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TAUNTON HOUSING AUTHORITY

Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The Taunton Housing Authority receives its operating subsidy for the public housing program from the Department of Housing and Urban Development. The THA is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. The PHA enters into an Annual Contributions Contract with HUD to administer the public housing program. The PHA must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the THA and its programs with emphasis on the public housing program. It also contains information about the purpose, intent and use of the plan and guide.

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of the PHA, its jurisdiction, its programs, and its mission and intent.

Part II: The Public Housing Program. This part contains information about public housing operation, roles and responsibilities, and partnerships.

Part III: The Admissions and Continued Occupancy (ACOP). This part discusses the purpose and organization of the plan and its revision requirements.

PART I: THE THA

1-I.A. OVERVIEW

This part describes the THA's creation and authorization, the general structure of the organization, and the relationship between the THA Board and staff.

1-I.B. ORGANIZATION AND STRUCTURE OF THE THA

Public housing is funded by the federal government and administered by the Taunton Housing Authority for the jurisdiction of the City of Taunton of Bristol County.

PHAs are governed by a board of officials that are generally called “commissioners.” Although some PHAs may use a different title for their officials, this document will hitherto refer to the “board of commissioners” or the “board” when discussing the board of governing officials.

Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation. The board of commissioners establishes policies under which the PHA conducts business, and ensures that those policies are followed by PHA staff. The board is responsible for preserving and expanding the agency’s resources and assuring the agency’s continued viability and success.

Formal actions of the PHA are taken through written resolutions, adopted by the board and entered into the official records of the PHA.

The principal staff member of the PHA is the executive director (ED), who is selected and hired by the board. The ED oversees the day to day operations of the PHA and is directly responsible for carrying out the policies established by the commissioners. The ED’s duties include hiring, training, and supervising the PHA’s staff, as well as budgeting and financial planning for the agency. Additionally, the ED is charged with ensuring compliance with federal and state laws, and program mandates. In some PHAs, the ED is known by another title, such as chief executive officer or president.

1-I.C. THA MISSION

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

THA Policy

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

1-I.D. THE THA'S COMMITMENT TO ETHICS AND SERVICE

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

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

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

PART II: THE PUBLIC HOUSING PROGRAM

1-II.A. OVERVIEW AND HISTORY OF THE PROGRAM

The intent of this section is to provide the public and staff an overview of the history and operation of public housing.

The United States Housing Act of 1937 (the “Act”) is responsible for the birth of federal housing program initiatives, known as public housing. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing for low-income residents. There have been many changes to the program since its inception in 1937.

The Housing Act of 1965 established the availability of federal assistance, administered through local public agencies, to provide rehabilitation grants for home repairs and rehabilitation. This act also created the federal Department of Housing and Urban Development (HUD).

The Housing Act of 1969 created an operating subsidy for the public housing program for the first time. Until that time, public housing was a self-sustaining program.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act or Housing Act of 1998 – was signed into law. Its purpose was to provide more private sector management guidelines to the public housing program and provide residents with greater choices. It also allowed PHAs more remedies to replace or revitalize severely distressed public housing developments. Highlights of the Reform Act include: the establishment of flat rents; the requirement for PHAs to develop five-year and annual plans; income targeting, a requirement that 40% of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and resident self-sufficiency incentives.

1-II.B. PUBLIC HOUSING PROGRAM BASICS

HUD writes and publishes regulations in order to implement public housing laws enacted by Congress. HUD contracts with the PHA to administer programs in accordance with HUD regulations and provides an operating subsidy to the PHA. The PHA must create written policies that are consistent with HUD regulations. Among these policies is the PHA's Admissions and Continued Occupancy Policy (ACOP). The ACOP must be approved by the board of commissioners of the PHA.

The job of the PHA pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. The PHA screens applicants for public housing and, if they are found eligible and accepted, the PHA offers the applicant a unit. If the applicant accepts the offer, the PHA will enter into a contract with the applicant known as the lease. At this point, the applicant becomes a tenant of the public housing program.

In the context of the public housing program, a tenant is defined as the adult person(s) (other than a live-in aide who (1) executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit. [24 CFR 966.53]. The Public Housing Occupancy Guidebook refers to tenants as "residents." The terms "tenant" and "resident" are used interchangeably in this policy. Additionally, this policy uses the term "family" or "families" for residents or applicants, depending on context.

Since the PHA owns the public housing development, the PHA is the landlord. The PHA must comply with all of the legal and management responsibilities of a landlord in addition to administering the program in accordance with HUD regulations and PHA policy.

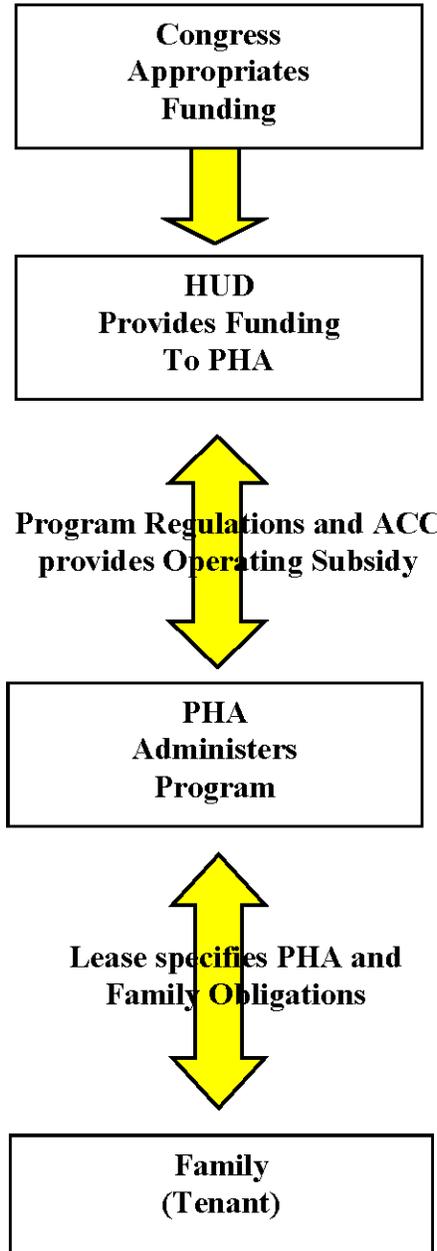
1-II.C. PUBLIC HOUSING PARTNERSHIPS

Relationships between the important parties are defined by federal regulations and by contract. To administer the public housing program, the PHA enters into a contractual relationship with HUD through the ACC. The PHA also enters into a contractual relationship with the tenant through the public housing lease. These contracts outline the roles and responsibilities of each party.

Federal regulations further identify the important roles of the parties involved. For the program to work and be successful, all parties involved – HUD, the PHA, and the tenant – must play their important parts.

The chart on the following page illustrates key aspects of these relationships.

The Public Housing Relationships



What does HUD do?

Federal law is the source of HUD responsibilities. HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement housing legislation passed by Congress
- Allocate operating subsidies to PHAs
- Allocate capital funding to PHAs
- Provide technical assistance to PHAs on interpreting and applying program requirements
- Monitor PHA compliance with program requirements and PHA performance in program administration.

What does the PHA do?

The PHA's responsibilities originate in federal regulations and the ACC. The PHA owns and manages public housing developments, administers the program under contract with HUD and has the following major responsibilities:

- Establish local policies
- Review applications from interested applicant families to determine whether applicants are eligible for the program
- Maintain waiting list and select families for admission
- Maintain housing units by making any necessary repairs in a timely manner
- Screen families who apply for tenancy, to determine if they will be good renters
- Offer units to families (minimize vacancies without overcrowding)
- Maintain properties to the standard of decent, safe, sanitary, and in good repair (including assuring compliance with uniform physical conditions standards)
- Make sure the PHA has adequate financial resources to maintain its housing stock
- Ensure that families continue to qualify under the program
- Collect rent due from the assisted family and comply with and enforce provisions of the lease
- Ensure that families comply with program rules
- Provide families with prompt and professional service
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's ACOP, and other applicable federal, state and local laws.

What does the Tenant do?

The tenant's responsibilities are articulated in the public housing lease. The tenant has the following broad responsibilities:

- Comply with the terms of the lease
- Provide the PHA with complete and accurate information, determined by the PHA to be necessary for administration of the program
- Cooperate in attending all appointments scheduled by the PHA
- Allow the PHA to inspect the unit at reasonable times and after reasonable notice
- Take responsibility for care of the housing unit, including any violations of uniform physical condition standards caused by the family
- Not engage in drug-related or violent criminal activity
- Notify the PHA before moving or termination of the lease
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit or assign the lease
- Promptly notify the PHA of any changes in family composition
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled in an effective manner.

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 902: Public Housing Assessment System
- 24 CFR Part 903: Public Housing Agency Plans
- 24 CFR Part 945: Designated Housing
- 24 CFR Part 960: Admission and Occupancy Policies
- 24 CFR Part 965: PHA-Owned or Leased Projects – General Provisions
- 24 CFR Part 966: Lease and Grievance Procedures

PART III: THE ADMISSIONS AND CONTINUED OCCUPANCY POLICIES

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

The ACOP is the PHA's written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements. The ACOP is required by HUD and it must be available for public review [CFR 24 Part 903]. The ACOP also contains policies that support the objectives contained in the PHA's Agency Plan.

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

1-III.B. CONTENTS OF THE POLICY

Unlike the housing choice voucher program, HUD regulations for public housing do not contain a list of what must be included in the ACOP. However, individual regulations contain requirements of inclusion in the PHA's written policy. At a minimum, the ACOP plan should cover PHA policies on these subjects:

- The organization of the waiting list and how families are selected and offered available units, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (Chapters 4 and 5)
- Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter 12)
- Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters 3 and 5)
- Procedures for verifying the information the family has provided (Chapter 7)
- The method for achieving deconcentration of poverty and income-mixing of public housing developments (Chapter 4)
- Grievance procedures (Chapter 14)
- Policies concerning payment by a family to the PHA of amounts the family owes the PHA (Chapter 15 and 16)
- Interim redeterminations of family income and composition (Chapter 9)
- Policies regarding community service requirements; (Chapter 11)
- Policies and rules about safety and ownership of pets in public housing (Chapter 10).

New Approach to Policy Development

HUD has developed an approach to monitoring policy that emphasizes the importance of consistency. The ACOP supports that goal by clearly defining PHA policy for PHA management and staff.

A primary focus of programs like HUD's Rental Integrity Monitoring (RIM) program has been consistency in how PHAs conduct their business and in how HUD monitors PHA activities. HUD has made it clear that consistency in PHA conduct is important. Referring to and following the ACOP is essential to maintaining consistency in applying PHA policy.

HUD makes a distinction between:

- Mandatory policies: those driven by legislation, regulations, current handbooks, notices, and legal opinions, and
- Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies the PHA has adopted. The PHA's Admissions and Continued Occupancy Policy is the document that contains and clarifies PHA policy. HUD's new direction adds additional emphasis to the need for a clearly written and comprehensive ACOP to guide staff in the clear and consistent application of policy.

HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. Therefore, following HUD guidance in the preparation of PHA policy, even though it is not mandatory, provides a PHA with a "safe harbor." If a PHA adopts its own optional policy, it must make its own determination that such policy is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than that suggested by HUD, but PHAs should carefully think through those decisions and be able to articulate how their policy is consistent with federal laws, regulations and mandatory policy.

1-III.C. UPDATING AND REVISING THE POLICY

The THA will revise this ACOP as needed to comply with changes in HUD regulations. The original policy and any changes must be approved by the board of commissioners of the THA, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

THA Policy

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

Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and HUD regulations requiring THAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the THA's public housing operations.

This chapter describes HUD regulations and THA policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the THA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the public housing program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the THA to ensure meaningful access to the public housing program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD's Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register* ("Notice of Guidance").

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require THAs to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. The THA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

When more than one civil rights law applies to a situation, the laws will be read and applied together.

THA Policy

No state or local nondiscrimination laws or ordinances apply.

2-I.B. NONDISCRIMINATION

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as THA policies, can prohibit discrimination against additional classes of people.

The THA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin (called “protected classes”).

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

THA Policy

The THA will not discriminate on the basis of marital status or sexual orientation.

The THA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the public housing program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or tenant toward or away from a particular area based on any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

Providing Information to Families

The THA must take steps to ensure that families are fully aware of all applicable civil rights laws. As part of the public housing orientation process, the THA will provide information to public housing applicant families about civil rights requirements.

Discrimination Complaints

If an applicant or tenant family believes that any family member has been discriminated against by the THA, the family should advise the THA. HUD requires the THA to make every reasonable attempt to determine whether the applicant's or tenant family's assertions have merit and take any warranted corrective action.

THA Policy

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

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

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

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

The THA must ensure that persons with disabilities have full access to the THA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program [24 CFR 8].

The THA must provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy [24 CFR 966.7(b)].

THA Policy

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

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

A specific name and phone number will be indicated as the contact for requests for accommodation for persons with disabilities.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

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

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the THA, or result in a “fundamental alteration” in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider’s operations.

Types of Reasonable Accommodations

When it is reasonable (see definition above and Section 2-II.E), the THA shall accommodate the needs of a person with disabilities. Examples include but are not limited to:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Permitting a higher utility allowance for the unit if a person with disabilities requires the use of specialized equipment related to the disability
- Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability
- Installing a ramp into a dwelling or building
- Installing grab bars in a bathroom
- Installing visual fire alarms for hearing impaired persons
- Allowing a THA-approved live-in aide to reside in the unit if that person is determined to be essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities, and would not be otherwise living in the unit.
- Providing a designated handicapped-accessible parking space
- Allowing an assistance animal
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with THA staff
- Displaying posters and other housing information in locations throughout the THA's office in such a manner as to be easily readable from a wheelchair

2-II.C. REQUEST FOR AN ACCOMMODATION

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

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

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

THA Policy

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

2-II.D. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

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

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

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

When verifying a disability, the THA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16 (Program Administration). In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- The THA must request only information that is necessary to evaluate the disability-related need for the accommodation. The THA may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

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

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

Requests for accommodations must be assessed on a case-by-case basis. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the THA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the THA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the THA may verify the need for the requested accommodation.

THA Policy

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

If the THA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the THA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

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

If the THA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the THA will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal the THA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

HUD regulations require the THA to take reasonable steps to ensure that persons with disabilities related to hearing and vision have reasonable access to the THA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, the THA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

THA Policy

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

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

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

2-II.G. PHYSICAL ACCESSIBILITY

The THA must comply with a variety of regulations pertaining to physical accessibility, including the following.

- PIH 2002-01 (HA), Accessibility Notice
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

The THA's policies concerning physical accessibility must be readily available to applicants and resident families. They can be found in three key documents.

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern the THA's responsibilities with regard to physical accessibility.
- Notice PIH 2002-01(HA) Accessibility Notice (which must be posted in the public housing offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The THA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of THA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the public housing program.

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

A THA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 966.7].

When applicants with disabilities are denied assistance, the notice of denial must inform them of their right to request an informal hearing [24 CFR 960.208(a)].

When a family's lease is terminated, the notice of termination must inform the family of their right to request a hearing in accordance with the THA's grievance process [24 CFR 966.4(1)(3)(ii)].

When reviewing reasonable accommodation requests, the THA must consider whether reasonable accommodation will allow the family to overcome the problem that led to the THA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the THA must make the accommodation [24 CFR 966.7].

In addition, the THA must provide reasonable accommodation for persons with disabilities to participate in the hearing process [24 CFR 966.56(h)].

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

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the public housing program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

The THA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP persons are defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this Admissions and Continued Occupancy Policy, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families.

In order to determine the level of access needed by LEP persons, the THA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the public housing program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the THA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the THA.

2-III.B. ORAL INTERPRETATION

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, the THA will generally offer, or ensure that the family is offered through other sources, competent interpretation services free of charge to the LEP person.

THA Policy

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

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

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

2-III.C. WRITTEN TRANSLATION

Translation is the replacement of a written text from one language into an equivalent written text in another language.

THA Policy

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

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

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

2-III.D. IMPLEMENTATION PLAN

After completing the four-factor analysis and deciding what language assistance services are appropriate, the THA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the THA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the THA's public housing program and services.

THA Policy

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

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

EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymTHAtic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major live activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the THA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the public housing program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this definition of disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the public housing program, yet an accommodation is needed to provide equal opportunity.

Chapter 3

ELIGIBILITY

INTRODUCTION

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

To be eligible for the public housing program:

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

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and THA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

Part III: Denial of Admission. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the THA to deny admission.

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the public housing unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.403 and HUD-50058 IB, p. 13]

The terms *family* and *household* have different meanings in the public housing program.

Family

To be eligible for admission, an applicant must qualify as a family. A family may be a single person or a group of persons. *Family* as defined by HUD includes a family with a child or children, two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides, or a single person. The THA has the discretion to determine if any other group of persons qualifies as a family.

THA Policy

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

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

Household

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

3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY

Family Break-up

THA Policy

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

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

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

In the absence of a judicial decision or an agreement among the original family members, the THA will determine which family retains their placement on the waiting list, or will continue in occupancy taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals.

Remaining Member of a Tenant Family [24 CFR 5.403]

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit [PH Occ GB, p. 26]. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6-I.B, for the policy on “Caretakers for a Child.”

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

Head of household means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a cohead or spouse.

THA Policy

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

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

3-I.E. SPOUSE, COHEAD, AND OTHER ADULT

A family may have a spouse or cohead, but not both [HUD-50058 IB, p. 13].

Spouse means the marriage partner of the head of household.

THA Policy

A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

A *cohead* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one cohead.

THA Policy

Minors who are emancipated under state law may be designated as a cohead.

Other adult means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults [HUD-50058 IB, p. 14].

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

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

Joint Custody of Dependents

THA Policy

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

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

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

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

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

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY

Elderly Persons

An *elderly person* is a person who is at least 62 years of age [24 CFR 5.100].

Near-Elderly Persons

A *near-elderly person* is a person who is at least 50 years of age but below the age of 62 [24 CFR 945.105].

Elderly Family

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

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

Persons with Disabilities

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

As discussed in Chapter 2, the THA must make all aspects of the public housing program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

Disabled Family

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the THA from denying admission for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from enforcing the lease following the policies in Chapter 13.

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

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

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)]. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near THA premises [24 CFR 966.4(f)].

THA Policy

A resident family must notify the THA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 14 consecutive days or a total of 30 cumulative calendar days during any 12 month period.

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

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

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

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

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

Foster adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609(c)(2)].

The term *foster child* is not specifically defined by the regulations.

Foster children and foster adults that are living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, pp. 13-14].

THA Policy

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

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

THA Policy

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

Absent Students

THA Policy

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

Absences Due to Placement in Foster Care [24 CFR 5.403]

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

THA Policy

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

Absent Head, Spouse, or Cohead

THA Policy

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

Individuals Confined for Medical Reasons

THA Policy

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

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

Return of Permanently Absent Family Members

THA Policy

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

3-I.M. LIVE-IN AIDE

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

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

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

THA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional of the family's choosing, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.

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

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

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

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

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

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

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

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

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

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

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

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

HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Using Income Limits for Eligibility [24 CFR 960.201]

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

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

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

If admissions of extremely low-income families to the THA's housing choice voucher program during a THA fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the THA's public housing basic targeting requirement for the same fiscal year.

The fiscal year credit for housing choice voucher program admissions that exceed the minimum voucher program targeting requirement must not exceed the lower of:

- Ten percent of public housing waiting list admissions during the THA fiscal year
- Ten percent of waiting list admission to the THA's housing choice voucher program during the THA fiscal year
- The number of qualifying low-income families who commence occupancy during the fiscal year of public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

For discussion of how income targeting is used in tenant selection, see Chapter 4.

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

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

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the THA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

Declaration [24 CFR 5.508]

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

U.S. Citizens and Nationals

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

THA Policy

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

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with THA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The THA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

Mixed Families

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 14 for a discussion of informal hearing procedures.

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

A THA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the THA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

THA Policy

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

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

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

Informal hearing procedures are contained in Chapter 14.

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

For new occupants joining the resident family the THA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, the THA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

THA Policy

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218]

For every family member age 6 or older the family must provide documentation of a valid Social Security Number (SSN) or a certification stating that no SSN has been issued. If a family member who is required to execute a certification is less than 18 years old, the certification must be executed by the individual's parent or guardian [24 CFR 5.216(j)]. Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

If a new member who is at least six years of age is added to the family, the new member's SSN documentation must be submitted at the family's next interim or regular reexamination, whichever comes first. If any member of the family who is at least six years of age obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted at the family's next regularly scheduled reexamination.

The THA must deny admission to an applicant family if they do not meet the SSN disclosure, documentation and verification, and certification requirements contained in 24 CFR 5.216.

3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230]

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/

Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

The THA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the THA to obtain information that the THA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b)].

PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

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

In addition, HUD requires or permits the THA to deny admission based on certain types of current or past behaviors of family members as discussed in this part.

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

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

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

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

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

THA Policy

The THA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the THA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the THA, or the person who committed the crime is no longer living in the household.

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

THA Policy

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

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

THA Policy

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

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

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

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

Criminal Activity [24 CFR 960.203 (b) and (c)]

Under the Public Housing Assessment System (THAS), THAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points.

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

THA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied admission.

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

Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

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

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

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

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past 5 years. A conviction for such activity will be given more weight than an arrest or an eviction.

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

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

HUD authorizes the THA to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

In the event of the receipt of unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

THA Policy

The THA will deny admission to an applicant family if the THA determines that the family:

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

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

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

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

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

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

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

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

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

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

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

3-III.D. SCREENING

Screening for Eligibility

THAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the public housing program. This authority assists the THA in complying with HUD requirements and THA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the THA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

The THA may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

THA Policy

The THA will perform criminal background checks through local law enforcement, Criminal Offenders Records check and Intelius for all adult household members.

PHA's are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

If the THA proposes to deny admission based on a criminal record or on lifetime sex offender registration information, the THA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission [24 CFR 5.903(f) and 5.905(d)].

Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]

HUD authorizes THAs to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, the THA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head, spouse, or cohead regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform the THA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use.

Drug Abuse Treatment Facility means an entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use, and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

Currently engaging in illegal use of a drug means illegal use of a drug that occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

Any consent form used for the purpose of obtaining information from a drug abuse treatment facility to determine whether a household member is currently engaging in illegal drug use must expire automatically after the THA has made a final decision to either approve or deny the admission of such person.

Any charges incurred by the THA for information provided from a drug abuse treatment facility may not be passed on to the applicant or tenant.

If the THA chooses to obtain such information from drug abuse treatment facilities, it must adopt and implement one of the two following policies:

Policy A: The THA must submit a request for information to a drug abuse treatment facility for all families before they are admitted. The request must be submitted for each proposed household member who is at least 18 years of age, and for each family head, spouse, or cohead regardless of age.

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

If the THA chooses to obtain such information, it must abide by the HUD requirements for records management and confidentiality as described in 24 CFR 960.205(f).

THA Policy

The THA will obtain information from drug abuse treatment facilities to determine whether any applicant family's household members are currently engaging in illegal drug activity only when the THA has determined that the family will be denied admission based on a family member's drug-related criminal activity, and the family claims that the culpable family member has successfully completed a supervised drug or alcohol rehabilitation program.

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

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

THA Policy

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

Payment of rent and utilities

Caring for a unit and premises

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

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

Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C

Compliance with any other essential conditions of tenancy

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

THAs have a variety of resources available to them for determination of the suitability of applicants. Generally, THAs should reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

THA Policy

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

Past Performance in Meeting Financial Obligations, Especially Rent

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

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

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

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

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

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

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

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

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

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

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

Evidence

THA Policy

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

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

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

HUD authorizes the THA to consider all relevant circumstances when deciding whether to deny admission based on a family's past history except in the situations for which denial of admission is mandated (see Section 3-III.B).

In the event the THA receives unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). In a manner consistent with its policies, THAs may give consideration to factors which might indicate a reasonable probability of favorable future conduct.

THA Policy

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

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

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

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

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

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

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

HUD permits THAs to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which warrants denial of admission, to not reside in the unit.

THA Policy

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

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

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

If the family includes a person with disabilities, the THA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

THA Policy

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

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

The THA will notify an applicant family of its final determination of eligibility in accordance with the policies in Section 4-III.E.

If a THA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the THA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)].

THA Policy

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

Notice requirements related to denying admission to noncitizens are contained in Section 3-II.B.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

The term *person with disabilities* means a person who has any of the following types of conditions.

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

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

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

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

 - Is attributable to a mental or physical impairment or combination of mental and physical impairments
 - Is manifested before the person attains age twenty-two
 - Is likely to continue indefinitely
 - Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency
 - Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”
- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

Individual with Handicaps [24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

- (1) Physical or mental impairment includes:
 - (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine
 - (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- (2) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) Is regarded as having an impairment means:
 - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation
 - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment
 - (c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

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

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

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

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

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

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

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

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

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

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

4-I.B. APPLYING FOR ASSISTANCE

Any family that wishes to reside in public housing must apply for admission to the program [24 CFR 1.4(b)(2)(ii), 24 CFR 960.202(a)(2)(iv), and PH Occ GB, p. 68]. HUD permits the THA to determine the format and content of its applications, as well how such applications will be made available to interested families and how applications will be accepted by the THA.

THA Policy

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

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

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

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

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

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

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

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

Limited English Proficiency

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

4-I.D. PLACEMENT ON THE WAITING LIST

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

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

Ineligible for Placement on the Waiting List

THA Policy

If the THA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the THA will send written notification of the ineligibility determination within 10 business days of receiving a completed application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal hearing and explain the process for doing so (see Chapter 14).

Eligible for Placement on the Waiting List

THA Policy

The THA will send written notification of the preliminary eligibility determination within 10 business days of receiving a completed application. If applicable, the notice will also indicate the waiting list preference(s) for which the family appears to qualify.

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

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

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

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

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

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

4-II.B. ORGANIZATION OF THE WAITING LIST

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

THA Policy

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

Name and social security number of head of household

Unit size required (number of family members)

Amount and source of annual income

Accessibility requirement, if any

Date and time of application or application number

Household type (family, elderly, disabled)

Admission preference, if any

Race and ethnicity of the head of household

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

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

THA Policy

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

The THA will not adopt site-based waiting lists.

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

HUD permits, but does not require, that THAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs [24 CFR 982.205(a)(1)].

THA Policy

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

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

Closing the Waiting List

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

THA Policy

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

Reopening the Waiting List

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

THA Policy

The THA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice. The notice will specify where, when, and how applications are to be received.

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

[List here newspapers/other media where notices will be published]

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

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

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

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

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

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

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

THA Policy

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

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

THA Policy

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

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

4-II.F. UPDATING THE WAITING LIST

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

Purging the Waiting List

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

THA Policy

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

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

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

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

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

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

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

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

Removal from the Waiting List

THA Policy

The THA will remove applicants from the waiting list if they have requested that their name be removed. In such cases no informal hearing is required.

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

If a family is removed from the waiting list because the THA has determined the family is not eligible for admission, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal hearing regarding the THA's decision (see Chapter 14) [24 CFR 960.208(a)].

PART III: TENANT SELECTION

4-III.A. OVERVIEW

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

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

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

THA Policy

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

4-III.B. SELECTION METHOD

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

Local / Other Preferences [24 CFR 960.206]

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

THA Policy The THA will use the following local preference:

Residency Preference: for families who live, work, or have been hired to work or who are attending school or participating in training programs in the jurisdiction.

Veterans Preference: any person who is a veteran, the spouse, surviving spouse, parent, child of a veteran or other dependent of such person.

In order to bring higher income families into public housing, the THA will establish a preference for “working” families, where the head, spouse, cohead, or sole member is employed at least 20 hours per week. As required by HUD, families where the head and spouse, or sole member is a person age 62 or older, or is a person with disabilities, will also be given the benefit of the working preference [24 CFR 960.206(b)(2)].

Housing First Preference: Eligible homeless families in the Commonwealth referred by the Department of Transitional Assistance.

Income Targeting Requirement [24 CFR 960.202(b)]

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

If a THA also operates a housing choice voucher (HCV) program, admissions of extremely low-income families to the THA’s HCV program during a THA fiscal year that exceed the 75% minimum target requirement for the voucher program, shall be credited against the THA’s basic targeting requirement in the public housing program for the same fiscal year. However, under these circumstances the fiscal year credit to the public housing program must not exceed the lower of: (1) ten percent of public housing waiting list admissions during the THA fiscal year; (2) ten percent of waiting list admissions to the THA’s housing choice voucher program during the THA fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of THA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

THA Policy

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

Mixed Population Developments [24 CFR 960.407]

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

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

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

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

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

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

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

THA Policy

The THA does not have designated elderly or designated disabled housing at this time.

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

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

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

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

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

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

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

THA Policy

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

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

THA Policy

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

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

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

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

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

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

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

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

THA Policy

For developments outside the EIR the THA will take the following actions to provide for deconcentration of poverty and income mixing:

[Insert THA policy here]

Order of Selection [24 CFR 960.206(e)]

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

THA Policy

Families will be selected from the waiting list based on preference. Among applicants with the same preference, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the THA.

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

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

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

4-III.C. NOTIFICATION OF SELECTION

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

THA Policy

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

The notice will inform the family of the following:

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

Who is required to attend the interview

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

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

Other documents and information that should be brought to the interview

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

4-III.D. THE APPLICATION INTERVIEW

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

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

THA Policy

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

The head of household and the spouse/cohead will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/cohead may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the THA.

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

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

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

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

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

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

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

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

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

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

THA Policy

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

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

THA Policy

If the THA determines that the family is ineligible, the THA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal hearing (see Chapter 14).

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

Chapter 5

OCCUPANCY STANDARDS AND UNIT OFFERS

INTRODUCTION

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

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

Policies in this chapter are organized in two parts.

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

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

PART I: OCCUPANCY STANDARDS

5-I.A. OVERVIEW

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

5-I.B. DETERMINING UNIT SIZE

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

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

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

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

THA Policy

The THA will use the same occupancy standards for each of its developments.

The THA's occupancy standards are as follows:

The THA will assign one bedroom for each two persons within the household, except in the following circumstances:

Persons of the opposite sex (other than spouses, and children under age 5) will not be required to share a bedroom.

Persons of different generations will not be required to share a bedroom.

Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide's family.

Single person families will be allocated a zero or one bedroom.

Foster children will be included in determining unit size.

The THA will reference the following standards in determining the appropriate unit bedroom size for a family:

BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	6	10
6	8	12

5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS

Types of Exceptions

THA Policy

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

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

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

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

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

Processing of Exceptions

THA Policy

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

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

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

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

PART II: UNIT OFFERS

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

5-II.A. OVERVIEW

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

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

THA Policy

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

5-II.B. NUMBER OF OFFERS

THA Policy

The THA has adopted a "two-to-three offer plan" for offering units to applicants. Under this plan, the THA will determine how many locations within its jurisdiction have available units of suitable size and type in the appropriate type of project. The number of unit offers will be based on the distribution of vacancies. If a suitable unit is available in:

Three (3) or more locations: The applicant will be offered a unit in the location with the highest number of vacancies. If the offer is rejected, the applicant will be offered a suitable unit in the location with the second highest number of vacancies. If that unit is rejected, a final offer will be made in the location with the third highest number of vacancies. The offers will be made in sequence and the applicant must refuse an offer before another is made.

Two (2) locations: The applicant will be offered a suitable unit in the location with the higher number of vacancies. If the offer is rejected, a final offer will be made at the other location. The offers will be made in sequence and the applicant must refuse the first offer before a second offer is made.

One (1) location: The applicant will be offered a suitable unit in that location. If the offer is rejected, the applicant will be offered the next suitable unit that becomes available, whether it is at the same location as the first offer or at another location. The second unit offer will be the final offer, unless there is good cause for refusing the offer.

If more than one unit of the appropriate type and size is available, the first unit to be offered will be the first unit that is ready for occupancy.

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

THA Policy

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

Offers made by telephone will be confirmed by letter.

5-II.D. REFUSALS OF UNIT OFFERS

Good Cause for Unit Refusal

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

THA Policy

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

Inaccessibility to source of employment, education, or job training, children's day care, or 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 THA'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

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

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

Unit Refusal Without Good Cause

THA Policy

When an applicant rejects the final unit offer without good cause, the THA will remove the applicant's name from the waiting list and send notice to the family of such removal. The notice will inform the family of their right to request an informal hearing and the process for doing so (see Chapter 14).

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

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

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

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

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

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

THA Policy

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

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

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

5-II.F. DESIGNATED HOUSING

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

Chapter 6

INCOME AND RENT DETERMINATIONS

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

INTRODUCTION

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

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

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

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

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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

5.609 Annual income.

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

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

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

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

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

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
- Earned Income Disallowance (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this ACOP, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

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

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

Temporarily Absent Family Members

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

THA Policy

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

Absent Students

THA Policy

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

Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

THA Policy

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

Absent Head, Spouse, or Cohead

THA Policy

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

Individuals Confined for Medical Reasons

THA Policy

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

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

Joint Custody of Children

THA Policy

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

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

Caretakers for a Child

THA Policy

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

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

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

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

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

6-I.C. ANTICIPATING ANNUAL INCOME

The THA is required to count all income “anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date” [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

Basis of Annual Income Projection

The THA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the THA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- The THA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

THA Policy

When the THA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the THA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the THA to show why the historic pattern does not represent the family’s anticipated income.

Known Changes in Income

If the THA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving \$6/hour will begin to receive \$6.25/hour in the eighth week after the effective date of the reexamination. In such a case the THA would calculate annual income as follows: $(\$6/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$6.25 \times 40 \text{ hours} \times 45 \text{ weeks})$.

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the THA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the THA’s policy on reexaminations does not require interim reexaminations for other types of changes.

Using Up-Front Income Verification (UIV) to Project Income

HUD strongly recommends the use of up-front income verification (UIV). UIV is “the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals” [PIH Notice 2004-01 Verification Guidance (“VG”), p. 7].

HUD allows THAs to use UIV information in conjunction with family-provided documents to anticipate income.

THA Policy

THA procedures for anticipating annual income will include the use of UIV methods approved by HUD in conjunction with family-provided documents dated within the last 60 days of the THA interview date.

The THA will follow “HUD Guidelines for Projecting Annual Income When Up-Front Income Verification (UIV) Data Is Available” in handling differences between UIV and family-provided income data. The guidelines depend on whether a difference is substantial or not. HUD defines *substantial difference* as a difference of \$200 or more per month.

No Substantial Difference. If UIV information for a particular income source differs from the information provided by a family by less than \$200 per month, the THA will follow these guidelines:

If the UIV figure is less than the family’s figure, the THA will use the family’s information.

If the UIV figure is more than the family’s figure, the THA will use the UIV data unless the family provides documentation of a change in circumstances to explain the discrepancy (e.g., a reduction in work hours). Upon receipt of acceptable family-provided documentation of a change in circumstances, the THA will use the family-provided information.

Substantial Difference. If UIV information for a particular income source differs from the information provided by a family by \$200 or more per month, the THA will follow these guidelines:

The THA will request written third-party verification from the discrepant income source in accordance with 24 CFR 5.236(b)(3)(i).

When the THA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), the THA will review historical income data for patterns of employment, paid benefits, and receipt of other income.

The THA will analyze all UIV, third-party, and family-provided data and attempt to resolve the income discrepancy.

The THA will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

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

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

THA Policy

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

Some Types of Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

Types of Earned Income Not Counted in Annual Income

Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]

This type of income (including gifts) is not included in annual income.

THA Policy

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

Children's Earnings [24 CFR 5.609(c)(1)]

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income. (See Eligibility chapter for a definition of *foster children*.)

Certain Earned Income of Full-Time Students

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

Income of a Live-in Aide.

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

Income Earned under Certain Federal Programs [24 CFR 5.609(c)(17)]

Income from some federal programs is specifically excluded from consideration as income, including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

Resident Service Stipend [24 CFR 5.600(c)(8)(iv)]

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the THA, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the THA's governing board. No resident may receive more than one such stipend during the same period of time.

State and Local Employment Training Program

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

THA Policy

The THA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual’s ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

The THA defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the THA will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the THA's interim reporting requirements (see chapter on reexaminations).

HUD-Funded Training Programs

Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

THA Policy

To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs.

Earned Income Tax Credit. Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

Earned Income Disallowance. The earned income disallowance is discussed in section 6-I.E below.

6-I.E. EARNED INCOME DISALLOWANCE [24 CFR 960.255]

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 960.255 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

Eligibility

This disallowance applies only to individuals in families already participating in the public housing program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

THA Policy

The THA defines *prior income*, or *prequalifying income*, as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

Initial 12-Month Exclusion

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

THA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

Second 12-Month Exclusion and THAse-In

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

Lifetime Limitation

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

THA Policy

During the 48-month eligibility period, the THA will conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

Individual Savings Accounts [24 CFR 960.255(d)]

THA Policy

The THA chooses not to establish a system of individual savings accounts (ISAs) for families who qualify for the EID.

The following rules pertaining to ISAs do not apply to this public housing program.

A qualified family paying income-based rent may choose an ISA instead of being given the EID. The THA must advise the family that the ISA option is available. Families who choose the ISA will pay the higher rent and the THA will deposit the difference between the higher rent and the EID rent in the savings account.

Amounts deposited to ISAs may only be withdrawn for the following reasons:

- Because the family is purchasing a home
- To pay education costs of family members
- Because the family is moving out of public or assisted housing
- To pay any other expenses the THA authorizes to promote economic self-sufficiency

The THA is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The THA may not charge the family a fee for maintaining the account.

At least once each year the THA must provide the family with a statement of the balance in their account, including any interest earned, if required by state law.

THA Policy

When applicable, the THA will provide the family with a statement of the balance in their account, including any interest earned, annually and upon request when the family makes withdrawals from the account.

If the family moves out of public housing, the THA must return the balance in the family's ISA, less any amounts the family owes the THA.

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

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

Business Expenses

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

THA Policy

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

Business Expansion

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

THA Policy

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

Capital Indebtedness

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

THA Policy

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

Negative Business Income

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

Withdrawal of Cash or Assets from a Business

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

THA Policy

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

Co-owned Businesses

THA Policy

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

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

Overview

There is no asset limitation for participation in the public housing program. However, HUD requires that the THA include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the THA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and THA policies related to each type of asset.

General Policies

Income from Assets

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

THA Policy

Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the THA to show why the asset income determination does not represent the family’s anticipated asset income.

Valuing Assets

The calculation of asset income sometimes requires the THA to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

THA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28 and PH Occ GB, p. 121].

Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

Imputing Income from Assets [24 CFR 5.609(b)(3)]

When net family assets are \$5,000 or less, the THA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, the THA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HUD-established passbook savings rate.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for the THA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

Withdrawal of Cash or Liquidation of Investments

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

Jointly Owned Assets

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

THA Policy

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

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

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

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

Minimum Threshold

The THA may set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

THA Policy

The THA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$1,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in nonrevocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

Separation or Divorce

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

THA Policy

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

Foreclosure or Bankruptcy

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

Family Declaration

THA Policy

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

Types of Assets

Checking and Savings Accounts

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

THA Policy

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

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

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

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

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

THA Policy

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

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

Equity in Real Property or Other Capital Investments

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25 and PH, p. 121].

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

THA Policy

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

Trusts

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

Revocable Trusts

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

Nonrevocable Trusts

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

Retirement Accounts

Company Retirement/Pension Accounts

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the THA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

IRA, Keogh, and Similar Retirement Savings Accounts

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

Personal Property

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

THA Policy

In determining the value of personal property held as an investment, the THA will use the family's estimate of the value. However, the THA also may obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

THA Policy

Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

Life Insurance

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6-I.H. PERIODIC PAYMENTS

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

Periodic Payments Included in Annual Income

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)].

THA Policy

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

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

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]

THA Policy

The THA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)].
Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].

6-I.I. PAYMENTS IN LIEU OF EARNINGS

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

6-I.J. WELFARE ASSISTANCE

Overview

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

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

The THA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was a public housing resident at the time the sanction was imposed.

Covered Families

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

Imputed Income

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

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

For special procedures related to grievance hearings based upon the THA’s denial of a family’s request to lower rent when the family experiences a welfare benefit reduction, see Chapter 14, Grievances and Appeals.

Offsets

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

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

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

Alimony and Child Support

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

THA Policy

The THA will count court-awarded amounts for alimony and child support unless the THA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

Regular Contributions or Gifts

The THA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

THA Policy

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

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

6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)], except that in accordance with Section 224 of the FY 2005 Appropriations Act, the portion of any athletic scholarship assistance available for housing costs must be included in annual income [PIH Notice 2005-16].

THA Policy

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

- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
 - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
 - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
 - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
 - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))

- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

HUD regulations require THAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

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

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

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7, Verifications.

Anticipating Expenses

THA Policy

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

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

6-II.B. DEPENDENT DEDUCTION

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

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

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

The medical expense deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

Definition of *Medical Expenses*

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

THA Policy

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

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

Families That Qualify for Both Medical and Disability Assistance Expenses

THA Policy

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

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

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

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

Earned Income Limit on the Disability Assistance Expense Deduction

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

THA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the THA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the THA determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members’ incomes [PH Occ GB, p. 124].

Eligible Disability Expenses

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows: “Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals” [PH Occ GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work [HCV GB, p. 5-30].

HUD advises THAs to further define and describe auxiliary apparatus [VG, p. 30].

Eligible Auxiliary Apparatus

THA Policy

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

Eligible Attendant Care

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

THA Policy

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

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

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

Payments to Family Members

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are reimbursed by an outside source.

Necessary and Reasonable Expenses

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

THA Policy

The THA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the THA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the THA will consider, the family's justification for costs that exceed typical costs in the area.

Families That Qualify for Both Medical and Disability Assistance Expenses

THA Policy

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

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

6-II.F. CHILD CARE EXPENSE DEDUCTION

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family’s household, are included when determining the family’s child care expenses.

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

THA Policy

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

In evaluating the family’s request, the THA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

THA Policy

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

Furthering Education

THA Policy

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

Being Gainfully Employed

THA Policy

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

Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

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

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

The THA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

THA Policy

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

Eligible Child Care Expenses

The type of care to be provided is determined by the tenant family. The THA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

Allowable Child Care Activities

THA Policy

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

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

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

Necessary and Reasonable Costs

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

THA Policy

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

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

6-II.G. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)]

Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the THA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128].

The *Form HUD-50058 Instruction Booklet* states that the maximum allowable amount for total permissive deductions is less than \$90,000 per year.

THA Policy

The THA has opted not to use permissive deductions.

PART III: CALCULATING RENT

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

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

TTP Formula [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the THA

The THA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

Welfare Rent [24 CFR 5.628]

THA Policy

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

THA Policy

The minimum rent for this locality is \$0.

Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134]

THAs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At the discretion of the THA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

The THA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to THA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

THA Policy

The THA chooses not to adopt optional changes to income-based rents.

Ceiling Rents [24 CFR 960.253 (c)(2) and (d)]

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing.

Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ GB, p. 135].

THA Policy

The THA chooses not to use ceiling rents.

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

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

THA Policy

The THA will make utility reimbursements to the family.

6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]

THA Policy

The financial hardship rules described below do not apply in this jurisdiction because the THA has established a minimum rent of \$0.

Overview

If the THA establishes a minimum rent greater than zero, the THA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the THA determines that a hardship exists, the TTP is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

THA Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

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

THA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent or tenant-paid utilities.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.

(4) A death has occurred in the family.

THA Policy

In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

(5) The family has experienced other circumstances determined by the THA.

THA Policy

The THA has not established any additional hardship criteria.

Implementation of Hardship Exemption

Determination of Hardship

When a family requests a financial hardship exemption, the THA must suspend the minimum rent requirement beginning the first of the month following the family's request.

The THA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

THA Policy

The THA defines temporary hardship as a hardship expected to last 90 days or less.

Long term hardship is defined as a hardship expected to last more than 90 days.

The THA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

When the minimum rent is suspended, the TTP reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption	
Assume the THA has established a minimum rent of \$35.	
TTP – No Hardship	TTP – With Hardship
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$35 Minimum rent	\$35 Minimum rent
Minimum rent applies. TTP = \$35	Hardship exemption granted. TTP = \$15

THA Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

The THA will make the determination of hardship within 30 calendar days.

No Financial Hardship

If the THA determines there is no financial hardship, the THA will reinstate the minimum rent and require the family to repay the amounts suspended.

For procedures pertaining to grievance hearing requests based upon the THA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

THA Policy

The THA will require the family to repay the suspended amount within 30 calendar days of the THA's notice that a hardship exemption has not been granted.

Temporary Hardship

If the THA determines that a qualifying financial hardship is temporary, the THA must reinstate the minimum rent from the beginning of the first of the month following the date of the family's request for a hardship exemption.

The family must resume payment of the minimum rent and must repay the THA the amounts suspended. HUD requires the THA to offer a reasonable repayment agreement, on terms and conditions established by the THA. The THA also may determine that circumstances have changed and the hardship is now a long-term hardship.

For procedures pertaining to grievance hearing requests based upon the THA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

THA Policy

The THA will enter into a repayment agreement in accordance with the THA's repayment agreement policy (see Chapter 16).

Long-Term Hardship

If the THA determines that the financial hardship is long-term, the THA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

THA Policy

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

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

Overview

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

For policies on establishing and updating utility allowances, see Chapter 16.

Reasonable Accommodation [24 CFR 8]

On request from a family, THAs 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 with a disability [PH Occ GB, p. 172].

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 related to reasonable accommodations.

Utility Allowance Revisions [24 CFR 965.507]

The THA must review its schedule of utility allowances each year. Between annual reviews, the THA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. 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 in such revision became effective [PH Occ GB, p. 171].

The tenant rent calculations must reflect any changes in the THA's utility allowance schedule [24 CFR 960.253(c)(3)].

THA Policy

Unless the THA 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.

6-III.D. PRORATED RENT FOR MIXED FAMILIES [24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The THA must prorate the assistance provided to a mixed family. The THA will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, the THA must:

- (1) Subtract the TTP from a maximum rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).
- (3) Multiply the member maximum subsidy by the number of eligible family members.
- (4) Subtract the subsidy calculated in the last step from the maximum rent. This is the prorated TTP.
- (5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.

THA Policy

Revised public housing maximum rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted.

For policies related to the establishment of the public housing maximum rent see Chapter 16.

6-III.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]

Flat Rents [24 CFR 960.253(b)]

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

There is no utility allowance or reimbursement with flat rents. When the family elects to pay the flat rent, the flat rent amount quoted to the family by the THA is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents are contained in Chapter 16.

Family Choice in Rents [24 CFR 960.253(a) and (e)]

Once each year, the THA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. The THA must document that flat rents were offered to families under the methods used to determine flat rents for the THA.

THA Policy

The annual THA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

The THA will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.

The THA must provide sufficient information for families to make an informed choice. This information must include the THA's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year the THA is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If the THA determines that a financial hardship exists, the THA must immediately allow the family to switch from flat rent to the income-based rent.

THA Policy

Upon determination by the THA that a financial hardship exists, the THA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by the THA to be appropriate

THA Policy

The THA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

Change in Flat Rents

THA Policy

Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit [PH Occ GB, pp. 137-138].

Flat Rents and Earned Income Disallowance [A&O FAQs]

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

A family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their 48 month period would have the 12 cumulative months of full (100 percent) and THAse-in (50 percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the 48-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 48-month lifetime limit expire while the family is paying flat rent.

Flat Rents and Mixed Families [A&O FAQs]

Mixed families electing to pay flat rent must first have a flat rent worksheet completed to see if the flat rent must be prorated. The worksheet is located in Appendix III of the *Form HUD-50058 Instruction Booklet*.

If the flat rent is greater than or equal to the public housing maximum rent, there is no proration of flat rent and the family pays the flat rent for the unit.

If the flat rent is less than the maximum rent, the worksheet will calculate a prorated flat rent. The mixed family will pay the prorated flat rent.

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EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

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

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

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

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

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

(6) Welfare assistance payments.

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

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

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

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

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

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

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

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

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

HHS DEFINITION OF "ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

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

(b) [The definition of "assistance"] excludes:

(1) Nonrecurrent, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

(c) Annual income does not include the following:

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
- (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the THA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the THA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

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

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

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

(13) [Reserved]

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

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

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

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

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

a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));

b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931));

g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from

spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

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EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, THAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

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EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) Definitions. The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

(c) Disallowance of increase in annual income—

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and THAse-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

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

Economic self-sufficiency program. See definition at Sec. 5.603.

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

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the THA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the THA, the welfare agency will inform the THA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the THA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The THA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the THA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the THA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The THA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of THA decision.

(1) Public housing. If a public housing tenant claims that the THA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the THA denies the family's request to modify such amount, the THA shall give the tenant written notice of such denial, with a brief explanation of the basis for the THA determination of the amount of imputed welfare income. The THA notice shall also state that if the tenant does not agree with the THA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the THA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the THA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the THA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the THA denies the family's request to modify such amount, the THA shall give the family written notice of such denial, with a brief explanation of the basis for the THA determination

of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the THA determination, the family may request an informal hearing on the determination under the THA hearing procedure.

(e) THA relation with welfare agency.

(1) The THA must ask welfare agencies to inform the THA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the THA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The THA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the THA. However, the THA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The THA shall be entitled to rely on the welfare agency notice to the THA of the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7

VERIFICATION

[24 CFR 960.259, 24 CFR 5.230]

INTRODUCTION

The THA 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 THA must not pass on the cost of verification to the family.

The THA will follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance ("VG") and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary THA 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 THA.

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 THA or HUD determines is necessary to the administration of the program and must consent to THA 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 THA 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 THA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with the THA's grievance procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [VG, p. 11-14]

HUD authorizes the THA to use five methods to verify family provided and/or other verified income information and specifies the circumstances in which each method will be used. In general HUD requires the THA to use the most reliable form of verification that is available and to document the reasons when the THA uses a lesser form of verification.

THA Policy

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

Up-front Income Verification (UIV) whenever available

Third-party Written Verification

Third-party Oral Verification

Review of Documents

Self-Certification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of the chapter contains an excerpt from the Verification Guidance that provides guidance with respect to how each method may be used.

Requirements for Acceptable Documents

THA Policy

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

The THA will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the THA would accept the most recent report.

Print-outs from web pages are considered original documents.

The THA 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 THA and must be signed in the presence of a THA representative or THA notary public.

File Documentation

The THA 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 THA 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.

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

Up-front income verification (UIV) refers to the THA'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 THA.

THA Policy

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

HUD's EIV system

The Work Number

The THA must restrict access to and safeguard UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until the THA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the THA's informal review/hearing processes.

Definition of Substantial Difference

UIV information is used differently depending upon whether there is a *substantial difference* between information provided by the family and the UIV information. In "HUD Guidelines for Projecting Annual Income When UIV Data is Available," HUD recommends using \$200 per month as the threshold for a substantial difference. The THA will use the \$200 per month as the threshold for a substantial difference.

See Chapter 6 for the THA's policies on the definition of substantial difference and the use of UIV to project annual income and for the THA's threshold for substantial difference.

When No Substantial Difference Exists

If UIV information does not differ substantially from family information, the UIV documentation may serve as third-party written verification.

When a Substantial Difference Exists [24 CFR 5.236(b)]

When there is a substantial difference between the information provided by the UIV source and the family, the THA must request another form of third-party written verification and use any other verification methods (in priority order) to reconcile the difference(s).

Use of HUD's Enterprise Income Verification (EIV) System

HUD's EIV system contains data showing earned income, unemployment benefits, Social Security and SSI benefits for resident families. HUD requires the THA to use the EIV system when available. The following policies will apply when the THA has access to HUD's EIV system.

The EIV system contains two main components: tenant income data reports and "exceeds threshold" reports.

Tenant Income Data (TID) Reports

The data shown on TID reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

THA Policy

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

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

TID reports will be used in interim reexaminations when it is necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits, and to verify that families claiming zero income are not receiving income from any of these sources.

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

When the THA determines through TID 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.

Exceeds Threshold Reports (ETRs)

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

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

THA Policy

The THA will generate and review ETRs on a monthly basis. The ETR threshold percentage will be adjusted as necessary based on the findings in the ETRs.

In reviewing ETRs, the THA will begin with the largest discrepancies.

When the THA determines that a resident appearing on the ETR 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 ETR processing until a subsequent interim or annual reexamination has been completed.

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

When the THA determines through ETR review 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 Identity Verification

The EIV system verifies resident identities against SSA records. These records are compared to PIC data for a match on Social Security number, name, and date of birth.

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

THA Policy

The THA will identify residents whose identity verification has failed as part of the annual reexamination process.

The THA will attempt to resolve PIC/SSA discrepancies by reviewing file documents. When the THA determines that discrepancies exist due to THA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

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

Reasonable Effort and Timing

Unless third-party verification is not required as described below, HUD requires the THA to make at least two unsuccessful attempts to obtain third-party verification before using another form of verification [VG, p. 15].

THA Policy

The THA will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

The THA may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. The THA will send a written request for verification to each required source within 5 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing. If a response has not been received by the 11th business day, the THA will request third-party oral verification.

The THA will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, THA 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 THA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

If a third party agrees to confirm in writing the information provided orally, the THA will wait no more than 5 business days for the information to be provided. If the information is not provided by the 6th business day, the THA will use any information provided orally in combination with reviewing family-provided documents (see below).

When Third-Party Information is Late

When third-party verification has been requested and the timeframes for submission have been exceeded, the THA will use the information from documents on a provisional basis. If the THA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the THA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of the THA's interim reexamination policy.

When Third-Party Verification is Not Required

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.

Certain Assets and Expenses

The THA 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 THA 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].

THA Policy

The THA will use review of documents in lieu of requesting third-party verification when the market value of an individual asset or an expense is less than \$500 annually and the family has original documents that support the declared amount.

Certain Income, Asset and Expense Sources

The THA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification [VG, p. 15]. For example, the THA will rely upon review of documents when the THA determines that a third party's privacy rules prohibit the source from disclosing information.

THA Policy

The THA will determine that third-party verification is not available when there is a service charge for verifying an asset or expense *and* the family has original documents that provide the necessary information.

If the family cannot provide original documents, the THA 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].

7-I.E. REVIEW OF DOCUMENTS

Using Review of Documents as Verification

THA Policy

If the THA has determined that third-party verification is not available or not required, the THA will use documents provided by the family as verification.

The THA may also review documents when necessary to help clarify information provided by third parties. In such cases the THA will document in the file how the THA arrived at a final conclusion about the income or expense to include in its calculations.

7-I.F. SELF-CERTIFICATION

THA 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 THA.

The THA 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 THA 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 THA representative or THA notary public.

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

THA Policy

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

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 THA'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 THA and be signed in the presence of a THA representative or THA notary public.

Legal identity will be verified on an as needed basis.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and HCV, p. 5-12]

For every family member age 6 or older, the family must provide documentation of a valid social security number (SSN), or a self-certification stating that no SSN has been issued. The self-certification must be executed personally by any family member 18 or older, or by a parent or guardian for a minor.

THA Policy

The THA will also accept the following documents as evidence if the SSN is provided on the document:

Driver's license

Other identification card issued by a federal, state, or local agency, a medical insurance company or provider, or employer or trade union

Payroll stubs

Benefit award letters from government agencies; retirement benefit letters; life insurance policies

Court records (real estate, tax notices, marriage and divorce, judgment or bankruptcy records)

If the family reports an SSN but cannot provide acceptable documentation of the number, the THA will require a self-certification stating that documentation of the SSN cannot be provided at this time. The THA will require documentation of the SSN within 60 calendar days from the date of the family member's self-certification mentioned above. If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

THA Policy

The THA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office.

For individuals who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 60-day period, the THA will grant an additional 60 calendar days to provide documentation.

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

If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination. In addition, if a child reaches the age of 6 and has no SSN, the parent or guardian must execute a self-certification stating that the child has no SSN at the next regularly scheduled reexamination.

The social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

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.

THA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the THA 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.

THA 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

THA Policy

Certification by the head of household is normally sufficient verification. If the THA has reasonable doubts about a marital relationship, the THA 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

THA Policy

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

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

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

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

Absence of Adult Member

THA 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

THA 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

THA Policy

The THA 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 THA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The THA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The THA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the THA receives a verification document that provides such information, the THA will not place this information in the tenant file. Under no circumstances will the THA 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 above cited regulation does not prohibit the following inquiries, provided these inquiries are made 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
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring 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 of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

THA Policy

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

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.

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

THA Policy

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the THA 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 7-2 at the end of this chapter summarizes documents family members must provide.

THA 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 THA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

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

7-II.H. VERIFICATION OF PREFERENCE STATUS

The THA must verify any preferences claimed by an applicant.

THA Policy

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

The THA 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 THA 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.

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 THA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

THA 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

THA 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 THA 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 THA 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 THA 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 THA will require the family to provide documentation of income and expenses for this period and use that information to project income.

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

Social Security/SSI Benefits

THA Policy

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

To verify the SS/SSI benefits of residents, the THA will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, the THA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the THA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the resident has received the benefit verification letter they will be required to provide it to the THA.

7-III.D. ALIMONY OR CHILD SUPPORT

THA Policy

The way the THA 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.

If payments are made through a state or local entity, the THA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments.

Third-party verification from the person paying the support

Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules

Copy of the latest check and/or payment stubs

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

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

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

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

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

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

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

THA Policy

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

The THA 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 participant reported a \$10,000 certificate of deposit at the last annual reexamination and the THA verified this amount. Now the person reports that she has given this \$10,000 to her son. The THA 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 THA will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

THA 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 THA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

THA Policy

When third-party verification is not available the type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, the THA 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 THA 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 THA 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 THA must obtain verification for income exclusions only if, without verification, the THA 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 THA will confirm that THA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

THA Policy

The THA 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 THA will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

THA Policy

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

PART IV: VERIFYING MANDATORY DEDUCTIONS

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

The dependent and elderly/disabled family deductions require only that the THA 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 THA 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 THA 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

THA Policy

The THA will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case the THA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The THA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

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 THA must verify that:

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

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. The THA 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 THA'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.

THA 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

THA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the THA 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

THA Policy

The THA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source

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

Auxiliary Apparatus

THA Policy

Expenses for auxiliary apparatus will be verified through:

Third-party verification of anticipated purchase costs of auxiliary apparatus

If third-party is not possible, 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

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

In addition, the THA 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 THA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

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

THA Policy

The THA will seek 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.).

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

Unreimbursed Expenses

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

THA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

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 THA 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 THA 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.

THA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

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 THA 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.

THA Policy

Information to be Gathered

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

Seeking Work

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

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

Furthering Education

The THA will ask that the academic or vocational educational institution 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.

Gainful Employment

The THA will seek verification from the employer 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.

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.

THA Policy

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

The THA 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 THA 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.

THA Policy

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

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

Exhibit 7-1: Excerpt from HUD Verification Guidance Notice (PIH 2004-01, pp. 11-14)

Upfront (UIV)	Highest (Highly Recommended, highest level of third party verification)
Written 3rd Party	High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)
Oral 3rd Party	Medium (Mandatory if written third party verification is not available)
Document Review	Medium-Low (Use on provisional basis)
Tenant Declaration	Low (Use as a last resort)

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Wages/Salaries	Use of computer matching agreements with a State Wage Information Collection Agency (SWICA) to obtain wage information electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the independent sources to obtain wage information.	In the event the independent source does not respond to the PHA's written request for information, the PHA may contact the independent source by phone or make an in person visit to obtain the requested information.	When neither form of third party verification can be obtained, the PHA may accept original documents such as consecutive pay stubs (HUD recommends the PHA review at least three months of pay stubs, if employed by the same employer for three months or more), W-2 forms, etc. from the tenant. Note: The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from earnings. Note: The PHA must document in the tenant file, the reason third party verification was not available.
	Agreements with private vendor agencies, such as The Work Number or ChoicePoint to obtain wage and salary information.	The PHA may have the tenant sign a Request for Earnings Statement from the SSA to confirm past earnings. The PHA mails the form to SSA and the statement will be sent to the address the PHA specifies on the form.			
	Use of HUD systems, when available.				
<p>Verification of Employment Income: The PHA should always obtain as much information as possible about the employment, such as start date (new employment), termination date (previous employment), pay frequency, pay rate, anticipated pay increases in the next twelve months, year-to-date earnings, bonuses, overtime, company name, address and telephone number, name and position of the person completing the employment verification form.</p> <p>Effective Date of Employment: The PHA should always confirm start and termination dates of employment.</p>					

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Self-Employment	Not Available	The PHA mails or faxes a verification form directly to sources identified by the family to obtain income information.	The PHA may call the source to obtain income information.	The PHA may accept any documents (i.e. tax returns, invoices and letters from customers) provided by the tenant to verify self-employment income. Note: The PHA must document in the tenant file, the reason third party verification was not obtained.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from self-employment. Note: The PHA must document in the tenant file, the reason third party verification was not available.
<p>Verification of Self-Employment Income: Typically, it is a challenge for PHAs to obtain third party verification of self-employment income. When third party verification is not available, the PHA should always request a notarized tenant declaration that includes a perjury statement.</p>					
Social Security Benefits	Use of HUD Tenant Assessment System (TASS) to obtain current benefit history and discrepancy reports.	The PHA mails or faxes a verification form directly to the local SSA office to obtain social security benefit information. (Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)	The PHA may call SSA, with the tenant on the line, to obtain current benefit amount. (Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)	The PHA may accept an original SSA Notice from the tenant. Note: The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly social security benefits. Note: The PHA must document in the tenant file, the reason third party verification was not available.
Welfare Benefits	Use of computer matching agreements with the local Social Services Agency to obtain current benefit amount electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the local Social Services Agency to obtain welfare benefit information.	The PHA may call the local Social Services Agency to obtain current benefit amount.	The PHA may review an original award notice or printout from the local Social Services Agency provided by the tenant. Note: The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly welfare benefits. Note: The PHA must document in the tenant file, the reason third party verification was not available.

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Child Support	Use of agreement with the local Child Support Enforcement Agency to obtain current child support amount and payment status electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may call the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may review an original court order, notice or printout from the local Child Support Enforcement Agency provided by the tenant to verify current child support amount and payment status. Note: The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares current child support amount and payment status. Note: The PHA must document in the tenant file, the reason third party verification was not available.
Unemployment Benefits	Use of computer matching agreements with a State Wage Information Collection Agency to obtain unemployment compensation electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the State Wage Information Collection Agency to obtain unemployment compensation information.	The PHA may call the State Wage Information Collection Agency to obtain current benefit amount.	The PHA may review an original benefit notice or unemployment check stub, or printout from the local State Wage Information Collection Agency provided by the tenant. Note: The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares unemployment benefits. Note: The PHA must document in the tenant file, the reason third party verification was not available.
	Use of HUD systems, when available.				
Pensions	Use of computer matching agreements with a Federal, State, or Local Government Agency to obtain pension information electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the pension provider to obtain pension information.	The PHA may call the pension provider to obtain current benefit amount.	The PHA may review an original benefit notice from the pension provider provided by the tenant. Note: The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly pension amounts. Note: The PHA must document in the tenant file, the reason third party verification was not available.

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Assets	Use of cooperative agreements with sources to obtain asset and asset income information electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the source to obtain asset and asset income information.	The PHA may call the source to obtain asset and asset income information.	The PHA may review original documents provided by the tenant. Note: The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares assets and asset income. Note: The PHA must document in the tenant file, the reason third party verification was not available.
Comments	Whenever HUD makes available wage, unemployment, and SSA information, the PHA should use the information as part of the reexamination process. Failure to do so may result in disallowed costs during a RIM review.	Note: The independent source completes the form and returns the form directly to the PHA. Agency. The tenant should not hand carry documents to or from the independent source.	The PHA should document in the tenant file, the date and time of the telephone call or in person visit, along with the name and title of the person that verified the current income amount.		The PHA should use this verification method as a last resort, when all other verification methods are not possible or have been unsuccessful. Notarized statement should include a perjury penalty statement.
Note: The PHA must not pass verification costs along to the participant.					
Note: In cases where the PHA cannot reliably project annual income, the PHA may elect to complete regular interim reexaminations (this policy should be apart of the PHA's written policies.)					

**Exhibit 7-2: Summary of Documentation Requirements for Noncitizens
[HCV GB, pp. 5-9 and 5-10]**

<ul style="list-style-type: none"> • All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the THA. • Except for persons 62 or older, all noncitizens must sign a verification consent form • Additional documents are required based upon the person's status. 	
<p>Elderly Noncitizens</p> <ul style="list-style-type: none"> • 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. 	
<p>All other Noncitizens</p> <ul style="list-style-type: none"> • Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below. 	
<ul style="list-style-type: none"> • Form I-551 Alien Registration Receipt Card (for permanent resident aliens) • Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> • “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” 	<ul style="list-style-type: none"> • Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> • 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).
<ul style="list-style-type: none"> • Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”. 	<ul style="list-style-type: none"> • Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.
<ul style="list-style-type: none"> • 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 <i>Federal Register</i> 	

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

This chapter is divided into two parts as follows:

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

Part II: Inspections. This part describes the THA'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 THA 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 THA's policies governing leasing issues.

8-I.B. LEASE ORIENTATION

THA Policy

After unit acceptance but prior to occupancy, a THA representative will provide a lease orientation to the family. The head of household or spouse is required to attend.

Orientation Agenda

THA Policy

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

- A copy of the lease

- A copy of the THA's grievance procedure

- A copy of the tenant handbook

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

- A copy of *Things You Should Know* (HUD-1140-OIG)

Topics to be discussed will include:

- Applicable deposits and other charges

- Review and explanation of lease provisions

- Unit maintenance and work orders

- The THA's reporting requirements

- Explanation of occupancy forms

- Community service requirements

- Family choice of rent

- Maintenance and damage charges

8-I.C. EXECUTION OF LEASE

The lease must be executed by the tenant and the THA, 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 THA unit to another.

The lease must state the composition of the household as approved by the THA (family members and any THA-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.

THA 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 THA 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 THA assistance. The live-in aide is only approved to live in the unit while serving as the attendant for the participant family member.

8-I.D. MODIFICATIONS TO THE LEASE

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

Modifications to the Lease Form

The THA may modify its lease from time to time. However, the THA must give residents 30 days advance notice of the proposed changes and an opportunity to comment on the changes. The THA 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(1)(2)(iii)(E)].

THA 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].

THA Policy

When the THA proposes to modify or revise schedules of special charges or rules and regulations, the THA will post a copy of the notice in the central office, and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

Other Modifications

THA 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 THA will be required to initial and date the change.

If a new household member is approved by the THA to reside in the unit, the person's name and birth date will be added to the lease. The head of household and THA 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 DEPOSITS [24 CFR 966.4(b)(5)]

At the option of the THA, 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 THA. The THA 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.

THA Policy

The THA does not collect security deposits.

8-I.F. PAYMENTS UNDER THE LEASE

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

Families must pay the full amount of the monthly tenant rent determined by the THA 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 THA must give written notice stating any change in the amount of tenant rent and when the change is effective.

THA Policy

The full tenant rent is due and payable in advance on the fifth day of every month. If the fifth day 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 THA 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 THA, 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 THA 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 THA grievance procedures. The THA 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)].

THA Policy

If the family fails to pay their rent in full by the seventh day of the month, and the THA 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 full payment of rent by the first business day of the following 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 the required timeframe, the THA 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 THA 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 THA 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 THA grievance procedures. The THA 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)].

THA Policy

When applicable, families will be charged for excess utility usage according to the THA'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 THA 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 THA 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 THA 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 THA grievance procedures. The THA 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)].

THA Policy

When applicable, families will be charged for maintenance and/or damages according to the THA's. Residents 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 THA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Failure to pay maintenance and damage charges is a violation of the lease and is grounds for eviction.

PART II: INSPECTIONS

8-II.A. OVERVIEW

HUD rules require the THA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the THA may require additional inspections, in accordance with THA Policy. This part contains the THA'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 THA 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 THA and the resident, must be provided to the tenant and be kept in the resident file.

THA 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 THA 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 THA. The THA 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.

THA Policy

When applicable, the THA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 10 business days of conducting the move-out inspection.

Annual Inspections

Under the Public Housing Assessment System (THAS), the THA 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

THA Policy

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

Special Inspections

THA Policy

THA 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

THA Policy

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

8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS

Notice of Entry

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

The THA 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 THA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

THA Policy

The THA 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 THA to enter the unit.

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

The THA 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 THA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

Scheduling of Inspections

THA Policy

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

THA Policy

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

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

8-II.D. INSPECTION RESULTS

The THA 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 THA of the damage, and the THA must make repairs within a reasonable time frame.

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

If the THA cannot make repairs quickly, the THA must offer the family standard alternative accommodations. If the THA 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.

THA Policy

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

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

- Any condition that jeopardizes the security of the unit

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

- Natural or LP gas or fuel oil leaks

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

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

- Utilities not in service, including no running hot water

- Conditions that present the imminent possibility of injury

- Obstacles that prevent safe entrance or exit from the unit

- Absence of a functioning toilet in the unit

- Inoperable smoke detectors

Non-emergency Repairs

THA Policy

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

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

Resident-Caused Damages

THA 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

THA 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 THA 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 will also be issued to residents who purposely disengage the unit's smoke detector. Only one warning will be given. A second incidence will result in lease termination.

Chapter 9

REEXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

INTRODUCTION

The THA is required to monitor each family's income and composition over time, and to adjust the family's rent accordingly. THAs 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 THA must reexamine income for a family depends on whether the family pays income-based or flat rent. HUD requires the THA to offer all families the choice of paying income-based rent or flat rent at least annually. The THA'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 THA'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 THA's policies for conducting annual updates of family composition for flat rent families.

Part III: Interim Reexaminations. This part includes HUD requirements and THA 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 THA 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.

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 THA 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 THA 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 THA 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 THA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of the THA. 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 THA's policies for conducting annual reexaminations.

9-I.B. SCHEDULING ANNUAL REEXAMINATIONS

The THA 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)].

THA Policy

Generally, the THA will schedule annual reexaminations to coincide with the family's anniversary date. The THA 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 THA will perform a new annual reexamination, and the anniversary date will be changed.

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

Notification of and Participation in the Annual Reexamination Process

The THA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the THA.

THA 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 THA 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 THA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview the THA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without THA 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)].

THA 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 THA-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 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 THA 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.

THA Policy

Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

Compliance with Community Service

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

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

9-I.D. EFFECTIVE DATES

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

THA 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 THA 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 THA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in 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 THA 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 THA.

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

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

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

9-II.A. OVERVIEW

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

For families who choose flat rents, the THA 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 THA is only required to provide the amount of income-based rent the family might pay in those years that the THA 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 THA must also review community service compliance and should have each adult resident consent to a criminal background check.

This part contains the THA'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

THA Policy

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

Reexamination Policies

THA Policy

In conducting full reexaminations for families paying flat rents, the THA 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 THA 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 THA 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 THA 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)].

THA 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 THA 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)].

THA Policy

Generally, the family will not be required to attend an interview for an annual update. However, if the THA 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 THA. The family will have 10 business days to submit the required information to the THA. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. The THA 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 THA 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 THA.

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 THA 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.

THA Policy

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

Compliance with Community Service

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

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

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 THA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the THA must process interim reexaminations to reflect those changes. HUD regulations also permit the THA 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 THA must complete the interim reexamination within a reasonable time after the family's request.

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

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

The THA 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 THA 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.

THA 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 THA 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 THA approval. However, the family is required to promptly notify the THA of the addition [24 CFR 966.4(a)(1)(v)].

THA Policy

The family must inform the THA 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 THA 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)].

The THA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which THA consent will be given or denied. Under such policies, the factors considered by the THA 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 THA's obligation to make reasonable accommodation for handicapped persons.

THA Policy

Families must request THA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or a total of 30 cumulative calendar days during any 12 month period, and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the THA prior to the individual moving into the unit.

The THA 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 THA. Exceptions will be made on a case-by-case basis.

The THA will not approve the addition of a new family or household member unless the individual meets the THA's eligibility criteria (see Chapter 3).

If the THA determines that an individual does not meet the THA's eligibility criteria as defined in Chapter 3, the THA 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 THA 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

THA Policy

If a family member ceases to reside in the unit, the family must inform the THA 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 THA within 10 business days.

9-III.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the THA 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 THA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

THA 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.

THA-initiated Interim Reexaminations

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

THA Policy

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

For families receiving the Earned Income Disallowance (EID), the THA 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 THAse-in period).

If the family has reported zero income, the THA 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 THA 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 THA will conduct an interim reexamination.

The THA 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 THA 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 THA the freedom to determine the circumstances under which families will be required to report changes affecting income.

THA Policy

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

The THA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's rent will change as a result of the increase. In all other cases, the THA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

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 THA 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.

THA Policy

If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, the THA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, the THA will conduct an interim reexamination. See Section 9-III.D. for effective dates.

Families may report changes in income or expenses at any time.

9-III.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

THA Policy

The family may notify the THA of changes either orally or in writing. If the family provides oral notice, the THA 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 THA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the THA 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 THA. This time frame may be extended for good cause with THA approval. The THA will accept required documentation by mail, by fax, or in person.

Effective Dates

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

THA Policy

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

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

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

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

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

PART IV: RECALCULATING TENANT RENT

9-IV.A. OVERVIEW

For those families paying income-based rent, the THA 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 THA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

THA Policy

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

THA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

9-IV.D. DISCREPANCIES

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

Chapter 10

PETS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

INTRODUCTION

This chapter explains the THA'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 THA 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 THA.

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 policies for all developments. This part includes pet policies that are common to both elderly/disabled developments and general occupancy developments.

Part III: Pet deposits and fees for elderly/disabled developments. This part contains policies for pet deposits and fees that are applicable to elderly/disabled developments.

Part IV: Pet deposits and fees for general occupancy developments. This part contains policies for pet deposits and fees that are applicable to general occupancy developments.

PART I: ASSISTANCE ANIMALS

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

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 work, provide assistance, or perform tasks for the benefit of 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 THA’s pet policies described in Parts II through IV 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 THA 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 THA'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
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

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

THA Policy

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 THA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.

10-I.C. CARE AND HANDLING

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

THA 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 THA will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If the THA determines that no such accommodation can be made, the THA may withdraw the approval of a particular assistance animal.

PART II: PET POLICIES FOR ALL DEVELOPMENTS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

10-II.A. OVERVIEW

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

10-II.B. MANAGEMENT APPROVAL OF PETS

Registration of Pets

THAs may require registration of the pet with the THA [24 CFR 960.707(b)(5)].

THA Policy

Pets must be registered with the THA before they are brought onto the premises.

Registration includes documentation signed by a licensed veterinarian or state/local authority that the pet has received all inoculations required by state or local law, and that the pet has no communicable disease(s) and is pest-free. This registration must be renewed annually and will be coordinated with the annual reexamination date.

Pets will not be approved to reside in a unit until completion of the registration requirements.

Refusal to Register Pets

THA Policy

The THA will refuse to register a pet if:

The pet is not *a common household pet* as defined in Section 10-II.C. below

Keeping the pet would violate any pet restrictions listed in this policy

The pet owner fails to provide complete pet registration information, or fails to update the registration annually

The applicant has previously been charged with animal cruelty under state or local law; or has been evicted, had to relinquish a pet or been prohibited from future pet ownership due to pet rule violations or a court order

The THA reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament and behavior may be considered as a factor in determining the pet owner's ability to comply with provisions of the lease.

If the THA refuses to register a pet, a written notification will be sent to the pet owner within 10 business days of the THA's decision. The notice will state the reason for refusing to register the pet and will inform the family of their right to appeal the decision in accordance with the THA's grievance procedures.

Pet Agreement

THA Policy

Residents who have been approved to have a pet must enter into a pet agreement with the THA, or the approval of the pet will be withdrawn.

The pet agreement is the resident's certification that he or she has received a copy of the THA's pet policy and applicable house rules, that he or she has read the policies and/or rules, understands them, and agrees to comply with them.

The resident further certifies by signing the pet agreement that he or she understands that noncompliance with the THA's pet policy and applicable house rules may result in the withdrawal of THA approval of the pet or termination of tenancy.

10-II.C. STANDARDS FOR PETS [24 CFR 5.318; 960.707(b)]

THAs may establish reasonable requirements related to pet ownership including, but not limited to:

- Limitations on the number of animals in a unit, based on unit size
- Prohibitions on types of animals that the THA classifies as dangerous, provided that such classifications are consistent with applicable state and local law
- Prohibitions on individual animals, based on certain factors, including the size and weight of the animal
- Requiring pet owners to have their pets spayed or neutered

THA's may not require pet owners to have any pet's vocal cords removed.

Definition of "Common Household Pet"

There is no regulatory definition of common household pet for public housing programs, although the regulations for pet ownership in both elderly/disabled and general occupancy developments use the term. The regulations for pet ownership in elderly/disabled developments expressly authorize THAs to define the term [24 CFR 5.306(2)].

THA Policy

Common household pet means a domesticated animal, such as a dog, cat, bird, or fish that is traditionally recognized as a companion animal and is kept in the home for pleasure rather than commercial purposes.

The following animals are not considered common household pets:

Reptiles

Rodents

Insects

Arachnids

Wild animals or feral animals

Pot-bellied pigs

Animals used for commercial breeding

Pet Restrictions

THA Policy

The following animals are not permitted:

Any animal whose adult weight will exceed 25 pounds

Dogs of the pit bull, rottweiler, chow, or boxer breeds

Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites or lacerations

Any animal not permitted under state or local law or code

Number of Pets

THA Policy

Residents may own a maximum of 2 pets, only 1 of which may be a dog.

In the case of fish, residents may keep no more than can be maintained in a safe and healthy manner in a tank holding up to 10 gallons. Such a tank or aquarium will be counted as 1 pet.

Other Requirements

THA Policy

Dogs and cats must be spayed or neutered at the time of registration or, in the case of underage animals, within 30 days of the pet reaching 6 months of age. Exceptions may be made upon veterinary certification that subjecting this particular pet to the procedure would be temporarily or permanently medically unsafe or unnecessary.

Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration and annually, in conjunction with the resident's annual reexamination.

10-II.D. PET RULES

Pet owners must maintain pets responsibly, in accordance with THA policies, and in compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations [24 CFR 5.315; 24 CFR 960.707(a)].

Pet Area Restrictions

THA Policy

Pets must be maintained within the resident's unit. When outside of the unit (within the building or on the grounds) dogs and cats must be kept on a leash or carried and under the control of the resident or other responsible individual at all times.

Pets other than dogs or cats must be kept in a cage or carrier when outside of the unit.

Pets are not permitted in common areas including lobbies, community rooms and laundry areas except for those common areas which are entrances to and exits from the building.

Pet owners are not permitted to exercise pets or permit pets to deposit waste on project premises outside of the areas designated for such purposes.

Designated Pet/No-Pet Areas [24 CFR 5.318(g), PH Occ GB, p. 182]

THAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Pet rules may also designate buildings, floors of building, or sections of building for residency by pet-owning tenants.

THAs may direct initial tenant moves as may be necessary to establish pet and no-pet areas. The THA may not refuse to admit, or delay admission of, an applicant on the grounds that the applicant's admission would violate a pet or no-pet area. The THA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary to accommodate such applicants for tenancy or to meet the changing needs of the existing tenants.

THAs may not designate an entire development as a no-pet area, since regulations permit residents to own pets.

THA Policy

With the exception of common areas as described in the previous policy, the THA has not designated any buildings, floors of buildings, or sections of buildings as no-pet areas. In addition, the THA has not designated any buildings, floors of buildings, or sections of buildings for residency of pet-owning tenants.

Cleanliness

THA Policy

The pet owner shall be responsible for the removal of waste from the exercise area by placing it in a sealed plastic bag and disposing of it in a container provided by the THA.

The pet owner shall take adequate precautions to eliminate any pet odors within or around the unit and to maintain the unit in a sanitary condition at all times.

Litter box requirements:

Pet owners must promptly dispose of waste from litter boxes and must maintain litter boxes in a sanitary manner.

Litter shall not be disposed of by being flushed through a toilet.

Litter boxes shall be kept inside the resident's dwelling unit.

Alterations to Unit

THA Policy

Pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal.

Installation of pet doors is prohibited.

Noise

THA Policy

Pet owners must agree to control the noise of pets so that such noise does not constitute a nuisance to other residents or interrupt their peaceful enjoyment of their housing unit or premises. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities.

Pet Care

THA Policy

Each pet owner shall be responsible for adequate care, nutrition, exercise and medical attention for his/her pet.

Each pet owner shall be responsible for appropriately training and caring for his/her pet to ensure that the pet is not a nuisance or danger to other residents and does not damage THA property.

No animals may be tethered or chained inside or outside the dwelling unit at any time.

Responsible Parties

THA Policy

The pet owner will be required to designate two responsible parties for the care of the pet if the health or safety of the pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet.

A resident who cares for another resident's pet must notify the THA and sign a statement that they agree to abide by all of the pet rules.

Pets Temporarily on the Premises

THA Policy

Pets that are not owned by a tenant are not allowed on the premises. Residents are prohibited from feeding or harboring stray animals.

This rule does not apply to visiting pet programs sponsored by a humane society or other non-profit organizations, and approved by the THA.

Pet Rule Violations

THA Policy

All complaints of cruelty and all dog bites will be referred to animal control or an applicable agency for investigation and enforcement.

If a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, written notice will be served.

The notice will contain a brief statement of the factual basis for the determination and the pet rule(s) that were violated. The notice will also state:

That the pet owner has 10 business days from the effective date of the service of notice to correct the violation or make written request for a meeting to discuss the violation

That the pet owner is entitled to be accompanied by another person of his or her choice at the meeting

That the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy

Notice for Pet Removal

THA Policy

If the pet owner and the THA are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by the THA, the THA may serve notice to remove the pet.

The notice will contain:

A brief statement of the factual basis for the THA's determination of the pet rule that has been violated

The requirement that the resident /pet owner must remove the pet within 30 calendar days of the notice

A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures

Pet Removal

THA Policy

If the death or incapacity of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the responsible party designated by the pet owner.

If the responsible party is unwilling or unable to care for the pet, or if the THA after reasonable efforts cannot contact the responsible party, the THA may contact the appropriate state or local agency and request the removal of the pet.

Termination of Tenancy

THA Policy

The THA may initiate procedures for termination of tenancy based on a pet rule violation if:

The pet owner has failed to remove the pet or correct a pet rule violation within the time period specified

The pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease

Emergencies

THA Policy

The THA will take all necessary steps to ensure that pets that become vicious, display symptoms of severe illness, or demonstrate behavior that constitutes an immediate threat to the health or safety of others, are immediately removed from the premises by referring the situation to the appropriate state or local entity authorized to remove such animals.

If it is necessary for the THA to place the pet in a shelter facility, the cost will be the responsibility of the pet owner.

If the pet is removed as a result of any aggressive act on the part of the pet, the pet will not be allowed back on the premises.

PART III: PET DEPOSITS AND FEES IN ELDERLY/DISABLED DEVELOPMENTS

10-III.A. OVERVIEW

This part describes the THA's policies for pet deposits and fees in elderly, disabled and mixed population developments. Policies governing deposits and fees in general occupancy developments are described in Part IV.

10-III.B. PET DEPOSITS

Payment of Deposit

The THA may require tenants who own or keep pets in their units to pay a refundable pet deposit. This deposit is in addition to any other financial obligation generally imposed on tenants of the project [24 CFR 5.318(d)(1)].

The maximum amount of pet deposit that may be charged by a THA on a per dwelling unit basis, is the higher of the total tenant payment (TTP) or such reasonable fixed amount as the THA may require. The THA may permit gradual accumulation of the pet deposit by the pet owner [24 CFR 5.318(d)(3)].

The pet deposit is not part of the rent payable by the resident [24 CFR 5.318(d)(5)].

THA Policy

Pet owners are required to pay a pet deposit in addition to any other required deposits. The amount of the deposit is the higher of the family's total tenant payment or \$50.00, and must be paid in full before the pet is brought on the premises.

Refund of Deposit [24 CFR 5.318(d)(1)]

The THA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet, including (but not limited to) the costs of repairs and replacements to, and fumigation of, the tenant's dwelling unit. The THA must refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet in the unit.

THA Policy

The THA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit.

The resident will be billed for any amount that exceeds the pet deposit.

The THA will provide the resident with a written list of any charges against the pet deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, the THA will provide a meeting to discuss the charges.

10-III.C. OTHER CHARGES

Pet-Related Damages During Occupancy

THA Policy

All reasonable expenses incurred by the THA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

The cost of repairs and replacements to the resident's dwelling unit

Fumigation of the dwelling unit

Repairs to common areas of the project

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage are not part of rent payable by the resident.

Pet Waste Removal Charge

The regulations do not address the THA's ability to impose charges for house pet rule violations. However, charges for violation of THA pet rules may be treated like charges for other violations of the lease and THA tenancy rules.

THA Policy

A separate pet waste removal charge of \$10.00 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this policy.

Notices of pet waste removal charges 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 the required timeframe, the THA may not take action for nonpayment of the charge until the conclusion of the grievance process.

Charges for pet waste removal are not part of rent payable by the resident.

PART IV: PET DEPOSITS AND FEES IN GENERAL OCCUPANCY DEVELOPMENTS

10-IV.A. OVERVIEW

This part describes the THA's policies for pet deposits and fees for those who reside in general occupancy developments.

10-IV.B. PET DEPOSITS

A THA may require a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered [24 CFR 960.707(b)(1)].

A THA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. The THA must comply with such laws as to retention of the deposit, interest, and return of the deposit to the resident, and any other applicable requirements [24 CFR 960.707(d)].

Payment of Deposit

THA Policy

Pet owners are required to pay a pet deposit of \$200 in addition to any other required deposits. The deposit must be paid in full before the pet is brought on the premises.

The pet deposit is not part of rent payable by the resident.

Refund of Deposit

THA Policy

The THA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit.

The resident will be billed for any amount that exceeds the pet deposit.

The THA will provide the resident with a written list of any charges against the pet deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, the THA will provide a meeting to discuss the charges.

10-IV.C. NON-REFUNDABLE NOMINAL PET FEE

THAs may require payment of a non-refundable nominal pet fee to cover the reasonable operating costs to the development relating to the presence of pets [24 CFR 960.707(b)(1)].

THA Policy

The THA requires pet owners to pay a non-refundable nominal pet fee.

This fee is intended to cover the reasonable operating costs to the project relating to the presence of pets. Reasonable operating costs to the project relating to the presence of pets include, but are not limited to:

Landscaping costs

Pest control costs

Insurance costs

Clean-up costs

The pet fee of \$10.00 will be billed on a monthly basis, and payment will be due 14 calendar days after billing.

Charges for the non-refundable pet fee are not part of rent payable by the resident.

10-IV.D. OTHER CHARGES

Pet-Related Damages During Occupancy

THA Policy

All reasonable expenses incurred by the THA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

The cost of repairs and replacements to the resident's dwelling unit

Fumigation of the dwelling unit

Repairs to common areas of the project

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage are not part of rent payable by the resident.

Pet Waste Removal Charge

The regulations do not address the THA's ability to impose charges for house pet rule violations. However, charges for violation of THA pet rules may be treated like charges for other violations of the lease and THA tenancy rules.

THA Policy

A separate pet waste removal charge of \$10.00 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this policy.

Such charges will be due and payable 14 calendar days after billing.

Charges for pet waste removal are not part of rent payable by the resident.

Chapter 11

COMMUNITY SERVICE

INTRODUCTION

This chapter explains HUD regulations requiring THAs to implement a community service program for all non-exempt adults living in public housing.

This chapter describes HUD regulations and THA 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: THA Implementation of Community Service. This part provides THA policy regarding THA 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). THAs and residents must comply with the community service requirement, effective with THA fiscal years that commenced on or after October 1, 2000. Per 903.7(1)(1)(iii), the THA Plan must contain a statement of the how the THA will comply with the community service requirement, including any cooperative agreement that the THA 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 THA must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

11-I.B. REQUIREMENTS

Each adult resident of the THA, 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).

THA Policy

An individual may not skip a month and then double up the following month, unless special circumstances warrant it. The THA will make the determination of whether to 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 THA in writing within 5 business days of the circumstances becoming known. The THA will review the request and notify the individual, in writing, of its determination within 10 business days. The THA may require those individuals to provide documentation to support their claim.

Definitions

Exempt Individual [24 CFR 960.601(b)]

An *exempt individual* is an adult who:

- Is age 62 years or older
- Is blind or disabled (as defined under section 216[i][1] 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

THA Policy

The THA will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

- Meets the requirements for being exempted from having to engage in a work activity under the 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 THA is located, including a state-administered welfare-to-work program; or
- Is in a family receiving assistance 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 THA 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 [PH Occ GB, p. 174]

Community service is volunteer work which includes, but is not limited to:

- Work at a local institution including but not limited to: school, child care center, hospital, hospice, recreation center, senior center, adult day care center, homeless shelter, indigent feeding program, cooperative food bank, etc.
- Work with a nonprofit organization that serves THA residents or their children such as: Boy Scouts, Girl Scouts, Boys or Girls Clubs, 4-H programs, PAL, Garden Center, community clean-up programs, beautification programs, other youth or senior organizations
- Work at the THA to help improve physical conditions
- Work at the THA to help with children's programs
- Work at the THA to help with senior programs
- Helping neighborhood groups with special projects
- Working through a resident organization to help other residents with problems, serving as an officer in a resident organization, serving on the resident advisory board
- Caring for the children of other residents so they may volunteer

NOTE: Political activity is excluded for purposes of 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.

These economic self-sufficiency programs can include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeships (formal or informal), or any other program necessary to ready a participant to work (such as substance abuse or mental health treatment).

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)]

The THA 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 THA verification of exempt status. The THA 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.

THA Policy

The THA 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 THA 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 non-exempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training 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 THA 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.

THA Policy

The THA will monitor family community service requirements by obtaining a monthly work/activities time sheet demonstrating the activities performed and number of hours contributed. Time sheets must be signed by a THA authorized representative or an outside agency official where the community service was completed.

Annual Determination

Determination of Exemption Status

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

THA Policy

At least 60 days prior to lease renewal, the THA 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 THA 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 THA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

Determination of Compliance

The THA 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 THA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

THA Policy

Approximately 60 days prior to the end of the lease term, the THA 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 THA required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or THA 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.

Change in Status Between Annual Determinations

THA Policy

Exempt to Non-Exempt Status

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

Within 10 business days of a family reporting such a change, or the THA determining such a change is necessary, the THA 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.

Non-Exempt to Exempt Status

If a non-exempt person becomes exempt during the twelve month lease term, it is the family's responsibility to report this change to the THA within 10 business days. Any claim of exemption will be verified by the THA 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 THA determining such a change is necessary, the THA will provide the family written notice that the family member is no longer subject to the community service requirement, if the THA 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 THA must retain reasonable documentation of service requirement performance or exemption in participant files.

Documentation and Verification of Exemption Status

THA 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 THA will provide a completed copy to the family and will keep a copy in the tenant file.

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

The THA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the THA's determination, s/he can dispute the decision through the THA's grievance procedures (see Chapter 14).

Documentation and Verification of Compliance

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

THA Policy

If anyone in the family is subject to the community service requirement, the THA 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 THA, upon request by the THA.

If the THA has reasonable cause to believe that the certification provided by the family is false or fraudulent, the THA 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 THA 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 THA. 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 of Initial Noncompliance [24 CFR 960.607(b)]

If the THA 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 THA must notify the tenant of this determination.

The notice to the tenant must briefly describe the noncompliance. The notice must state that the THA 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 THA to cure the noncompliance, or the family provides written assurance satisfactory to the THA 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 THA's determination, in accordance with the THA's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for the THA's nonrenewal of the lease because of the THA's determination.

THA 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 THA 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 THA 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 THA must terminate tenancy of the entire family, according to the THA's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

THA 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 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 THA 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.

PART II: IMPLEMENTATION OF COMMUNITY SERVICE

11-II.A. OVERVIEW

Each THA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in the THA'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.

THA Implementation of Community Service

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

THA Policy

The THA will notify its insurance company if residents will be performing community service at the THA. In addition, the THA 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 THA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

THA Program Design

The THA 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)].

THA Policy

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

The THA'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 THA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

The THA 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 THA 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 THA Plan.

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

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

A. Background

The Quality Housing and Work Responsibility Act of 1998 requires that all non-exempt (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 – volunteer work which includes, but is not limited to:

- Work at a local institution, including but not limited to: school, child care center, hospital, hospice, recreation center, senior center, adult day care center, homeless shelter, indigent feeding program, cooperative food bank, etc.
- Work with a nonprofit organization such as: Parks and Recreation, United Way, Red Cross, Volunteers of America, Boy Scouts, Girl Scouts, Boys or Girls Clubs, 4-H Program, PAL, Garden Center, community clean-up programs, beautification programs, other counseling, aid, youth or senior organizations
- Work at the housing authority to help with litter control
- Work at the housing authority to help with children's programs
- Work at the housing authority to help with senior programs
- Helping neighborhood groups with special projects
- Working through a resident organization to help other residents with problems
- Serving as an officer in a resident organization
- Serving on the Resident Advisory Board
- Caring for children of other residents so they may volunteer

NOTE: Political activity is excluded.

Self-Sufficiency Activities – activities that include, but are not limited to:

- Job readiness programs
- Job training programs
- GED classes
- Substance abuse or mental health counseling
- English proficiency or literacy (reading) classes
- Apprenticeships
- Budgeting and credit counseling
- Any kind of class that helps a person toward economic independence
- Student status at any school, college or vocation school

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][1] 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 individual
- Is working at least 30 hours per week
- Meets the requirements for being exempted from having to engage in a work activity under TANF or any other State welfare program including a State-administered welfare-to-work program
- Is a member of a family receiving assistance, benefits or services under TANF or any other State welfare program and has not been found to be in noncompliance with such 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 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 THA, non-exempt 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, as a condition of continued occupancy.
4. Change in exempt status:
 - If, during the twelve (12) month lease period, a non-exempt person becomes exempt, it is his or her responsibility to report this to the THA and provide documentation of exempt status.
 - If, during the twelve (12) month lease period, an exempt person becomes non-exempt, it is his or her responsibility to report this to the THA. Upon receipt of this information the THA 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.

D. Authority Obligation

1. To the greatest extent possible and practicable, the THA 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 THA 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 THA will verify the exemption status in accordance with its verification policies. The THA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the THA's grievance procedure if they disagree with the THA's determination.
4. Noncompliance of family member:
 - At least thirty(30) days prior to the end of the 12-month lease term, the THA will begin reviewing the exempt or non-exempt status and compliance of family members;
 - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, the THA finds the family member to be noncompliant, the THA will not renew the lease unless:
 - The head of household and any other noncompliant resident enter into a written agreement with the THA, to make up the deficient hours over the next twelve (12) month period; or
 - The family provides written documentation satisfactory to the THA 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 THA that the noncompliant family member no longer resides in the unit;
 - The family may use the THA's grievance procedure to dispute the lease termination.

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

EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(1) 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.

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

Family: _____

Adult family member: _____

This adult family member meets the requirements for being exempted from the THA'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 working at least 30 hours per week. (*Employment verification in file*)
- Is participating in a welfare-to-work program. (*Documentation in file*).
- Meets the requirements for being exempted from having to engage in a work activity under TANF or any other State welfare program, including a State-administered welfare-to-work program (*Documentation in file*)
- Is a member of a family receiving assistance, benefits or services under TANF or any other State welfare program and has not been found to be in noncompliance with such program. (*Documentation in file*)

Signature of Family Member

Date

Signature of THA Official

Date

Chapter 12

TRANSFER POLICY

INTRODUCTION

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

This chapter describes HUD regulations and THA 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: THA Required Transfers. This part describes types of transfers that may be required by the THA, 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 THA 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 THA 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 THA.

In the case of a genuine emergency, it may be unlikely that the THA 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 THA 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.

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 THA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

THA 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

THA Policy

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, the THA 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 THA 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

THA Policy

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

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

The THA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the THA will collect information from companies in the community that provide these services.

The THA will reimburse the family for eligible out-of-pocket moving expenses up to the THA's established moving allowance.

PART II: THA REQUIRED TRANSFERS

12-II.A. OVERVIEW

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

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

A transfer that is required by the THA 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 THA REQUIRED TRANSFERS

THA Policy

The types of transfers that may be required by the THA, 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 THA 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 THA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

THA Policy

When a non-accessible unit becomes available, the THA 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 THA 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 THA 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 THA policy [24 CFR 960.257(a)(4)]. On some occasions, the THA 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)].

THA Policy

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

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

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

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

The THA 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 THA's occupancy standards, when the THA determines there is a need for the transfer.

The THA 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 THA 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 THA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

THA Policy

The THA 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 THA'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 THA 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 THA may not take action on the transfer until the conclusion of the grievance process.

12-II.D. COST OF TRANSFER

THA Policy

The THA will bear the reasonable costs of transfers that the THA requires, except that residents will be required to bear the cost of occupancy standards transfers.

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

The THA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the THA will collect information from companies in the community that provide these services.

The THA will reimburse the family for eligible out-of-pocket moving expenses up to the THA's established moving allowance.

PART III: TRANSFERS REQUESTED BY TENANTS

12-III.A. OVERVIEW

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

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

THA Policy

The types of requests for transfers that the THA 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 THA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by the THA.

The THA 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 THA's discretion, include an assessment by law enforcement indicating a threat of criminal attack, potential retaliation for testimony, or where the tenant is a victim of a hate crime or domestic violence.

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 THA 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 THA's definition of overcrowded, as long as the family meets the THA's occupancy standards for the requested size unit

When the head of household or spouse is employed 25 miles or more from the public housing unit, has no reliable transportation, and public transportation is not adequate

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 THA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

THA Policy

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

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

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

- Have no housekeeping lease violations or history of damaging property

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

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

Exceptions to the good record requirement may be made when it is to the THA'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

THA Policy

When a family transfers from one unit to another, the THA 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.

12-III.E. COST OF TRANSFER

THA Policy

The resident will bear all of the costs of transfer s/he requests. However, in cases of documented financial hardship, the THA will consider assuming the transfer costs when the transfer is done as a reasonable accommodation.

12-III.F. HANDLING OF REQUESTS

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

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

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

THA Policy

The THA 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
2. Verified medical condition
3. Threat of harm or criminal activity
4. Reasonable accommodation
5. Transfer to make an accessible unit available
6. Demolition, renovation, etc.
7. Occupancy Standards
8. Other THA required transfers
9. 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 THA to meet the demolition or renovation schedule.

Transfers will take precedence over waiting list admissions.

12-IV.C. TRANSFER OFFER POLICY

THA Policy

Residents will receive one offer of a transfer.

When the transfer is required by the THA, 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

THA 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 THA'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 THA will require documentation of good cause for unit refusals.

12-IV.E. DECONCENTRATION

THA Policy

If subject to deconcentration requirements, the THA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the THA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

12-IV.F. REEXAMINATION POLICIES FOR TRANSFERS

THA Policy

The reexamination date will be changed to the first of the month in which the transfer took place.

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 THA 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 THA can terminate a family's lease, and give THAs authority to determine other reasons.

When determining THA 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 THA'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 THA places upon families who wish to terminate their lease.

Part II: Termination by THA - Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by the THA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by THA – Other Authorized Reasons. This part describes the THA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes THAs to terminate. For some of these options HUD requires the THA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the THA has full discretion whether to consider the options as just cause to terminate as long as the THA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the THA may consider in lieu of termination, and the criteria the THA 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 THA 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.

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 THA central office or sent by pre-paid first-class mail, properly addressed.

THA Policy

If a family desires to move and terminate their tenancy with the THA, they must give at least 30 calendar days advance written notice to the THA of their intent to vacate. When a family must give less than 30 days notice due to circumstances beyond their control the THA, 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.

PART II: TERMINATION BY THA – MANDATORY

13-II.A. OVERVIEW

HUD requires the THA to terminate the lease in certain circumstances. In other circumstances HUD requires the THA to establish provisions for lease termination, but it is still a THA 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 THA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the THA to terminate the lease.

13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The THA 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 THA 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 THA, 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 PROVIDE SOCIAL SECURITY DOCUMENTATION [24 CFR 5.218(c) and 24 CFR 960.259(a)(3)]

The THA must terminate the lease if a resident family fails to provide the documentation or certification required for any family member who obtains a social security number, joins the family, or reaches 6 years of age. See Chapter 7 for a complete discussion of documentation and certification requirements.

13-II.E. FAILURE TO ACCEPT THE THA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

The THA must terminate the lease if the family fails to accept the THA's offer of a lease revision to an existing lease, provided the THA has done the following:

- The revision is on a form adopted by the THA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The THA 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 THA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to THA policies for offering lease revisions.

13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]

The THA must immediately terminate the lease if the THA 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 THA 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.

PART III: TERMINATION BY THA – OTHER AUTHORIZED REASONS

13-III.A. OVERVIEW

Besides requiring THAs to terminate the lease under the circumstances described in Part II, HUD requires the THA 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 THAs to terminate for such violations in all cases. The THA 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 THA may, as an alternative to termination, require the exclusion of the culpable household member. The THA must make policy decisions concerning these options.

In addition, HUD authorizes THAs 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 THA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the THA lease. In the development of the terms of the lease, the THA 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 THAs wide discretion in some areas, a broad range of policies could be acceptable.

The THA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

The THA may consider alternatives to termination and must establish policies describing the criteria the THA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the THA 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 THAs to terminate for such violations in all cases, therefore THA 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.

Household means the family and THA-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.

THA Policy

The THA 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 THA 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 THA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the THA 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 THA may evict a family when the THA 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.

THA Policy

The THA will terminate the lease when the THA determines that a household member is illegally using a drug or the THA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

The THA 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 THA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the THA 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 THA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

THA Policy

The THA 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 THA 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 THA 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 THA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the THA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

THAs must establish standards that allow termination of tenancy if the THA 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.

THA Policy

The THA will terminate the lease if the THA 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 THA 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 THA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the THA may, on a case-by-case basis, choose not to terminate the lease.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

THAs must establish standards that allow termination of tenancy if the THA 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.

THA Policy

The THA will terminate the lease if the THA 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 THA 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 THA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the THA 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.

THA Policy

The THA 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

To abide by necessary and reasonable regulations promulgated by the THA 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 THA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the THA 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 THAs 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 THA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the THA to only those examples.

THA Policy

The THA will terminate the lease for the following reasons.

Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery after admission of facts that made the tenant ineligible

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income

Failure to furnish such information and certifications regarding family composition and income as may be necessary for the THA 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 THA that such a dwelling unit is available

Failure to permit access to the unit by the THA 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 THA 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 THA pet policy

If the family has breached the terms of a repayment agreement entered into with the THA

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 THA personnel.

Abusive or violent behavior towards THA 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 THA will consider alternatives as described in Section 13-III.D and other factors described in Section 13-III.E. Upon consideration of such alternatives and factors, the THA 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 THA 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.

THA Policy

The family must supply any information or certification requested by the THA to verify that the family is living in the unit, or relating to family absence from the unit, including any THA-requested information or certification on the purposes of family absences. The family must cooperate with the THA for this purpose.

The family must promptly notify the THA 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 THA will terminate the lease for other good cause.

Abandonment. If the family appears to have vacated the unit without giving proper notice, the THA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the THA 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 THAs to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, the THA 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 THAs to evict over-income residents, but rather gives THAs the discretion to do so thereby making units available for applicants who are income-eligible.

THA Policy

The THA 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 THA may consider exclusion of the culpable household member. Such an alternative can be used, by THA policy, for any other reason where such a solution appears viable.

THA Policy

The THA 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 THA request.

Repayment of Family Debts

THA Policy

If a family owes amounts to the THA, as a condition of continued occupancy, the THA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the THA of the amount owed. See Chapter 16 for policies on repayment agreements.

13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

A THA 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 THA 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.

THA Policy

The THA 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 THA 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.

THA Policy

The THA 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

The effect on the community of the termination, or of the THA's failure to terminate the tenancy

The effect of the THA'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 THAs 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.

THA 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 THA 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 THA 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 THA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

THA 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 THA will determine whether the behavior is related to the disability. If so, upon the family's request, the THA will determine whether alternative measures are appropriate as a reasonable accommodation. The THA 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 THA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

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 THAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. THA policy determines when the THA will conduct such checks.

THA Policy

The THA will conduct criminal records checks when it has come to the attention of the THA, 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 THA 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 THA 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 THA 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 THA 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.

THA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the THA 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 THA notice, to dispute the accuracy and relevance of the information. If the family does not contact the THA to dispute the information within that 10 business day period, the THA 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 THA documents directly relevant to the termination or eviction. If the THA does not make the documents available for examination upon request by the tenant, the THA may not proceed with the eviction [24 CFR 966.4(m)].

When the THA 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 THA'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 THA 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 THA 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 THA, or for a drug-related criminal activity on or off the premises.

THA Policy

The THA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first class mail the same day.

Timing of the Notice [24 CFR 966.4(1)(3)(i)]

The THA 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, THA 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

THA Policy

The THA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations the THA 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(1)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When the THA 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.

THA 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 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 THA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the THA'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 THA 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.

THA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the THA 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 THA will seek the assistance of the court to remove the family from the premises as per state and local law.

The THA may not proceed with an eviction action if the THA 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 THA evicts an individual or family for criminal activity, including drug-related criminal activity, the THA 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.

THA Policy

A written record of every termination and/or eviction will be maintained by the THA at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (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

Chapter 14

GRIEVANCES AND APPEALS

INTRODUCTION

This chapter discusses grievances and appeals pertaining to THA 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.

Note that this chapter is not the THA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14-I.A. OVERVIEW

When the THA 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 THA 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 THA 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 THA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the THA could make the informal hearing process available to applicants who wish to dispute other THA actions that adversely affect them.

THA Policy

The THA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

Notice of Denial [24 CFR 960.208(a)]

The THA 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 THA 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

THA Policy

A request for an informal hearing must be made in writing and delivered to the THA 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 THA's notification of denial of admission.

The THA must 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]

THA 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 THA.

The person conducting the informal hearing will make a recommendation to the THA, but the THA is responsible for making the final decision as to whether admission should be granted or denied.

Informal Hearing Decision [PH Occ GB, p. 58]

THA Policy

The THA will notify the applicant of the THA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the THA 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 THA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. The THA 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 THA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the THA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The THA 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 THA must consider such accommodations. The THA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

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 THA 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 THA 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 THA 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 THA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the THA 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 THA with a copy of the written request for appeal and proof of mailing.

THA Policy

The THA 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 THA 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 THA, of its decision. When the USCIS notifies the THA of the decision, the THA must notify the family of its right to request an informal hearing.

THA Policy

The THA 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 THA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the THA 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 THA 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 THA 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.

THA 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 THA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the THA, and to confront and cross-examine all witnesses on whose testimony or information the THA 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 THA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the THA 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 THA may, but is not required to provide a transcript of the hearing.

THA Policy

The THA will not provide a transcript of an audio taped informal hearing.

Hearing Decision

The THA 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 THA must retain for a minimum of 5 years the following documents that may have been submitted to the THA by the family, or provided to the THA as part of the USCIS appeal or the THA 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 THA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the THA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

14-III.A. REQUIREMENTS [24 CFR 966.52]

THAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any THA action or failure to act involving the lease or THA policies which adversely affect their rights, duties, welfare, or status.

The THA grievance procedure must be included in, or incorporated by reference in, the lease.

THA Policy

The THA grievance procedure will be incorporated by reference in the tenant lease.

The THA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the THA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by the THA before adoption of any grievance procedure changes by the THA.

THA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by the THA of any proposed changes in the THA grievance procedure, to submit written comments to the THA.

The THA 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 THA action or failure to act in accordance with the individual tenant’s lease or THA regulations which adversely affect the individual tenant’s rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the THA 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 THA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
 - 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 THA 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 THA'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 THA. It is not applicable to disputes between tenants not involving the THA. 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 THA.

If HUD has issued a due process determination, a THA may exclude from the THA 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 THA
- 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, THAs 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 THA may evict through the state/local judicial eviction procedures. In this case, the THA is not required to provide the opportunity for a hearing under the THA's grievance procedure as described above.

THA Policy

The THA is located in a due process state, therefore shall grant the opportunity for a grievance hearing for lease terminations excluding the above referenced activity.

See Chapter 13 for related policies on the content of termination notices.

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 THA 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.

THA Policy

The THA will accept requests for an informal settlement of a grievance either orally or in writing, to the THA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the THA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the THA 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 THA'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.

THA Policy

The THA 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 THA's tenant file.

For THAs 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.

THA Policy

The resident must submit a written request for a grievance hearing to the THA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the THA'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 THA'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 THA claims is due, the family must pay an escrow deposit to the THA. When a family is required to make an escrow deposit, the amount is the amount of rent the THA 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 THA 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 THA 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 THA's disposition of the grievance in any appropriate judicial proceeding.

THA Policy

The THA 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 THA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate THA official.

THA 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 THA.

The THA may wish to permit the tenant to request to reschedule a hearing for good cause.

THA 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 THA may request documentation of the “good cause” prior to rescheduling the hearing.

Expedited Grievance Procedure [24 CFR 966.55(g)]

The THA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the THA, or
- Any drug-related criminal activity on or near such premises

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

The THA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

THA Policy

The THA will follow expedited grievance procedures for any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the THA, or any drug-related criminal activity on or near such premises.

Such procedures will provide for an expedited notice of hearing request, an expedited scheduling of the hearing, and for an expedited decision on the grievance. The tenant will have 3 business days to make their hearing request. The hearing officer will have 3 business days to schedule the hearing, and 3 business days to render a decision. All other aspects of the expedited grievance process shall be the same as for other grievances.

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 THA, other than the person who made or approved the THA action under review, or a subordinate of such person.

THA Policy

THA grievance hearings will be conducted by a single hearing officer and not a panel. The THA has designated the following to serve as hearing officer:

Francine Kouis

The THA must determine the methodology for appointment of the hearing officer and it must be stated in the grievance procedure.

THA Policy

The THA will appoint a person who has been selected in the manner required under the grievance procedure. Efforts will be made to assure that the person selected is not a friend, nor enemy, of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.

The THA must consult with resident organizations before a person is appointed as a hearing officer or hearing panel member. Comments from the resident organizations must be considered before making the appointment.

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 THA 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 THA does not make the document available for examination upon request by the complainant, the THA may not rely on such document at the grievance hearing.

THA 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 THA 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.

THA Policy

Hearings may be attended by the following applicable persons:

A THA representative(s) and any witnesses for the THA

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by the THA 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 THA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the THA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

Decision without Hearing [24 CFR 966.56(c)]

The hearing officer/panel may render a decision without proceeding with the hearing if the hearing officer/panel determines that the issue has been previously decided in another proceeding.

Failure to Appear [24 CFR 966.56(d)]

If the complainant or the THA 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 THA 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 THA'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.

THA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the THA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or 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.

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 THA must sustain the burden of justifying the THA 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 THA 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)].

THA 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 THA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the THA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine THA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the THA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require the THA, 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 THA 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)].

THA Policy

If the complainant would like the THA to record the proceedings by audiotape, the request must be made to the THA by 12:00 p.m. on the business day prior to the hearing.

The THA will consider that an audio tape recording of the proceedings is a transcript.

Accommodations of Persons with Disabilities [24 CFR 966.56(h)]

The THA 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 THA's responsibilities pertaining to reasonable accommodation.

14-III.H. DECISION OF THE HEARING OFFICER/PANEL [24 CFR 966.57]

The hearing officer/panel must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and the THA. The THA must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by the THA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

THA Policy

In rendering a decision, the hearing officer will consider the following matters:

THA Notice to the Family: The hearing officer will determine if the reasons for the THA'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 THA policy.

THA Evidence to Support the THA 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 THA'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 THA policies. If the grounds for termination are not specified in the regulations or in compliance with THA policies, then the decision of the THA will be overturned.

The hearing officer will issue a written decision to the family and the THA 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 THA representative(s)

Name of family representative (if any)

Names of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the THA's decision.

Order: The hearing report will include a statement of whether the THA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the THA 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 THA to restore the family's status.

Procedures for Further Hearing

THA 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 THA will take effect and another hearing will not be granted.

Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer/panel is binding on the THA which must take the action, or refrain from taking the action cited in the decision unless the THA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern THA action or failure to act in accordance with or involving the complainant's lease on THA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer/panel is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the THA

THA Policy

When the THA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the THA 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 THA 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)].

Chapter 15

PROGRAM INTEGRITY

INTRODUCTION

The THA is committed to ensuring that funds made available to the THA are spent in accordance with HUD requirements.

This chapter covers HUD and THA 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 THA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the THA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

THA Policy

The THA anticipates that the vast majority of families and THA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the THA's program is administered effectively and according to the highest ethical and legal standards, the THA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The THA will provide each applicant and resident with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

The THA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The THA 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 THA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

THA staff will be required to review and explain the contents of all HUD- and THA-required forms prior to requesting family member signatures.

The THA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key THA forms and form letters that request information from a family member.

The THA will provide each THA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

15-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the THA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

THA Policy

The THA will employ a variety of methods to detect errors and program abuse, including:

The THA routinely will use available sources of up-front income verification 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 THA 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 THA activities and notifies the THA of errors and potential cases of program abuse.

THA Policy

The THA 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 THA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

THA Policy

The THA will encourage staff, residents, and the public to report possible program abuse.

15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the THA Will Investigate

THA Policy

The THA 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 THA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The THA 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 THA may investigate possible instances of error or abuse using all available THA and public records. If necessary, the THA will require applicant/resident families to give consent to the release of additional information.

Analysis and Findings

THA Policy

The THA 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 THA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the THA, 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 THA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

THA Policy

In the case of family-caused errors or program abuse, the THA 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

THA Policy

The THA 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 THA 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).

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 THA must promptly correct the tenant rent and any utility reimbursement prospectively.

THA 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 THA or the THA 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 THA to use incorrect information provided by a third party.

Family Reimbursement to THA

THA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. If the family fails to repay the amount owed, the THA will terminate the family's lease in accordance with the policies in Chapter 13.

THA Reimbursement to Family

THA Policy

The THA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

Prohibited Actions

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the THA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the THA [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)].

THA Policy

Any of the following will be considered evidence of family program abuse:

Offering bribes or illegal gratuities to the THA Board of Commissioners, employees, contractors, or other THA 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 THA 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 THA 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 THA may, at its discretion, impose any of the following remedies.

- The THA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to THA).
- The THA 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 THA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The THA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

15-II.C. THA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of THA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a THA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the THA personnel policy.

THA-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 THA

The family is required to repay an underpayment of rent if the error or program abuse is caused by THA staff.

THA Reimbursement to Family

THA Policy

The THA 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

THA Policy

Any of the following will be considered evidence of program abuse by THA 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 THA

- Disclosing confidential or proprietary information to outside parties

- Gaining profit as a result of insider knowledge of THA 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

THA Policy

When the THA determines that program abuse by a family or THA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, (\$3,000 +) the THA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

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 THA recovers [Notice PIH 2005-7 (HA)].

If the THA 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 THA's grievance process.

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 THA-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 THA 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 (THAS). This part describes the PHAS indicators, how THAs are scored under PHAS, and how those scores affect a THA.

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 THA will follow.

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the THA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

16-I.A. OVERVIEW

THAs must establish allowances for THA-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)].

THAs must also establish surcharges for excess consumption of THA-furnished utilities [24 CFR 965.506].

The THA 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)].

16-I.B UTILITY ALLOWANCES

The THA must establish separate allowances for each utility and for each category of dwelling units the THA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a THA 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 THA 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 siting 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 THA about establishing utility allowances.

Air-Conditioning

“If a THA 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)].

THA Policy

The THA does not installed air-conditioning.

Utility Allowance Revisions [24 CFR 965.507]

The THA 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 THA 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.

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.

THA Policy

Between annual reviews of utility allowances, the THA will only revise its utility allowances due to a rate change, when required to by the regulation.

16-I.C. SURCHARGES FOR THA-FURNISHED UTILITIES [24 CFR 965.506]

For dwelling units subject to allowances for THA-furnished utilities where check meters have been installed, the THA 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 THA's average utility rate. The basis for calculating the surcharges must be described in the THA's schedule of allowances. Changes in the amount of surcharges based directly on changes in the THA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by THA-furnished utilities where check meters have not been installed, the THA 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 THA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of THA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the THA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

THA Policy

The THA does have THA-furnished utilities.

16-I.D. NOTICE REQUIREMENTS [965.502]

The THA 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 THA'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.

16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]

On request from a family that includes a disabled or elderly person, the THA 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.

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 THA 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

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 THA could promptly lease the public housing unit after preparation for occupancy.

The THA must use a reasonable method to determine flat rents. In determining flat rents, THAs must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of property
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the THA
- Utilities provided by the THA
- Section 8 rent reasonableness

Review of Flat Rents

The THA must ensure that flat rents continue to mirror market rent values [24 CFR 960.253(b)].

THA Policy

The THA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values.

Posting of Flat Rents

THA Policy

The THA will publicly post the schedule of flat rents in a conspicuous manner in the applicable THA or project office.

Documentation of Flat Rents [24 CFR 960.253(b)(5)]

The THA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the THA in accordance with this method.

16-II.C. PUBLIC HOUSING MAXIMUM RENTS

Establishing Public Housing Maximum Rents

THAs 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, THAs 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 THA. THAs may calculate a maximum rent on either a THA- 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.

THAs 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

THA Policy

The THA will recalculate the public housing maximum rents on an annual basis.

Posting of Public Housing Maximum Rents

THA Policy

The THA will publicly post the schedule of public housing maximum rents in a conspicuous manner in the applicable THA or project office.

Documentation of Public Housing Maximum Rents

THA Policy

The THA will maintain records that document how the THA determined the 95th percentile of TTP, whether the maximum rent was determined THA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

PART III: FAMILY DEBTS TO THE THA

16-III.A. OVERVIEW

This part describes the THA's policies for recovery of monies that have been underpaid by families.

THA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the THA holds the family liable to return any underpayments to the THA.

The THA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. The term *repayment agreement* refers to a formal document signed by a tenant and provided to the THA in which a tenant acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

When a family refuses to repay monies owed to the THA, the THA 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 THA

THA Policy

Any amount due to the THA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the THA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the THA will terminate the family's tenancy in accordance with the policies in Chapter 13. The THA will also pursue other modes of collection.

Repayment Agreement Guidelines

Down Payment Requirement

THA Policy

The THA does not require a down payment.

Payment Thresholds

THA Policy

All repayment agreements must be paid in full within 12 months as of the date the agreement is ratified.

Execution of the Agreement

THA Policy

The head of household and spouse/cohead (if applicable) must sign the repayment agreement.

Due Dates

THA Policy

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

Non-Payment

THA 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 THA, the THA 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 THA 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 THA will terminate tenancy in accordance with the policies in Chapter 13.

No Offer of Repayment Agreement

THA Policy

The THA will not enter into a repayment agreement if there is already a repayment agreement in place with the family.

PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (THAS)

16-IV.A. OVERVIEW

The purpose of the Public Housing Assessment System (THAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among THAs, 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. THAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]

The table below lists each of the THAS indicators, the points possible under each indicator, and a brief description of each indicator. A THA's performance is based on a combination of all four indicators.

Indicator 1: Physical condition of the THA's properties

Maximum Score: 30

- The objective of this indicator is to determine the level to which a THA 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 THA'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 THA's public housing portfolio.

Indicator 2: Financial condition of a THA

Maximum Score: 30

- The objective of this indicator is to measure the financial condition of a THA 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 THA's financial condition is determined by measuring the THA'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.

Indicator 3: Management operations of a THA**Maximum Score: 30**

- The objective of this indicator is to measure certain key management operations and responsibilities of a THA for the purpose of assessing the THA's management operations capabilities.
- A THA's management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, THA 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 THA.
- The THA'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 THA takes based on the results of the survey.

16-IV.C. THAS SCORING [24 CFR 902.63 and 902.67]

HUD's Real Estate Assessment Center (REAC) issues overall THAS scores, which are based on the scores of the four THAS indicators, and the components under each indicator. THAS scores translate into a designation for each THA as high performing, standard, or troubled.

A high performer is a THA that achieves a score of at least 60 percent of the points available under each of the four indicators, and achieves an overall THAS score of 90 or greater.

A standard performer is a THA that has an overall THAS 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 THA that achieves an overall THAS 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 THA in several ways:

- High-performing THAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- THAs that are standard performers may be required to submit an improvement plan to eliminate deficiencies in the THA's performance [24 CFR 902.73(a)].
- THAs 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 THA performance [24 CFR 902.75].
- THAs that fail to execute or meet MOA requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].

THAs must post a notice of its final THAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status.

PART V: RECORD KEEPING

16-V.A. OVERVIEW

The THA 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 THA 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

THA Policy

During the term of each public housing tenancy, and for at least four years thereafter, the THA will keep all documents related to a family's eligibility, tenancy, and termination.

In addition, the THA 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 THAS scores

- Accounts and other records supporting THA budget and financial statements for the program

- Other records as determined by the THA 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

THAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

THA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized THA staff.

THA 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 THA may release the information collected.

Upfront Income Verification (UIV) Records

THAs 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*.

THA Policy

EIV documentation will be retained in resident files with the applicable annual or interim reexamination.

EIV documentation may only be provided to the individual (only) to whom the record pertains.

EIV data of minors may be provided to the minor's parent or guardian.

EIV documents shall be shredded as soon as it has served its purpose.

Criminal Records

The THA may only disclose the criminal conviction records which the THA receives from a law enforcement agency to officers or employees of the THA, or to authorized representatives of the THA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The THA must establish and implement a system of records management that ensures that any criminal record received by the THA 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 THA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The THA must establish and implement a system of records management that ensures that any sex offender registration information received by the THA 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 THA 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 THA other than under 24 CFR 5.905.

Medical/Disability Records

THAs are not permitted to inquire about the nature or extent of a person's disability. The THA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the THA receives a verification document that provides such information, the THA should not place this information in the tenant file. The THA should destroy the document.

**PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH
ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]

The THA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The THA 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 THA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

THA Policy

The THA 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 THA 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.

