CFR 966.4(b)(2)].

Schedules of special charges for services and repairs which are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after the PHA gives written notice of the charges. The

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under the PHA grievance procedures. The PHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

PHA Policy

When applicable, families will be charged for maintenance and/or damages according to the PHA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the PHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

PART II: INSPECTIONS

8-II.A. OVERVIEW

HUD rules require the PHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the PHA may require additional inspections, in accordance with PHA Policy. This part contains the PHA's policies governing inspections, notification of unit entry, and inspection results.

8-II.B. TYPES OF INSPECTIONS

Move-In Inspections [24 CFR 966.4(i)]

The lease must require the PHA and the family to inspect the dwelling unit prior to occupancy in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by the PHA and the resident, must be provided to the tenant and be kept in the resident file.

PHA Policy

Any adult family member may attend the initial inspection and sign the inspection form for the head of household.

Move-Out Inspections [24 CFR 966.4(i)]

The PHA must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if he or she wishes, unless the tenant vacates without notice to the PHA. The PHA must provide to the tenant a statement of any charges to be made for maintenance and damage beyond normal wear and tear.

The difference between the condition of the unit at move-in and move-out establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

PHA Policy

When applicable, the PHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 14 calendar days of the move-out.

Annual Inspections

Under the Public Housing Assessment System (PHAS), the PHA is required to inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS) [24 CFR 902.43(a)(4)].

Quality Control Inspections

The purpose of quality control inspections is to assure that all defects were identified in the original inspection, and that repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

PHA Policy

Supervisory quality control inspections will be conducted in accordance with the PHA's maintenance plan.

Special Inspections

PHA Policy

PHA staff may conduct a special inspection for any of the following reasons:

Housekeeping

Unit condition

Suspected lease violation

Preventive maintenance

Routine maintenance

There is reasonable cause to believe an emergency exists

Other Inspections

PHA Policy

Building exteriors, grounds, common areas and systems will be inspected according to the PHA's maintenance plan.

8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS

Notice of Entry

Non-emergency Entries [24 CFR 966.4(j)(1)]

The PHA may enter the unit, with reasonable advance notification to perform routine inspections and maintenance, make improvements and repairs, or to show the unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

PHA Policy

The PHA will notify the resident in writing at least 48 hours prior to any non-emergency inspection.

For regular annual inspections, the family will receive at least 2 weeks written notice of the inspection to allow the family to prepare the unit for the inspection.

Entry for repairs requested by the family will not require prior notice. Resident-requested repairs presume permission for the PHA to enter the unit.

Emergency Entries [24 CFR 966.4(j)(2)]

The PHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, the PHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

Scheduling of Inspections

PHA Policy

Inspections will generally be conducted during business hours. If a family needs to reschedule an inspection, they must notify the PHA at least 24 hours prior to the scheduled inspection. The PHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. The PHA may request verification of such cause.

Attendance at Inspections

Residents are required to be present for move-in inspections [24 CFR 966.4(i)]. There is no such requirement for other types of inspections.

PHA Policy

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes.

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a notice that PHA staff were in the unit, including a notation of the purpose of the visit.

8-II.D. INSPECTION RESULTS

The PHA is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

Emergency Repairs [24 CFR 966.4(h)]

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify the PHA of the damage, and the PHA must make repairs within a reasonable time frame.

If the damage was caused by a household member or guest, the PHA must charge the family for the reasonable cost of repairs. The PHA may also take lease enforcement action against the family.

If the PHA cannot make repairs quickly, the PHA must offer the family standard alternative accommodations. If the PHA can neither repair the defect within a reasonable time frame nor offer alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

PHA Policy

When conditions in the unit are hazardous to life, health, or safety, the PHA will make repairs or otherwise abate the situation within 24 hours.

Defects hazardous to life, health or safety include, but are not limited to, the following:

Any condition that jeopardizes the security of the unit

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

Any electrical problem or condition that could result in shock or fire

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors

Non-emergency Repairs

PHA Policy

The PHA will correct non-life threatening health and safety defects within 15 business days of the inspection date. If the PHA is unable to make repairs within that period due to circumstances beyond the PHA's control (e.g. required parts or services are not available, weather conditions, etc.) the PHA will notify the family of an estimated date of completion.

The family must allow the PHA access to the unit to make repairs.

Resident-Caused Damages

PHA Policy

Damages to the unit beyond wear and tear will be billed to the tenant in accordance with the policies in 8-I.G., Maintenance and Damage Charges.

Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.

Housekeeping

PHA Policy

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, the PHA will provide proper notice of a lease violation.

A reinspection will be conducted within 30 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a reinspection is considered a violation of the lease and may result in termination of tenancy in accordance with Chapter 13.

Notices of lease violation and fines will also be issued to residents who purposely disengage the unit's smoke detector or who block fire egress (see the PHA's schedule of charges). Only one warning (with a fine) will be given. A second incidence will result in lease termination.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

Chapter 9

REEXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

INTRODUCTION

The PHA is required to monitor each family's income and composition over time, and to adjust the family's rent accordingly. PHAs must adopt policies concerning the conduct of annual and interim reexaminations that are consistent with regulatory requirements, and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)].

The frequency with which the PHA must reexamine income for a family depends on whether the family pays income-based or flat rent. HUD requires the PHA to offer all families the choice of paying income-based rent or flat rent at least annually. The PHA's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

Part I: Annual Reexaminations for Families Paying Income Based Rents. This part discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.

Part II: Reexaminations for Families Paying Flat Rents. This part contains the PHA's policies for conducting full reexaminations of family income and composition for families paying flat rents. These full reexaminations are conducted at least once every 3 years. This part also contains the PHA's policies for conducting annual updates of family composition for flat rent families.

Part III: Interim Reexaminations. This part includes HUD requirements and PHA policies related to when a family may and must report changes that occur between annual reexaminations.

Part IV: Recalculating Tenant Rent. After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

Policies governing reasonable accommodation, family privacy, required family cooperation and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART I: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS [24 CFR 960.257]

9-I.A. OVERVIEW

For those families who choose to pay income-based rent, the PHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, the PHA must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point to determine the need for lease enforcement or eviction.

The PHA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of the PHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

This part contains the PHA's policies for conducting annual reexaminations.

9-I.B. SCHEDULING ANNUAL REEXAMINATIONS

The PHA must establish a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12 month period [24 CFR 960.257(a)(1)].

PHA Policy

Generally, the PHA will schedule annual reexaminations to coincide with the family's anniversary date. The PHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family transfers to a new unit, the PHA will not perform a new annual reexamination.

The PHA may also schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Notification of and Participation in the Annual Reexamination Process

The PHA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the PHA. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

PHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the PHA to request a reasonable accommodation.

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview the PHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without PHA approval, the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

An advocate, interpreter, or other assistant may assist the family in the interview process.

9-I.C. CONDUCTING ANNUAL REEXAMINATIONS

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

PHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

Change in Unit Size

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

Criminal Background Checks

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

Compliance with Community Service

For families who include nonexempt individuals, the PHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the PHA's policies governing compliance with the community service requirement.

9-I.D. EFFECTIVE DATES

As part of the annual reexamination process, the PHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

PHA Policy

In general, an *increase* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA.

If the family causes a delay in processing the annual reexamination, d*ecreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS [24 CFR 960.257(2)]

9-II.A. OVERVIEW

HUD requires that the PHA offer all families the choice of paying income-based rent or flat rent at least annually. The PHA's policies for offering families a choice of rents are located in Chapter 6.

For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. The PHA is only required to provide the amount of income-based rent the family might pay in those years that the PHA conducts a full reexamination of income and family composition, or upon request of the family after the family submits updated income information [24 CFR 960.253(e)(2)].

As it does for families that pay income-based rent, on an annual basis, the PHA must also review community service compliance and should have each adult resident consent to a criminal background check.

This part contains the PHA's policies for conducting reexaminations of families who choose to pay flat rents.

9-II.B. FULL REEXAMINATION OF FAMILY INCOME AND COMPOSITION

Frequency of Reexamination

PHA Policy

For families paying flat rents, the PHA will conduct a full reexamination of family income and composition once every 3 years.

Reexamination Policies

PHA Policy

In conducting full reexaminations for families paying flat rents, the PHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.

9-II.C. REEXAMINATION OF FAMILY COMPOSITION ("ANNUAL UPDATE")

As noted above, full reexaminations are conducted every 3 years for families paying flat rents. In the years between full reexaminations, regulations require the PHA to conduct a reexamination of family composition ("annual update") [24 CFR 960.257(a)(2)].

The annual update process is similar to the annual reexamination process, except that the PHA does not collect information about the family's income and expenses, and the family's rent is not recalculated following an annual update.

Scheduling

The PHA must establish a policy to ensure that the reexamination of family composition for families choosing to pay the flat rent is completed at least annually [24 CFR 960.257(a)(2)].

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

For families paying flat rents, annual updates will be conducted in each of the 2 years following the full reexamination.

In scheduling the annual update, the PHA will follow the policy used for scheduling the annual reexamination of families paying income-based rent as set forth in Section 9-I.B. above.

Conducting Annual Updates

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

PHA Policy

Generally, the family will not be required to attend an interview for an annual update. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Notification of the annual update will be sent by first-class mail and will inform the family of the information and documentation that must be provided to the PHA. The family will have 10 business days to submit the required information to the PHA. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. The PHA will accept required documentation by mail, by fax, or in person.

If the family's submission is incomplete, or the family does not submit the information in the required time frame, the PHA will send a second written notice to the family. The family will have 10 business days from the date of the second notice to provide the missing information or documentation to the PHA.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

Change in Unit Size

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual update to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

Criminal Background Checks

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

PHA Policy

The PHA will conduct criminal records checks when it has come to the attention of the PHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The PHA may not pass along to the tenant the costs of a criminal records check.

Compliance with Community Service

For families who include nonexempt individuals, the PHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the PHA's policies governing compliance with the community service requirement.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: INTERIM REEXAMINATIONS [24 CFR 960.257; 24 CFR 966.4]

9-III.A. OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time.

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition change. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to provisions of the public housing lease, the PHA has limited discretion in this area.

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

PHA Policy

All families, those paying income-based rent as well as flat rent, must report all changes in family and household composition that occur between annual reexaminations (or annual updates).

The PHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 966.4(a)(1)(v)].

PHA Policy

The family must inform the PHA of the birth, adoption or court-awarded custody of a child within 10 business days.

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 966.4(a)(1)(v)] or other household member (live-in aide or foster child) [24 CFR 966.4(d)(3)].

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The PHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include [24 CFR 966.4(d)(3)(i)]:

- Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.
- The PHA 's obligation to make reasonable accommodation for persons with disabilities.

PHA Policy

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 cumulative calendar days during any 12 month period, and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the PHA prior to the individual moving into the unit.

The PHA will not approve the addition of new family or household members other than by birth, adoption, court-awarded custody, or marriage, if it will require the family to transfer to a larger size unit (under the transfer policy in Chapter 12), unless the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by the PHA. Exceptions will be made on a case-by-case basis.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria (see Chapter 3) and documentation requirements (See Chapter 7, Part II).

If the PHA determines that an individual does not meet the PHA's eligibility criteria or documentation requirements, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

PHA Policy

If a family member ceases to reside in the unit, the family must inform the PHA within 10 business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the PHA within 10 business days.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

9-III.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

PHA Policy

This section only applies to families paying income-based rent. Families paying flat rent are not required to report changes in income or expenses.

PHA-Initiated Interim Reexaminations

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

PHA Policy

The PHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the PHA will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the second 12 month exclusion period (50 percent phase-in period).

If the family has reported zero income, the PHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the PHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination.

The PHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Family-Initiated Interim Reexaminations

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 960.257(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)].

Required Reporting

HUD regulations give the PHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

Families are required to report all increases in income, including new employment, within 10 calendar days of the date the change takes effect.

The HACC will conduct interim reexaminations when families have an increase in income in excess of $1,000 per year. The family may opt to have the interim completed when the increase in income is less than $1,000 per year (usually for Family Self-Sufficiency escrow purposes). In all other cases, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)]. The PHA must process the request if the family reports a change that will result in a reduced family income [PH Occ GB, p. 159].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

9-III.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

PHA Policy

The family may notify the PHA of changes either orally or in writing. If the family provides oral notice, the PHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, or in person.

Effective Dates

The PHA must make the interim reexamination within a reasonable time after the family request [24 CFR 960.257(b)].

PHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART IV: RECALCULATING TENANT RENT

9-IV.A. OVERVIEW

For those families paying income-based rent, the PHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

9-IV.B. CHANGES IN UTILITY ALLOWANCES [24 CFR 965.507, 24 CFR 966.4]

The tenant rent calculations must reflect any changes in the PHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

PHA Policy

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

9-IV.C. NOTIFICATION OF NEW TENANT RENT

The public housing lease requires the PHA to give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective [24 CFR 966.4(b)(1)(ii)].

When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA 's schedule of Utility Allowances for families in the PHA 's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA's grievance procedure [24 CFR 966.4(c)(4)].

9-IV.D. DISCREPANCIES

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

© Copyright 20109 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 10

PETS

INTRODUCTION

This chapter explains the PHA's policies on the keeping of pets and any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of the PHA to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of the PHA.

The chapter is organized as follows:

Part I: Assistance Animals. This part explains the difference between assistance animals and pets and contains policies related to the designation of an assistance animal as well as their care and handling.

Part II: Pet Policy. This part includes pet policies that are applied to this development for animals that are not assistance animals.

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

PART I: ASSISTANCE ANIMALS

[Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303; 24 CFR 960.705]

10-I.A. OVERVIEW

This part discusses situations under which permission for an assistance animal may be denied, and also establishes standards for the care of assistance animals.

Assistance animals are animals that assist, support, or provide service to a person with a disability, or that provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as "service animals," "assistive animals," "support animals," or "therapy animals" – perform many disability-related functions, including but not limited to the following:

- Guiding individuals who are blind or have low vision
- Alerting individuals who are deaf or hearing impaired
- Providing minimal protection or rescue assistance
- Pulling a wheelchair
- Fetching items
- Alerting persons to impending seizures
- Providing emotional support to persons with disabilities who have a disability-related need for such support

Assistance animals that are needed as a reasonable accommodation for persons with disabilities are not considered pets, and thus, are not subject to the PHA's pet policies described in Part II of this chapter [24 CFR 5.303; 960.705].

10-I.B. APPROVAL OF ASSISTANCE ANIMALS

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal [PH Occ GB, p. 179].

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ GB, p. 178].

A PHA's refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless[PH Occ GB, p. 179]:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

PHAs have the authority to regulate assistance animals under applicable federal, state, and local law [24 CFR 5.303(b) (3); 960.705(b) (3)].

For an animal to be excluded from the pet policy and be considered an assistance animal, there must be a person with disabilities in the household, and the family must request and the PHA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.

PHA Policy on Approval

A Request to Allow a Service Animal and the Veterinary Certification (PHA-139) must be completed prior to having the animal. The following information must be provided:

- Basic information about the animal (type, size weight, description, etc.)
- Proof of inoculation and licensing.
- Proof of neutering or spaying. (All service animals must be spayed or neutered, unless a veterinarian certifies that spaying or neutering would be inappropriate).

Denial of Approval

The PHA reserves the right to refuse to register a service animal if:

- The service animal owner fails to provide verification of the need for a service animal from a qualified professional.
- The owner does not provide complete service animal registration
- The service animal is not licensed in accordance with City Ordinances.
- The service animal does not have a veterinary certification.
- The animal has not been spayed/neutered or the tenant has not provided the appropriate certification that spaying or neutering would be inappropriate.

10-I.C. CARE AND HANDLING

HUD regulations do not affect any authority a PHA may have to regulate assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

PHA Policy

Residents must care for assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.

Residents must ensure that assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.

When a resident's care or handling of an assistance animal violates these policies, the PHA will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If the PHA determines that no such accommodation can be made, the PHA may withdraw the approval of a particular assistance animal.

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

Care of Service Animals

- Residents must prevent any damage to their unit, the immediate adjacent grounds and the common grounds of the community in which they live.
- Owners of service animals will be totally liable for damages and/or injuries caused by the animal.
- Residents are responsible for all damages caused by a service animal and must reimburse the PHA for all costs it incurs in repairing such damages.
- All service animals shall be on a leash and kept under control at all times when they are outside the unit.
- Service animal owners will be required to immediately clean up and dispose of pet waste.
- Animals may not be a nuisance or a threat to the health or safety of PHA employees, postal workers, agency employees, the public or other residents in the community by reason of noise, unpleasant odors, or other objectionable situations.
- Repeated substantiated complaints by neighbors or of Housing Authority personnel regarding pets disturbing the peace of neighbors through noise, odor, animal waste, or other nuisance may result in the owners having to remove the pet or move him/herself.
- In the event a resident cannot care for his/her service animal due to an illness, absence or death, PHA will contact the people listed on the Request to Allow a Service Animal form (PHA-139). If the persons listed cannot be contacted, after 24 hours the resident hereby gives permission for the service animal to be released to the Human Society/Animal Control in accordance with their procedures. In no case shall PHA incur any costs or liability for the care of a service animal placed in the care of another individual or agency under this policy/procedure.

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

PART II: PET POLICY

10-II.A. OVERVIEW

The Housing Authority allows for pet ownership in its developments with the written pre-approval of the Housing Authority. Residents are responsible for any damage caused by their pets, including the cost of fumigating or cleaning their units. In exchange for this right, residents assume full responsibility and liability for the pet and agree to hold the Peninsula Housing Authority harmless for any claims caused by any action or inaction of the pet. All State and local laws shall be enforced regarding pets.

10-II.B. APPROVAL

Residents **must have prior written approval** of the Housing Authority **before moving** a pet into their unit. Residents must request approval on Pet Request and Agreement form that must be fully completed before the Housing Authority will approve the request. Failure to appropriately register a dog or cat and pay the required security deposit shall be cause for termination of the lease. The following information must be provided as a part of the Pet Registration **and at each Annual Review**:

- Basic information about the pet (type, age, size, weight, description, etc.)
- Proof of current Inoculation and licensing. The City of Port Angeles requires that all dogs and cats, within city limits and over the age of 6 months old, be licensed.
- Proof of neutering or spaying, (all pets must be spayed or neutered, unless a veterinarian certifies that the spaying or neutering would be inappropriate.)
- A statement by a licensed veterinarian that the breed is non-aggressive.
- One (1) color photo of the pet, not less than 3" X 3" in size.

10-II.C. PET DEPOSIT AND FEES

A refundable Pet Security Deposit in the amount of $200 shall be paid for a dog or cat.

A non-refundable nominal fee in the amount of $100 shall be paid for a dog or cat. The nominal fee shall be paid in full prior to having the pet in the rental unit. Installment payments will not be accepted.

There shall be no additional security deposit for pets other than dogs or cats. The payment of a security deposit does not preclude charges to a resident during their occupancy for repair of damages done on an ongoing basis by a dog or cat. Residents are responsible for all damages caused by their pets and must reimburse the PHA for all costs it incurs in repairing such damages.

10-II.D. PETS PERMITTED

Common household pets are acceptable as follows:

The only pets allowed are a dog, cat, bird, hamster, gerbil, guinea pig or fish that are traditionally kept in the home for pleasure rather than commercial purposes. All other animals, insects or reptiles including but not limited to a ferret, rat, mice, pot-bellied pig, spiders and snakes are not allowed.

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

Tenants are not permitted to have more than one type of pet (unless the pet is a fish). In the case of fish, a tenant can have two types of pets.

- Dog – maximum number: 1
- Cat – maximum number: 1
- Birds – maximum number: 2 (must be caged at all times)
- Hamster, Gerbil or Guinea pig – maximum number: 1 (must be caged at all times)
- Fish – maximum number is one 25 gallon fish tank

The weight of a dog or cat shall not exceed 25 pounds (adult size).

10-II.E. ACCEPTABLE CARE OF PETS/PET RULES

- Residents must prevent any damage to their unit, the immediate adjacent grounds, and the common grounds of the community in which they live.
- Animals may not be a nuisance or a threat to the health or safety of PHA employees, postal workers, agency employees, the public or other residents in the community by reason of noise, unpleasant odors, or other objectionable situations.
- Pet owners will be totally liable for damages and/or injuries caused by their pet. Also, any pet related infestation in the pet owner's unit will be the financial responsibility of the pet owner. The Housing Authority reserves the right to exterminate and charge the resident.
- All dogs and cats shall be on a leash and kept under control at any time they are in the halls, elevators, grounds or common areas of the building and/or project; however, pets shall not be permitted at any time in the community rooms or community kitchens.
- Pets shall not be permitted in the lobbies, laundry rooms or activity rooms, except for ingress and egress to and from the building.
- Tenants shall not alter their dwelling unit, patio, or other unit area in order to create an enclosure for any pet. No doghouses, animal runs, etc. will be permitted. No animal may be leashed to any stationary object outside the Tenant's apartment.
- All residents given approval to have a dog will be required to walk their dog in a designated area of the property for proper disposal of pet waste. Waste must be disposed of by being placed in a sealed plastic bag and then placed in a trash container outside of the building. At no time is pet waste washed down any drains or flushed down any toilets. In addition, dog owners will be required to participate in monthly yard maintenance of the designated areas (if applicable).
- All residents given approval to have a cat will be required to provide litter boxes, which must be kept in the dwelling unit for cat waste. Tenants shall not permit refuse from litter boxes to accumulate nor to become unsightly or unsanitary. Litter shall be changed no less than once a week and placed in a sealed plastic bag, property disposed of by being placed in a trash container outside the building, and no time washed down any drains or flushed down any toilets.
- Breeding of pets is forbidden.

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

- If maintenance is requested or scheduled, either the pet owner must be at home at time of maintenance to restrain pets or pets must be confined. Failure to confine pets may be cause for either delayed maintenance, additional costs to the pet owner in the event of rescheduled maintenance, and termination of either the pet agreement or residential lease. PHA will not be liable for any pet which escapes due to failure of the owner to properly confine the pet.
- Any pet owner found to be involved in animal cruelty or neglect will have their Pet Agreement terminated.
- Dogs and cats must be licensed yearly with the City of Port Angeles. Pet owners must show proof annually of license.
- The pet and its living quarters must be maintained in a manner to prevent odors and any other unsanitary conditions in the owner's unit and surrounding areas. Repeated substantiated complaints by neighbors or of Housing Authority personnel regarding pets disturbing the peace of neighbors through noise, odor, animal waste, or other nuisance may result in the owners having to remove the pet or move him/herself.

10-II.F. VISITING PETS

Visiting pets are not allowed.

10-II.G. STRAYS

The care or feeding of animals not registered with the PHA shall be considered keeping a pet without permission, a violation of the Pet Policy and subject to any appropriate charges/fees.

10-II.H. DENIAL OF APPROVAL

The PHA reserves the right to refuse to register a pet if;

- The pet is not a common household pet; or
- The keeping of the pet would violate any applicable house or pet rules, or
- The pet owner fails to provide complete pet registration information; or
- The PHA reasonably determines, based upon the pet owner's past habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other rental agreement obligations, or
- At the time of request to have a pet, the resident is not in good standing.

10-II.I. PET RULES VIOLATION PROCEDURES

Violation of these pet rules shall be considered violations of the lease agreement and shall be handled accordingly, including the tenant's right to a hearing under the PHA Grievance Procedure.

10-II.J. GRANDFATHER CLAUSE

Residents who have previously been granted permission in writing to have a pet or pets which would not qualify under this policy will be allowed to keep such pet(s) as long as they abide by all other rules and regulations of this policy, the keeping of such pet is not a danger or disturbance to other residents and until the death of the pet. Upon the death of a pet that was grandfathered, any replacement pet must meet the terms of this policy

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

10-II.K. AMENDING THE PET POLICY

The PHA may amend the Pet Policy at any time by following the procedures established for amending the Statement of occupancy Policies.

10-II.L. INABILITY TO CARE FOR PETS

In the event a resident cannot care for his/her pet due to an illness, absence, or death, and no other person can be found to care for the pet, and after 24 hours has elapsed, the resident hereby gives permission for the pet to be released to the Humane Society/Animal Control, in accordance with their procedures. In no case shall PHA incur any costs or liability for the care of a pet placed in the care of another individual or agency under this procedure.

NOTE: This policy is an agreement between the head of household and the Peninsula Housing Authority and needs to be signed only if a pet is in the household.

I have read the Pet Policy as written above and understand these provisions. I agree to abide by these provisions fully and understand that permission will be revoked if I fail to do so. Failure to comply with any part of the above and/or to take corrective action after sufficient notice of the violation shall be cause for termination of the lease. I have received a copy of this policy.

TENANT _____
SIGNATURE PRINTED NAME

RESPONSIBLE PARTY _____
SIGNATURE PRINTED NAME

_____ _____
DATE ADDRESS & UNIT NO.

Approval for Pet: As of this date, the above named resident has been given permission to have the pet listed in the attached Request to Allow a Pet, subject to the above terms and conditions.

MANAGER _____
SIGNATURE PRINTED NAME

_____
DATE

© Copyright 2009 Nan McKay & Associates
Unlimited copies may be made for internal use

Chapter 11

COMMUNITY SERVICE

INTRODUCTION

This chapter explains HUD regulations requiring PHAs to implement a community service program for all nonexempt adults living in public housing.

This chapter describes HUD regulations and PHA policies related to these topics in two parts:

Part I: Community Service Requirements. This part describes who is subject to the community service requirement, who is exempt, and HUD's definition of economic self-sufficiency.

Part II: PHA Implementation of Community Service. This part provides PHA policy regarding PHA implementation and program design.

PART I: COMMUNITY SERVICE REQUIREMENT

11-I.A. OVERVIEW

HUD regulations pertaining to the community service requirement are contained in 24 CFR 960 Subpart F (960.600 through 960.609). PHAs and residents must comply with the community service requirement, effective with PHA fiscal years that commenced on or after October 1, 2000. Per 903.7(l)(1)(iii), the PHA Plan must contain a statement of how the PHA will comply with the community service requirement, including any cooperative agreement that the PHA has entered into or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities [24 CFR 960.601(b)].

In administering community service requirements, the PHA must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

11-I.B. REQUIREMENTS

Each adult resident of the PHA, who is not exempt, must [24 CFR 960.603(a)]:

- Contribute 8 hours per month of community service; or
- Participate in an economic self-sufficiency program (as defined in the regulations) for 8 hours per month; or
- Perform 8 hours per month of combined activities (community service and economic self-sufficiency programs).

PHA Policy

An individual may not skip a month and then double up the following month, unless special circumstances warrant it. The PHA will make the determination of whether to

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

permit a deviation from the schedule.

Individuals who have special circumstances which they believe will prevent them from completing the required community service hours for a given month, must notify the PHA in writing within 5 business days of the circumstances becoming known. The PHA will review the request and notify the individual, in writing, of its determination within 10 business days. The PHA may require those individuals to provide documentation to support their claim.

Definitions

Exempt Individual [24 CFR 960.601(b,) Notice PIH 2009-48]

An *exempt individual* is an adult who:

- Is age 62 years or older
- Is blind or disabled (as defined under section 216[i][l] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions
- Is a primary caretaker of such an individual
- Is engaged in work activities

  PHA Policy

  The PHA will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.
- Is able to meet requirements 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 in which the PHA is located, including a state-administered welfare-to-work program; or
- Is 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 in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

Community Service [24 CFR 960.601(b), Notice PIH 2009-48]

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

Eligible community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

- Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

PHAs may form their own policy in regards to accepting community services at profit-motivated entities, acceptance of volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work.

PHA Policy

The PHA will accept community services at profit-motivated entities, volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work as eligible community service activities.

Economic Self-Sufficiency Program [24 CFR 5.603(b)]

For purposes of satisfying the community service requirement, an *economic self-sufficiency program* is defined by HUD as: Any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

Eligible self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF)
- Any other program necessary to ready a participant to work (such as substance abuse or

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

mental health counseling)

Work Activities [42 U.S.C. 607(d)]

As it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of 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, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

Notification Requirements [24 CFR 960.605(c)(2), Notice PIH 2009-48]

The PHA must give each family a written description of the community service requirement, the process for claiming status as an exempt person, and the process for PHA verification of exempt status. The PHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt. In addition, the family must sign a certification, Attachment A of Notice PIH 2009-48, that they have received and read the policy and understand that if they are not exempt, failure to comply with the requirement will result in nonrenewal of their lease.

PHA Policy

The PHA will provide the family with a copy of the Community Service Policy found in Exhibit 11-1 of this chapter, at lease-up, lease renewal, when a family member is determined to be subject to the community service requirement during the lease term, and at any time upon the family's request.

On an annual basis, at the time of lease renewal, the PHA will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes nonexempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

11-I.C. DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE [24 CFR 960.605(c)(3)]

The PHA must review and verify family compliance with service requirements annually at least thirty days before the end of the twelve month lease term. The policy for documentation and verification of compliance with service requirements may be found at Section 11-I.D., Documentation and Verification.

Annual Determination

Determination of Exemption Status

An exempt individual is excused from the community service requirement [24 CFR 960.603(a)].

PHA Policy

At least 60 days prior to lease renewal, the PHA will review and verify the exemption status of all adult family members. This verification will only be done on an annual basis unless the family reports a change or the PHA has reason to believe that an individual's exemption status has changed. For individuals who are exempt because they are 62 years of age and older, verification of exemption status will be done only at the initial examination.

Upon completion of the verification process, the PHA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

Determination of Compliance

The PHA must review resident family compliance with service requirements annually at least thirty days before the end of the twelve month lease term [24 CFR 960.605(c)(3)]. As part of this review, the PHA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

PHA Policy

Approximately 60 days prior to the end of the lease term, the PHA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have 10 business days to submit the PHA required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or PHA approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Section 11-I.E., Noncompliance.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

Change in Status between Annual Determinations

PHA Policy

Exempt to Nonexempt Status

If an exempt individual becomes nonexempt during the twelve month lease term, it is the family's responsibility to report this change to the PHA within 10 business days.

Within 10 business days of a family reporting such a change, or the PHA determining such a change is necessary, the PHA will provide written notice of the effective date of the requirement, a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.

The effective date of the community service requirement will be the first of the month following 30 day notice.

Nonexempt to Exempt Status

If a nonexempt person becomes exempt during the twelve month lease term, it is the family's responsibility to report this change to the PHA within 10 business days. Any claim of exemption will be verified by the PHA in accordance with the policy at 11-I.D., Documentation and Verification of Exemption Status.

Within 10 business days of a family reporting such a change, or the PHA determining such a change is necessary, the PHA will provide the family written notice that the family member is no longer subject to the community service requirement, if the PHA is able to verify the exemption.

The exemption will be effective immediately.

11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4)]

The PHA must retain reasonable documentation of service requirement performance or exemption in participant files.

Documentation and Verification of Exemption Status

PHA Policy

All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification form found in Exhibit 11-3. The PHA will provide a completed copy to the family and will keep a copy in the tenant file.

The PHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.

The PHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the PHA's

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

determination, s/he can dispute the decision through the PHA's grievance procedures (see Chapter 14).

Documentation and Verification of Compliance

At each regularly scheduled reexamination, each nonexempt family member presents a signed standardized certification form developed by the PHA of community service and self-sufficiency activities performed over the last 12 months [Notice PIH 2009-48].

If qualifying community service activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide certification to the PHA, signed by the organization, that the family member has performed the qualifying activities [24 CFR 960.607].

PHA Policy

If anyone in the family is subject to the community service requirement, the PHA will provide the family with community service documentation forms at admission, at lease renewal, when a family member becomes subject to the community service requirement during the lease term, or upon request by the family.

Each individual who is subject to the requirement will be required to record their community service or self-sufficiency activities and the number of hours contributed on the required form. The certification form will also include places for signatures and phone numbers of supervisors, instructors, and counselors certifying to the number of hours contributed.

Families will be required to submit the documentation to the PHA, upon request by the PHA.

If the PHA has reasonable cause to believe that the certification provided by the family is false or fraudulent, the PHA has the right to require third-party verification.

11-I.E. NONCOMPLIANCE

Initial Noncompliance

The lease specifies that it is renewed automatically for all purposes, unless the family fails to comply with the community service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term [24 CFR 960.603(b)].

If the tenant or another family member has violated the community service requirement, the PHA may not renew the lease upon expiration of the twelve-month term of the lease, unless the tenant and any other noncompliant family member enter into a written agreement with the PHA. Under this agreement the tenant or noncompliant family member must agree to cure the noncompliance by completing the additional hours of community service or economic self-sufficiency needed to make up the total number of hours required, over the twelve-month term of the new lease. In addition, all other members of the family who are subject to the service requirement must be currently complying with the service requirement or must no longer be residing in the unit [24 CFR 960.607(c), Notice PIH 2009-48].

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

Notice of Initial Noncompliance [24 CFR 960.607(b)]

If the PHA determines that there is a family member who is required to fulfill a service requirement, but who has failed to comply with this obligation (noncompliant resident), the PHA must notify the tenant of this determination.

The notice to the tenant must briefly describe the noncompliance. The notice must state that the PHA will not renew the lease at the end of the twelve-month lease term unless the tenant, and any other noncompliant resident, enter into a written agreement with the PHA to cure the noncompliance, or the family provides written assurance satisfactory to the PHA that the tenant or other noncompliant resident no longer resides in the unit.

The notice must also state that the tenant may request a grievance hearing on the PHA's determination, in accordance with the PHA's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of the PHA's determination.

PHA Policy

The notice of initial noncompliance will be sent at least 45 days prior to the end of the lease term.

The family will have 10 business days from the date of the notice of noncompliance to enter into a written agreement to cure the noncompliance over the 12 month term of the new lease, provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before the PHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them.

If the family does not request a grievance hearing, or does not take either corrective action required by the notice of noncompliance within the required 10 business day timeframe, the PHA will terminate tenancy in accordance with the policies in Section 13-IV.D.

Continued Noncompliance [24 CFR 960.607(b)]

If, after the 12 month cure period, the family member is still not compliant, the PHA must terminate tenancy of the entire family, according to the PHA's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

PHA Policy

Notices of continued noncompliance will be sent at least 30 days prior to the end of the lease term and will also serve as the family's termination notice. The notice will meet the requirements for termination notices described in Section 13-IV.D, Form, Delivery, and Content of the Notice.

The family will have 10 business days from the date of the notice of non-compliance to provide documentation that the noncompliant resident no longer resides in the unit, or to

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before the PHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the noncompliant family member that previously resided with them.

If the family does not request a grievance hearing, or provide such documentation within the required 10 business day timeframe, the family's lease and tenancy will automatically terminate at the end of the current lease term without further notice.

Enforcement Documentation [Notice PIH 2009-48]

PHAs are required to initiate due process (see 24 CFR 966.53(c)) against households failing to comply with lease requirements including the community service and self-sufficiency requirement.

When initiating due process, the PHA must take the following procedural safeguards:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
- Right of the tenant to be represented by counsel
- Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have
- A decision on merits

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

PART II: IMPLEMENTATION OF COMMUNITY SERVICE

11-II.A. OVERVIEW

Each PHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in the PHA's best interests to develop a viable, effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

PHA Implementation of Community Service

The PHA may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

PHA Policy

The PHA will notify its insurance company if residents will be performing community service at the PHA. In addition, the PHA will ensure that the conditions under which the work is to be performed are not hazardous.

If a disabled resident certifies that s/he is able to perform community service, the PHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

PHA Program Design

The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions [24 CFR 960.605(b)].

PHA Policy

The PHA will attempt to provide the broadest choice possible to residents as they choose community service activities.

The PHA's goal is to design a service program that gives residents viable opportunities to become involved in the community and to gain competencies and skills. The PHA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

The PHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, the PHA will provide names and contacts at agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations.

Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in the PHA Plan.

The PHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

When the PHA has a ROSS program, a ROSS Service Coordinator, or an FSS program, the PHA will coordinate individual training and service plans (ITSPs) with the community service requirement. Regular meetings with PHA coordinators will satisfy community service activities and PHA coordinators will verify community service hours within individual monthly logs.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY

A. Background

The Quality Housing and Work Responsibility Act of 1998 requires that all nonexempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

B. Definitions

Community Service – community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

NOTE: Political activity is excluded.

Self-Sufficiency Activities

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF)
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

Exempt Adult – an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i][l] or 1614 of the Social Security Act), and who certifies that because of this disability he or she is unable to comply with the service provisions, or is the primary caretaker of such an individuals
- Is engaged in *work activities*
- Is able to meet requirements 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 in which the PHA is located, including a state-administered welfare-to-work program; or
- Is 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 in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

Work Activities – as it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of 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, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

- Provision of child care services to an individual who is participating in a community service program

C. Requirements of the Program

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month. An individual may not skip a month and then double up the following month, unless special circumstances warrant special consideration. The housing authority will make the determination of whether to allow or disallow a deviation from the schedule based on a family's written request.
3. Family obligation:
   - At lease execution, all adult members (18 or older) of a public housing resident family must:
     - Sign a certification (Attachment A) that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
     - Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.
   - Upon written notice from the PHA, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying to the number of hours contributed.
   - If a family member is found to be noncompliant at the end of the 12-month lease term, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be terminated.
4. Change in exempt status:
   - If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is his or her responsibility to report this to the PHA and provide documentation of exempt status.
   - If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is his or her responsibility to report this to the PHA. Upon receipt of this information the PHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

D. Authority Obligation

1. To the greatest extent possible and practicable, the PHA will:
   - Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.
   - Provide in-house opportunities for volunteer work or self-sufficiency activities.
2. The PHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, the PHA will verify the exemption status in accordance with its verification policies. The PHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the PHA's grievance procedure if they disagree with the PHA's determination.
4. Noncompliance of family member:
   - At least thirty(30) days prior to the end of the 12-month lease term, the PHA will begin reviewing the exempt or nonexempt status and compliance of family members;
     - The PHA will secure a certification of compliance from nonexempt family members (Attachment B).
   - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, the PHA finds the family member to be noncompliant, the PHA will not renew the lease unless:
     - The head of household and any other noncompliant resident enter into a written agreement with the PHA, to make up the deficient hours over the next twelve (12) month period; or
     - The family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit.
   - If, at the end of the next 12-month lease term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit;
   - The family may use the PHA's grievance procedure to dispute the lease termination.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

Resident	Date
Resident	Date
Resident	Date
Resident	Date

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(l) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE

Social Security Act:

216(i)(1): Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) 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 has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

Section 1416 (excerpt):

SEC. 1614. *[42 U.S.C. 1382c]* (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who:

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or

(ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable 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 twelve months.

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

EXHIBIT 11-3: PHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE

Family: _____

Adult family member: _____

This adult family member meets the requirements for being exempted from the PHA's community service requirement for the following reason:

❒ 62 years of age or older *(Documentation of age in file)*

❒ Is a person with disabilities and self-certifies below that he or she is unable to comply with the community service requirement (*Documentation of HUD definition of disability in file)*

Tenant certification: I am a person with disabilities and am unable to comply with the community service requirement.

_____ _____
Signature of Family Member Date

❒ Is the primary caretaker of such an individual in the above category. *(Documentation in file)*

❒ Is engaged in work activities *(Verification in file)*

❒ Is able to meet requirements 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 in which the PHA is located, including a state-administered welfare-to-work program (*Documentation in file*)

❒ Is 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 in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program *(Documentation in file)*

_____ _____
Signature of Family Member Date

_____ _____
Signature of PHA Official Date

© Copyright 2010 by Nan McKay & Associates
Unlimited copies may be made for internal use.

Chapter 12

TRANSFER POLICY

INTRODUCTION

This chapter explains the PHA's transfer policy, based on HUD regulations, HUD guidance, and PHA policy decisions.

This chapter describes HUD regulations and PHA policies related to transfers in four parts:

Part I: Emergency Transfers. This part describes emergency transfers, emergency transfer procedures, and payment of transfer costs.

Part II: PHA Required Transfers. This part describes types of transfers that may be required by the PHA, notice requirements, and payment of transfer costs.

Part III: Transfers Requested by Residents. This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.

Part IV: Transfer Processing. This part describes creating a waiting list, prioritizing transfer requests, the unit offer policy, examples of good cause, deconcentration, transferring to another development and reexamination.

The PHA may require the tenant to move from the unit under some circumstances. There are also emergency circumstances under which alternate accommodations for the tenant must be provided, that may or may not require a transfer.

The tenant may also request a transfer, such as a request for a new unit as a reasonable accommodation.

The PHA must have specific policies in place to deal with acceptable transfer requests.

PART I: EMERGENCY TRANSFERS

12-I.A. OVERVIEW

HUD categorizes certain actions as emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by the PHA.

In the case of a genuine emergency, it may be unlikely that the PHA will have the time or resources to immediately transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, the PHA should find alternate accommodations for the tenant until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is reached.

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

12-I.B. EMERGENCY TRANSFERS

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, the PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

PHA Policy

The following is considered an emergency circumstance warranting an immediate transfer of the tenant or family:

Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of such unit or building conditions would include: a gas leak; no heat in the building during the winter; no water; toxic contamination; and serious water leaks.

12-I.C. EMERGENCY TRANSFER PROCEDURES

PHA Policy

If the transfer is necessary because of maintenance conditions (not caused by the tenant), and an appropriate unit is not immediately available, the PHA will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the PHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers are mandatory for the tenant.

12-I.D. COSTS OF TRANSFER

PHA Policy

The PHA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers, if any, due to emergency conditions.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

Rather than reimbursing the family for eligible, reasonable expenses related to the move, the PHA will either complete the move, or make arrangements to pay for the move.

Exception: The cost of emergency transfers made necessary because of adverse maintenance conditions caused by the tenant will be borne by the tenant.

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

PART II: PHA REQUIRED TRANSFERS

12-II.A. OVERVIEW

HUD regulations regarding transfers are minimal, leaving it up to the PHA to develop reasonable transfer policies.

The PHA may require that a resident transfer to another unit under some circumstances. For example, the PHA may require a resident to transfer to make an accessible unit available to a disabled family. The PHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, a PHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by the PHA is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

12-II.B. TYPES OF PHA REQUIRED TRANSFERS

PHA Policy

The types of transfers that may be required by the PHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the PHA are mandatory for the tenant.

Transfers to Make an Accessible Unit Available

When a family is initially given an accessible unit, but does not require the accessible features, the PHA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

PHA Policy

When a non-accessible unit becomes available, the PHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. The PHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

Occupancy Standards Transfers

The PHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to PHA policy [24 CFR 960.257(a)(4)]. On some occasions, the PHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

PHA Policy

The PHA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

Overcrowded: the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Section 5-I.B.

Over-housed: the family no longer qualifies for the bedroom size in which they are living based on the PHA's occupancy standards as described in Section 5-I.B.

The PHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the PHA's occupancy standards, when the PHA determines there is a need for the transfer.

The PHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by the PHA that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Section 5-I.C. will only be required to transfer if it is necessary to comply with the approved exception.

Demolition, Disposition, Revitalizations, or Rehabilitation Transfers

These transfers permit the PHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

PHA Policy

The PHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The PHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

12-II.C. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]

A PHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, the PHA may not take action on the transfer until the conclusion of the grievance process.

12-II.D. COST OF TRANSFER

PHA Policy

The resident will bear all of the costs of a transfer unless the PHA determines that the costs associated with the PHA-required transfer are related to activities associated with

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

the Capital Fund Program. However, in the cases of documented financial hardship, the PHA will consider assuming the transfer costs when the transfer is done as a reasonable accommodation.

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

PART III: TRANSFERS REQUESTED BY TENANTS

12-III.A. OVERVIEW

HUD provides the PHA with discretion to consider transfer requests from tenants. The only requests that the PHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the PHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by the PHA.

Some transfers that are requested by tenants should be treated as higher priorities than others due to the more urgent need for the transfer.

12-III.B. TYPES OF RESIDENT REQUESTED TRANSFERS

PHA Policy

The types of requests for transfers that the PHA will consider are limited to requests for transfers to alleviate a serious or life threatening medical condition, transfers due to a threat of physical harm or criminal activity, reasonable accommodation, transfers to a different unit size as long as the family qualifies for the unit according to the PHA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by the PHA.

The PHA will consider the following as high priority transfer requests:

When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature

When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the PHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime, or domestic violence, dating violence, sexual assault, or stalking.

When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features

The PHA will consider the following as regular priority transfer requests:

When a family requests a larger bedroom size unit even though the family does not meet the PHA's definition of overcrowded, as long as the family meets the PHA's occupancy standards for the requested size unit

Transfers requested by the tenant are considered optional for the tenant.

12-III.C. ELIGIBILITY FOR TRANSFER

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the PHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

PHA Policy

Except where reasonable accommodation is being requested, the PHA will only consider transfer requests from residents that meet the following requirements:

Have not engaged in criminal activity that threatens the health and safety or residents and staff

Owe no back rent or other charges, or have a pattern of late payment

Have no housekeeping lease violations or history of damaging property

Can get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities)

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the PHA's advantage to make the transfer.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

12-III.D. SECURITY DEPOSITS

PHA Policy

When a family transfers from one unit to another, the PHA will transfer their security deposit to the new unit. The tenant will be billed for any maintenance or others charges due for the "old" unit and any security deposit required for the new unit (if deposit is more for the new unit).

12-III.E. COST OF TRANSFER

The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability [Notice PIH 2006-13].

PHA Policy

The resident will bear all of the costs of transfer s/he requests. However, the PHA will bear the transfer costs when the transfer is done as a reasonable accommodation.

12-III.F. HANDLING OF REQUESTS

PHA Policy

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

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

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

The PHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family.

If the family does not meet the "good record" requirements under Section 12-III.C., the manager will address the problem and, until resolved, the request for transfer will be denied.

The PHA will respond within ten (10) business days of the submission of the family's request. If the PHA denies the request for transfer, the family will be informed of its grievance rights.

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

PART IV: TRANSFER PROCESSING

12-IV.A. OVERVIEW

Generally, transfers should be placed on a transfer list and handled in the appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience disparate treatment.

12-IV.B. TRANSFER LIST

PHA Policy

The PHA will maintain a centralized transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case by case basis. If the emergency will not be finally resolved by a temporary accommodation, and the resident requires a permanent transfer, that transfer will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers and PHA required transfers
2. High Priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
3. Transfer to make an accessible unit available
4. Demolition, renovation, etc.
5. Occupancy Standards
7. Other tenant requested transfers

Within each category, transfers will be processed in order of the date the family was placed on the transfer list, starting with the earliest date.

Demolition and renovation transfers will gain the highest priority as necessary to allow the PHA to meet the demolition or renovation schedule.

Emergency transfers and PHA required transfers will take precedence over waiting list admissions.

All other transfers will be processed at a rate of one transfer to every seven waiting list admissions.

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

12-IV.C. TRANSFER OFFER POLICY

PHA Policy

Residents will receive one offer of a transfer.

When the transfer is required by the PHA, refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, refusal of that offer without good cause will result in the removal of the household from the transfer list and the family must wait six months to reapply for another transfer.

12-IV.D. GOOD CAUSE FOR UNIT REFUSAL

PHA Policy

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

Inaccessibility to source of employment, education, or job training, children's day care, or an educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

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

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

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

The unit has lead-based paint and the family includes children under the age of six.

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

12-IV.E. DECONCENTRATION

PHA Policy

PHA is exempt from Deconcentration requirements (less than 100 family units).

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

12-IV.F. REEXAMINATION POLICIES FOR TRANSFERS

PHA Policy

The reexamination date will not be changed when a transfer takes place. The original reexamination date will remain in effect.

© Copyright 2009 by Nan McKay & Associates
Unlimited copies may be made for internal use.

Chapter 13

LEASE TERMINATIONS

INTRODUCTION

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing which is in good repair. The PHA may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a PHA can terminate a family's lease, and give PHAs authority to determine other reasons.

When determining PHA policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern both the family's and PHA's termination of the lease. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the family's voluntary termination of the lease and the requirements the PHA places upon families who wish to terminate their lease.

Part II: Termination by PHA - Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by the PHA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by PHA – Other Authorized Reasons. This part describes the PHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires the PHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PHA has full discretion whether to consider the options as just cause to terminate as long as the PHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PHA may consider in lieu of termination, and the criteria the PHA will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and PHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART I: TERMINATION BY TENANT

13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

PHA Policy

If a family desires to move and terminate their tenancy with the PHA, they must give advance written notice to the PHA of their intent to vacate at least 20 calendar days prior to the end of the month in which they intend to vacate. When a family must give less than 30 days notice due to circumstances beyond their control the PHA, at its discretion, may waive the 30 day requirement.

The notice of lease termination must be signed by the head of household, spouse, or cohead.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: TERMINATION BY PHA – MANDATORY

13-II.A. OVERVIEW

HUD requires the PHA to terminate the lease in certain circumstances. In other circumstances HUD requires the PHA to establish provisions for lease termination, but it is still a PHA option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, the PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the PHA to terminate the lease.

13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The PHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The PHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter 7 for a complete discussion of documentation requirements.

13-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2010-3]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

PHA Policy

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter 7 for a complete discussion of documentation and certification requirements.

13-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises.*

13-II.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

The PHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

13-II.H. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2010-3]

The PHA must immediately terminate program assistance for deceased single member households.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS

13-III.A. OVERVIEW

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires the PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. The PHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PHA may, as an alternative to termination, require the exclusion of the culpable household member. The PHA must make policy decisions concerning these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. The PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the PHA lease. In the development of the terms of the lease, the PHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

The PHA may consider alternatives to termination and must establish policies describing the criteria the PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PHA must take when terminating a family's lease.

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore PHA policies are needed.

Definitions **[24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

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 the intent to manufacture, sell, distribute, or use the drug.

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.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Household means the family and PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

Other person under the tenant's control means that the 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.*

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.

Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

PHA Policy

The PHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHA will terminate the lease when the PHA determines that a household member is illegally using a drug or the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

PHA Policy

The PHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

Immediate vicinity means within a three-block radius of the premises.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations, and grounds for termination.

PHA Policy

The PHA will terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.

Failure to fulfill the following household obligations:

Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

Not to provide accommodations for boarders or lodgers

To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease

To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety

To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition

To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner

To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators

To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project

To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest

To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes PHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause".

Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]

HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples.

PHA Policy

The PHA will terminate the lease for the following reasons.

Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery after admission of facts that made the tenant ineligible

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income

Failure to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available

Failure to permit access to the unit by the PHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists

Failure to promptly inform the PHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.

Failure to abide by the provisions of the PHA pet policy

If the family has breached the terms of a repayment agreement entered into with the PHA

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

If a household member has engaged in or threatened violent or abusive behavior toward PHA personnel.

> *Abusive or violent behavior towards PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
>
> *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors described in Section 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Family Absence from Unit [24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the PHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose.

The family must promptly notify the PHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, the PHA will terminate the lease for other good cause.

Abandonment. If the family appears to have vacated the unit without giving proper notice, the PHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the PHA will secure the unit immediately to prevent vandalism and other criminal activity.

Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]

Subject to certain restrictions, HUD authorizes PHAs to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, the PHA may not evict or terminate the tenancy of a family solely because the family is over income if: (1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or (2) the family is currently receiving the earned income disallowance. This rule does not require PHAs to evict over-income residents, but rather gives PHAs the discretion to do so thereby making units available for applicants who are income-eligible.

PHA Policy

The PHA will not evict or terminate the tenancies of families solely because they are over income.

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the PHA may consider exclusion of the culpable household member. Such an alternative can be used, by PHA policy, for any other reason where such a solution appears viable.

PHA Policy

The PHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon PHA request.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Repayment of Family Debts

PHA Policy

If a family owes amounts to the PHA, as a condition of continued occupancy, the PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

A PHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

Evidence [24 CFR 982.553(c)]

For criminal activity, HUD permits the PHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

PHA Policy

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

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

Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

PHA Policy

The PHA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

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

The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor or a person with disabilities

The effects that the eviction will have on other family members who were not involved in the action or failure to act

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The effect on the community of the termination, or of the PHA's failure to terminate the tenancy

The effect of the PHA's decision on the integrity of the public housing program

The demand for housing by eligible families who will adhere to lease responsibilities

The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action

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

In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family.

Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

PHA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the PHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

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

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, the PHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

PHA Policy

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

Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]

The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

13-III.F. PROHIBITION AGAINST TERMINATING TENANCY OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [24 CFR 5.2005]

The Violence against Women Reauthorization Act of 2005 (VAWA), provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, 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 the tenancy or occupancy rights, if the tenant or immediate family member of the tenant's family is the victim or threatened victim of that abuse." VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

Definitions

For the definitions of *domestic violence*, *dating violence*, *stalking*, and *immediate family member*, see section 3-III.F.

VAWA and Other Laws [24 CFR 5.2009, 24 CFR 5.2005(d)]

VAWA does not supersede any other federal, state, or local law that provides greater protection to victims of domestic violence, dating violence, or stalking.

Moreover, VAWA does not limit the PHA's duty to honor court orders issued to protect a victim or to address the distribution of property when a family breaks up.

Limits on VAWA Protections [24 CFR 5.2005(b), 24 CFR 5.2005(e)]

While VAWA prohibits a PHA from using domestic violence, dating violence, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, or stalking providing that the PHA does not subject the victim to a more demanding standard than other tenants.
- VAWA does not limit a PHA's authority to terminate the tenancy of any public housing tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

PHA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location

If the tenant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

Victim Notification [Notice PIH 2006-42]

VAWA requires PHAs to notify tenants of their rights under VAWA and to inform them about the existence of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking. (For general VAWA notification policies, see section 16-VII.) Notice PIH 2006-42 identifies two ways that a PHA may fulfill this requirement in the event of a termination or start of an eviction proceeding:

- It may enclose the form with the termination or eviction notice and direct the family to complete, sign, and return the form, if applicable, by a specified date.
- It may include language discussing the protections provided by VAWA in the termination or eviction notice and request that a tenant come to the PHA office and pick up the form if the tenant believes the VAWA protections apply.

Notice PIH 2006-42 points out that mailing the certification form in response to an incident could place the victim at risk, since the abuser may be monitoring the mail. In such cases, the notice recommends that PHAs work with tenants to make other delivery arrangements.

PHA Policy

The PHA will follow the lease termination notice policy in section 13-IV.D. If the PHA has reason to suspect that the notice might place a victim of domestic violence at risk, it will attempt to deliver the notice by hand directly to the victim. The PHA will use the same caution if it decides to deliver VAWA information to a victim at any other time following an incident of domestic violence,

Victim Documentation [Notice PIH 2006-42]

VAWA authorizes PHAs responding to incidents of actual or threatened domestic violence, dating violence, or stalking to request in writing that a tenant complete, sign, and submit a HUD approved certification form (form HUD-50066).

In lieu of a certification form, or in addition to the certification form, a tenant may provide one of the following:

- A federal, state, tribal, territorial, or local police or court record documenting the domestic violence, dating violence, or stalking
- Documentation signed by an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of such abuse, in which the professional attests under penalty of perjury to the professional's belief that the incidents In question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

A PHA is not required to demand that an individual produce official documentation or physical proof of an individual's status as a victim of domestic violence, dating violence, or stalking in order to receive the protections of VAWA. A PHA may, at its discretion, provide assistance to an individual based solely upon the individual's statement or other corroborating evidence.

VAWA specifies that a victim of domestic violence, dating violence, or stalking must provide documentation of abuse within 14 business days after receipt of a written request for such documentation by a PHA. If the victim does not provide the documentation within that time frame, or any extension approved by the PHA, the victim forfeits the protections against termination afforded by VAWA, and the PHA is free to evict or terminate the assistance of the victim in accordance with otherwise applicable law and lease provisions.

PHA Policy

When a tenant family is facing lease termination because of the actions of a tenant, household member, guest, or other person under the tenant's control and a tenant or immediate family member of the tenant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the PHA will request in writing that the individual submit documentation affirming that claim. The written request will include explicit instructions on where, when, and to whom the documentation must be submitted. It will also state the consequences for failure to submit the documentation by the deadline.

The documentation elements will consist of a completed and signed form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking. In lieu of the certification form, the PHA will accept either of the following forms of documentation:

A police or court record documenting the actual or threatened abuse

Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice.

The individual claiming victim status must submit the requested documentation within 14 business days after receipt of the PHA's written request or must request an extension within that time frame. The PHA may, at its discretion, extend the deadline for 10 business days.

If the individual provides the requested documentation within 14 business days, or any PHA-approved extension, the PHA will reconsider its termination decision in light of the documentation.

If the individual does not provide the requested documentation within 14 business days, or any PHA-approved extension, the PHA will proceed with termination of the family's lease in accordance with applicable local, state, and federal law and the policies in this ACOP.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Terminating or Evicting a Perpetrator of Domestic Violence [24 CFR 5.2005(c)]

Although VAWA provides protection from termination for victims of domestic violence, it does not provide protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or to remove a household member from a lease, "in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." Specific lease language affirming this authority is not necessary. Further, the authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance [Pub.L. 109-271]. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

PHA Policy

The PHA will bifurcate a family's lease and terminate the tenancy of a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the PHA by the victim in accordance with this section. The PHA will also consider the factors in section 13.III.E. Upon such consideration, the PHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the PHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If necessary, the PHA will also take steps to ensure that the remaining family members have a safe place to live during the termination process. For example, the PHA may offer the remaining family members another public housing unit, if available; it may help them relocate to a confidential location; or it may refer them to a victim service provider or other agency with shelter facilities.

PHA Confidentiality Requirements [24 CFR 5.2007(a)(1)(v)]

All information provided to the PHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

13-IV.A. OVERVIEW

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA policy determines when the PHA will conduct such checks.

PHA Policy

The PHA will conduct criminal records checks when it has come to the attention of the PHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The PHA may not pass along to the tenant the costs of a criminal records check.

13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if the PHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the PHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

PHA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the PHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of the PHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the PHA to

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

dispute the information within that 10 business day period, the PHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 996.4(m)].

When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the PHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and 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 as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises.

PHA Policy

The PHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. (For terminations related to domestic violence, see also the policy under "Victim Notification" in section 13-III.F.) In addition the notice will be sent by first class mail the same day.

All notices of lease termination will include a statement of the protection against termination provided by the Violence against Women Reauthorization Act of 2005 (VAWA) for victims of domestic violence, dating violence, or stalking. They will also include a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in section 13-III.F.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Timing of the Notice [24 CFR 966.4(l)(3)(i)]

The PHA must give written notice of lease termination of:

- 14 calendar days in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)

  If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened

  If any member of the household has engaged in any drug-related criminal activity or violent criminal activity

  If any member of the household has been convicted of a felony

- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

  PHA Policy

  The PHA will give written notice of 14 calendar days for nonpayment of rent and 72 hours for drug-related or violent criminal activity or if the PHA believes that the health or safety of other residents or PHA employees are threatened. For all other lease terminations the PHA will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When the PHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

PHA Policy

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the PHA's informal hearing procedures.

13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The PHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

PHA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the PHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the PHA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PHA may not proceed with an eviction action if the PHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]

When the PHA evicts an individual or family for criminal activity, including drug-related criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

13-IV.G. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

PHA Policy

A written record of every termination and/or eviction will be maintained by the PHA at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)

Date and method of notifying the resident

Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 14

GRIEVANCES AND APPEALS

INTRODUCTION

This chapter discusses grievances and appeals pertaining to PHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14-I.A. OVERVIEW

When the PHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the PHA policies necessary to respond to applicant appeals through the informal hearing process.

14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants in the PHA grievance procedure [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

Use of Informal Hearing Process

While the PHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the PHA could make the informal hearing process available to applicants who wish to dispute other PHA actions that adversely affect them.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

The PHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

Notice of Denial [24 CFR 960.208(a)]

The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.F. for details concerning this requirement.

Scheduling an Informal Hearing

PHA Policy

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's notification of denial of admission.

Except as provided in Section 3-III.F, the PHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

Conducting an Informal Hearing [PH Occ GB, p. 58]

PHA Policy

The informal hearing will be conducted by a person other than the one who made the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether admission should be granted or denied.

Informal Hearing Decision [PH Occ GB, p. 58]

PHA Policy

The PHA will notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the PHA must consider such accommodations. The PHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA Policy

The PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

PHA Policy

The PHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

PHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of $.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the PHA is still obligated to provide oral translation services in accordance with its LEP Plan.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

PHA Policy

The PHA will not provide a transcript of an audio taped informal hearing.

Hearing Decision

The PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

14-III.A. REQUIREMENTS [24 CFR 966.52]

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status.

The PHA grievance procedure must be included in, or incorporated by reference in, the lease.

PHA Policy

The PHA grievance procedure will be incorporated by reference in the tenant lease.

The PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by the PHA before adoption of any grievance procedure changes by the PHA.

PHA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by the PHA of any proposed changes in the PHA grievance procedure, to submit written comments to the PHA.

The PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the PHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **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:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- A decision on the merits

- **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto

- **Tenant** – the adult person (or persons) (other than a live-in aide)
  - Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit

- **Resident Organization** – includes a resident management corporation

14-III.C. APPLICABILITY [24 CFR 966.51]

Potential grievances could address most aspects of a PHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PHA. It is not applicable to disputes between tenants not involving the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

If HUD has issued a due process determination, a PHA may exclude from the PHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described in Section 14-III.E. below, to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, the PHA may evict through the state/local judicial eviction procedures. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure as described above.

PHA Policy

The PHA is located in a due process state. Therefore, the PHA will not offer grievance hearings for lease terminations involving criminal activity that resulted in a felony conviction of a household member or that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for drug-related criminal activity on or off the premises.

See Chapter 13 for related policies on the content of termination notices.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

PHA Policy

The PHA will accept requests for an informal settlement of a grievance either orally or in writing, to the PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without at least 24 hours prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the PHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

PHA Policy

The PHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in the PHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]

Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision [24 CFR 966.55(d)].

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion [24 CFR 966.55(a)]. The request must specify the reasons for the grievance and the action or relief sought.

PHA Policy

The resident must submit a written request for a grievance hearing to the PHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

If the complainant does not request a hearing, the PHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.55(c)].

Escrow Deposits [24 CFR 966.55(e)]

Before a hearing is scheduled in any grievance involving the amount of rent that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

The PHA must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income [24 CFR 5.630(b)(3)].

Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

PHA Policy

The PHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

Scheduling of Hearings [24 CFR 966.55(f)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

PHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PHA.

The PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

PHA Policy

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the "good cause" prior to rescheduling the hearing.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

14-III.F. SELECTION OF HEARING OFFICER/PANEL [24 CFR 966.55(b)]

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review, or a subordinate of such person.

PHA Policy

PHA grievance hearings will be conducted by a single hearing officer and not a panel appointed by the housing authority. Efforts will be made to assure that the person selected is not a friend, nor enemy, of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.

14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)]

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

  PHA Policy

  The tenant will be allowed to copy any documents related to the hearing at a cost of $.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

- The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf.

  PHA Policy

  Hearings may be attended by the following applicable persons:

  A PHA representative(s) and any witnesses for the PHA

  The tenant and any witnesses for the tenant

  The tenant's counsel or other representative

  Any other person approved by the PHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Decision without Hearing [24 CFR 966.56(c)]

The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another proceeding.

Failure to Appear [24 CFR 966.56(d)]

If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer/panel: Provided, That a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

PHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 20 minutes. If the tenant appears within 20 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 20 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear the PHA will not reschedule the hearing unless needed as a reasonable accommodation for a person with disabilities.

"Good cause" is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

General Procedures [24 CFR 966.56(e), (f), and (g)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed [24 CFR 966.56(e)].

The hearing must be conducted informally by the hearing officer/panel. The PHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].

PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the PHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(g)].

PHA Policy

If the complainant would like the PHA to record the proceedings by audiotape, the request must be made to the PHA by 12:00 p.m. on the business day prior to the hearing.

The PHA will consider that an audio tape recording of the proceedings is a transcript.

Accommodations of Persons with Disabilities [24 CFR 966.56(h)]

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the PHA's responsibilities pertaining to reasonable accommodation.

14-III.H. DECISION OF THE HEARING OFFICER [24 CFR 966.57]

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted,

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

must also be maintained on file by the PHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

PHA Notice to the Family: The hearing officer will determine if the reasons for the PHA's decision are factually stated in the notice.

Discovery: The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PHA policy.

PHA Evidence to Support the PHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.

Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of the PHA representative(s)

Name of family representative (if any)

Names of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.

Order: The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the PHA to restore the family's status.

Procedures for Further Hearing

PHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer is binding on the PHA which must take the action, or refrain from taking the action cited in the decision unless the PHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA

PHA Policy

When the PHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the PHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

© Copyright 2009 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 15

PROGRAM INTEGRITY

INTRODUCTION

The PHA is committed to ensuring that funds made available to the PHA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the PHA must and may take when errors or program abuses are found.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and residents with form HUD-52675, "Debts Owed to PHAs and Terminations"
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

PHA Policy

The PHA anticipates that the vast majority of families and PHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the PHA's program is administered effectively and according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The PHA will provide each applicant and resident with a copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The PHA will provide each applicant and resident with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, the PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The PHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The PHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The PHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family member.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. P*rogram abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

15-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

PHA Policy

The PHA will employ a variety of methods to detect errors and program abuse, including:

The PHA routinely will use available sources of up-front income verification, including HUD's EIV system, to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The PHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

PHA Policy

The PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the PHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

PHA Policy

The PHA will encourage staff, residents, and the public to report possible program abuse.

15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the PHA Will Investigate

PHA Policy

The PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the PHA to investigate, the allegation must contain at least one

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The PHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 960.259]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require applicant/resident families to give consent to the release of additional information.

Analysis and Findings

PHA Policy

The PHA will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation the PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

PHA Policy

In the case of family-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

PHA Policy

The PHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: CORRECTIVE MEASURES AND PENALTIES

15-II.A. UNDER- OR OVERPAYMENT

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect rental determination is an overpayment or underpayment, the PHA must promptly correct the tenant rent and any utility reimbursement prospectively.

PHA Policy

Increases in the tenant rent will be implemented only after the family has received 30 days notice.

Any decreases in tenant rent will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family is required to reimburse the PHA or the PHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

15-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA

PHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, the PHA will terminate the family's lease in accordance with the policies in Chapter 13.

PHA Reimbursement to Family

PHA Policy

The PHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Prohibited Actions

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the PHA [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l)(2)(iii)(C)].

PHA Policy

Any of the following will be considered evidence of family program abuse:

Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives

Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to PHA).
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 13 (for residents).
- The PHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

15-II.C. PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

a PHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

Repayment to the PHA

The family is not required to repay an underpayment of rent if the error or program abuse is caused by PHA staff.

PHA Reimbursement to Family

PHA Policy

The PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

Prohibited Activities

PHA Policy

Any of the following will be considered evidence of program abuse by PHA staff:

Failing to comply with any public housing program requirements for personal gain

Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident

Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the PHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of PHA activities, policies, or practices

Misappropriating or misusing public housing funds

Destroying, concealing, removing, or inappropriately using any records related to the public housing program

Committing any other corrupt or criminal act in connection with any federal housing program

15-II.D. CRIMINAL PROSECUTION

PHA Policy

When the PHA determines that program abuse by a family or PHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

15-II.E. FRAUD AND PROGRAM ABUSE RECOVERIES

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that the PHA recovers [Notice PIH 2005-7 (HA)].

If the PHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the PHA's grievance process.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in six parts as described below:

Part I: Setting Utility Allowances. This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of PHA-furnished utilities.

Part II: Establishing Flat Rents and Public Housing Maximum Rents. This part describes the requirements and policies related to establishing and updating flat rent amounts and public housing maximum rents.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which the PHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (PHAS). This part describes the PHAS indicators, how PHAs are scored under PHAS, and how those scores affect a PHA.

Part V: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the PHA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

Part VII: Notification to Applicants and Tenants regarding Protections under the Violence against Women Reauthorization Act of 2005 (VAWA). This part includes policies for notifying applicants and tenants of VAWA requirements.

PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

16-I.A. OVERVIEW

PHAs must establish allowances for PHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

PHAs must also establish surcharges for excess consumption of PHA-furnished utilities [24 CFR 965.506].

The PHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

16-I.B UTILITY ALLOWANCES

The PHA must establish separate allowances for each utility and for each category of dwelling units the PHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a PHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if the PHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ GB, p. 138].

Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to the PHA about establishing utility allowances.

Air-Conditioning

"If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible." [24 CFR 965.505(e)].

PHA Policy

The PHA has not installed air-conditioning.

Utility Allowance Revisions [24 CFR 965.507]

The PHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective.

PHA Policy

Between annual reviews of utility allowances, the PHA will only revise its utility allowances due to a rate change, when required to by the regulation.

16-I.C. SURCHARGES FOR PHA-FURNISHED UTILITIES [24 CFR 965.506]

For dwelling units subject to allowances for PHA-furnished utilities where check meters have been installed, the PHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on the PHA's average utility rate. The basis for calculating the surcharges must be described in the PHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in the PHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by PHA-furnished utilities where check meters have not been installed, the PHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

PHA Policy

The PHA does not have utility surcharges.

16-I.D. NOTICE REQUIREMENTS [965.502]

The PHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
- Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
- Notify residents of the place where the PHA's documentation on which allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]

On request from a family that includes a disabled or elderly person, the PHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: ESTABLISHING FLAT RENTS AND PUBLIC HOUSING MAXIMUM RENTS

16-II.A. OVERVIEW

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Public housing maximum rents are needed to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how the PHA establishes and updates flat rents and public housing maximum rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and public housing maximum rents are discussed in Chapter 6.

16-II.B. FLAT RENTS [24 CFR 960.253(b)]

Establishing Flat Rents

A provision of the Consolidated Appropriations Act of 2014 requires that, effective June 1, 2014, Flat Rents in public housing properties be established as not less than 80% of the Fair Market Rent (FMR) for the locality. By Notice PIH 2014-12 (HA), HUD has determined that the FMR shall be adjusted by the utility allowance for the specific property for the establishment of the minimum flat rent for that property. Additionally, the Act limits annual flat rent increases to 35% of the existing Flat Rent amount.

In accordance with this provision of law and Notice PIH 2014-12 (HA), the PHA will insure that Flat Rents are not less than 80% of the Fair Market Rent (FMR), as established by HUD less the applicable utility allowance. Flat Rent schedules will be subject to annual review based on changes in the FMR schedule and will be applied on the renewal of the lease, interim re-examination, or initial choice of Flat Rent that is effective on or after the date the revised schedule becomes effective. If the increase in Flat Rent from the previously paid Flat Rent is greater than 35% in any one year, then the increase will be limited to 35% of the previously paid Flat Rent. Affected families will be given a 30-day notice of any rent change. The Albany Housing Authority will post the flat rents at each of the AMP site offices and at the central office. Flat rents are incorporated in this policy upon approval by the Board of Commissioners.

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

The PHA must use a reasonable method to determine flat rents. In determining flat rents, PHAs must consider the following:

- Location
- Quality
- Unit size
- Unit type

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- Age of property
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the PHA
- Utilities provided by the PHA

Review of Flat Rents

The PHA must ensure that flat rents continue to mirror market rent values [24 CFR 960.253(b)].

PHA Policy
The PHA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values.

If the flat rent, as determined by the rent reasonableness study, is at least 80 percent of the FMR, PHAs must set flat rents at the amount determined by the rent reasonableness study;

If the flat rent, as determined by the rent reasonableness study, is less than 80 percent of the FMR, PHAs must set flat rents at no less than 80 percent of the FMR, subject to the utility allowance adjustment.

Documentation of Flat Rents [24 CFR 960.253(b)(5)]

The PHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the PHA in accordance with this method.

16-II.C. PUBLIC HOUSING MAXIMUM RENTS

Establishing Public Housing Maximum Rents

PHAs are prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status [24 CFR 5.500]. Therefore, in order to assist mixed families, PHAs must prorate assistance. Public housing maximum rents are needed in order to calculate the tenant rent for a mixed family.

The public housing maximum rent is based on value of the 95th percentile of the total tenant payment (TTP) for each tenant within the PHA. PHAs may calculate a maximum rent on either a PHA- or project wide basis. A separate maximum rent can be provided for each separate project or projects may be combined into logical groups, if appropriate. HUD recommends that a single project basis be avoided for a project unless at least 50 dwelling units are involved.

PHAs may use the "direct comparison" or the "unit distribution" method for establishing the public housing maximum rents for each unit size. Appendix H, of Guidebook 7465.G, Restrictions on Assistance to Noncitizens provides detailed guidance on how to establish public housing maximum rents using the methodologies identified above.

Review of Public Housing Maximum Rents

PHA Policy

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The PHA will recalculate the public housing maximum rents on an annual basis.

Documentation of Public Housing Maximum Rents

PHA Policy

The PHA will maintain records that document how the PHA determined the 95th percentile of TTP, whether the maximum rent was determined PHA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: FAMILY DEBTS TO THE PHA

16-III.A. OVERVIEW

This part describes the PHA's policies for recovery of monies owed to the PHA by families.

PHA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the PHA holds the family liable to return any underpayments to the PHA.

The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When a family refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:

Collection agencies

Small claims court

Civil law suit

State income tax set-off program

16-III.B. REPAYMENT POLICY

Family Debts to the PHA

PHA Policy

Any amount owed to the PHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate the family's tenancy in accordance with the policies in Chapter 13. The PHA will also pursue other modes of collection.

General Repayment Agreement Guidelines

Down Payment Requirement

PHA Policy

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the PHA that a down payment of 10 percent would impose an undue hardship, the PHA may, in its sole discretion, require a lesser percentage or waive the requirement.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Payment Thresholds

Notice PIH 2010-19 recommends that the total amount that a family must pay each month—the family's monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family's monthly adjusted income, which is considered "affordable." Moreover, Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

PHA Policy

If a family is paying less than 40 percent of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two amounts:

The difference between 40 percent of the family's MAI and the total family share at the time the agreement is executed

$25

If a family can provide evidence satisfactory to the PHA that a monthly payment amount of $25 would impose an undue hardship, the PHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either the PHA or the family may request that the monthly payment amount be adjusted accordingly.

Execution of the Agreement

PHA Policy

Any repayment agreement between the PHA and a family must be signed and dated by the PHA and by the head of household and spouse/cohead (if applicable) .

Due Dates

PHA Policy

All payments are due by the close of business on the 5th day of the month. If the 5th does not fall on a business day, the due date is the close of business on the first business day after the 5th.

Late or Missed Payments

PHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the PHA, the PHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PHA will terminate tenancy in accordance with the policies in Chapter 13.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the PHA will terminate tenancy in accordance with the policies in Chapter 13.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

No Offer of Repayment Agreement

PHA Policy

The PHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family, or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

Repayment Agreements Involving Improper Payments

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)

16-IV.A. OVERVIEW

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

16-IV.B. PHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]

The table below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. A PHA's performance is based on a combination of all four indicators.

Indicator 1: Physical condition of the PHA's properties
Maximum Score: 30

- The objective of this indicator is to determine the level to which a PHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.
- To determine the physical condition of a PHA's properties, inspections are performed of the following five major areas of public housing: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in the PHA's public housing portfolio.

Indicator 2: Financial condition of a PHA
Maximum Score: 30

- The objective of this indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.
- A PHA's financial condition is determined by measuring the PHA's entity-wide performance in each of the following components: current ratio, number of months expendable fund balance, tenant receivable outstanding, occupancy loss, expense management/utility consumption, and net income or loss divided by the expendable fund balance.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Indicator 3: Management operations of a PHA
Maximum Score: 30

- The objective of this indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.
- A PHA's management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, PHA annual inspection of units and systems, security, and economic self-sufficiency.

Indicator 4: Resident service and satisfaction
Maximum Score: 10

- The objective of this indicator is to measure the level of resident satisfaction with living conditions at the PHA.
- The PHA's score for this indicator is based on the results of resident surveys and the level of implementation and follow-up or corrective actions the PHA takes based on the results of the survey.

16-IV.C. PHAS SCORING [24 CFR 902.63 and 902.67]

HUD's Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the components under each indicator. PHAS scores translate into a designation for each PHA as high performing, standard, or troubled.

A high performer is a PHA that achieves a score of at least 60 percent of the points available under each of the four indicators, and achieves an overall PHAS score of 90 or greater.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, and does not achieve less than 60 percent of the total points available under one of the following Indicators: 1, 2, or 3.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 60 percent of the total points available under more than one of the following indicators: 1, 2, or 3.

These designations can affect a PHA in several ways:

- High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- PHAs that are standard performers may be required to submit an improvement plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- PHAs that fail to execute or meet MOA requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART V: RECORD KEEPING

16-V.A. OVERVIEW

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-V.B. RECORD RETENTION

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

PHA Policy

During the term of each public housing tenancy, and for at least four years thereafter, the PHA will keep all documents related to a family's eligibility, tenancy, and termination.

In addition, the PHA will keep the following records for at least four years:

An application from each ineligible family and notice that the applicant is not eligible

Lead-based paint records as required by 24 CFR 35, Subpart B

Documentation supporting the establishment of flat rents and the public housing maximum rent

Documentation supporting the establishment of utility allowances and surcharges

Documentation supporting PHAS scores

Accounts and other records supporting PHA budget and financial statements for the program

Other records as determined by the PHA or as required by HUD

If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

16-V.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

PHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data.*

PHA Policy

Prior to utilizing HUD's EIV system, the PHA will adopt and implement EIV security procedures required by HUD.

Criminal Records

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. The PHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

PHA Policy

The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

The PHA will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within 5 business days of receiving the information.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART VII: NOTIFICATION TO APPLICANTS AND TENANTS REGARDING PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005 (VAWA)

16-VII.A. OVERVIEW

The Violence against Women Reauthorization Act of 2005 (VAWA) requires PHAs to inform public housing tenants of their rights under this law, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as tenants, PHAs may elect to provide the same information to applicants [24 CFR 5.2007(3)].

This part describes the steps that the PHA will take to ensure that all actual and potential beneficiaries of its public housing program are notified about their rights under VAWA.

16-VII.B. VAWA NOTIFICATION

PHA Policy

The PHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to public housing applicants and residents who are or have been victims of domestic violence, dating violence, or stalking (see sample notice in Exhibit 16-1)

The definitions of *domestic violence*, *dating violence*, and *stalking* provided in VAWA (included in Exhibit 16-1)

An explanation of the documentation that the PHA may require from an individual who claims the protections provided by VAWA (included in Exhibit 16-1)

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking

A statement of the PHA's obligation to keep confidential any information that it receives from a victim unless (a) the PHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibit 16-1)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibit 16-1)

Contact information for local victim advocacy groups or service providers

16-VII.C.NOTIFICATION TO APPLICANTS

PHA Policy

The PHA will provide all applicants with notification of their protections and rights under VAWA at the time they request an application for housing assistance.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The notice will explain the protections afforded under the law, inform each applicant of PHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The PHA will also include in all notices of denial a statement explaining the protection against denial provided by VAWA (see section 3-III.F).

16-VII.D. NOTIFICATION TO TENANTS [24 CFR 5.2007(3)]

VAWA requires PHAs to notify tenants assisted under public housing of their rights under this law, including their right to confidentiality and the limits thereof.

PHA Policy

The PHA will provide all tenants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination.

The notice will explain the protections afforded under the law, inform the tenant of PHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The PHA will also include in all lease termination notices a statement explaining the protection against termination or eviction provided by VAWA (see Section 13-IV.D).

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Exhibit 16-1
VIOLENCE AGAINST WOMEN ACT (VAWA) NOTIFICATION

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for public housing, the housing authority cannot refuse to admit you to the public housing program solely because you are a victim of domestic violence, dating violence, or stalking.

If you are the victim of domestic violence, dating violence, or stalking, the housing authority cannot evict you based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you if you were the victim of the abuse.

Reasons You Can Be Evicted

The housing authority can still evict you if the housing authority can show there is an *actual* and *imminent* (immediate) threat to other tenants or housing authority staff if you are not evicted. Also, the housing authority can evict you for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking against you. The housing authority cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

Removing the Abuser from the Household

The housing authority may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the public housing unit. If the housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, the housing authority must follow Federal, state, and local eviction procedures.

Proving that You Are a Victim of Domestic Violence, Dating Violence, or Stalking

The housing authority can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, or stalking. In cases of termination or eviction, the housing authority must give you at least 14 business days (i.e. Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority is free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the violence.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."

- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the housing authority may evict you.

Confidentiality

The housing authority must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority to release the information.
- The housing authority needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority to release the information.

If release of the information would put your safety at risk, you should inform the housing authority.

VAWA and Other Laws

VAWA does not limit the housing authority's duty to honor court orders about access to or control of a public housing unit. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

For Additional Information

If you have any questions regarding VAWA, please contact your Property Manager at 360-452-7631.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines ***domestic violence*** to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines ***dating violence*** as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) 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

VAWA defines ***stalking*** as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

© Copyright 2010 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.