HOUSING AUTHORITY OF THE CITY OF AUSTIN

Public Housing Admissions and Continued Occupancy Policy

Housing and Community Development Department

Approved by the HACA Board of Commissioners

11/18/2014

Revisions Approved by HACA Board of Commissioners

5/21/2015

12/17/2015

8/24/2016

12/15/2016

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Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

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

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

There are three parts to this chapter:

Part I: HACA. This part includes a description of HACA, 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: HACA

1-I.A. OVERVIEW

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

1-I.B. ORGANIZATION AND STRUCTURE OF HACA

Public housing is funded by the federal government and administered by the Housing Authority of the City of Austin (HACA) for the jurisdiction of the City of Austin, Texas.

HACA is governed by a Board of Commissioners and is appointed in accordance with state housing law and generally serves in the same capacity as the Directors of a corporation. The Board of Commissioners establishes policies under which HACA conducts business and ensures that those policies are followed by HACA staff. The Board of Commissioners is responsible for preserving and expanding HACA's resources and assuring the agency's continued viability and success.

Formal actions of HACA are taken through written resolutions, adopted by the Board of Commissioners and entered into the official HACA record.

The principal staff member of HACA is the President/CEO (CEO), who is selected and hired by the Board of Commissioners. The CEO oversees the day-to-day operations of HACA and is directly responsible for carrying out the policies established by the Board of Commissioners. The CEO's duties include ensuring for the hiring, training and supervising of HACA staff, as well as budgeting and financial planning for the agency. Additionally, the CEO is charged with ensuring compliance with federal and state laws and program mandates.

1-I.C. HACA MISSION

The Housing Authority of the City of Austin's mission is to cultivate sustainable affordable housing communities and partnerships that inspire self reliance, growth and optimism.

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

As a public service agency, the Housing Authority of the City of Austin (HACA) is committed to providing excellent service to all public housing applicants, residents and the public. In order to provide superior service, HACA 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 that 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 HACA'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 HACA's support systems and commitment to our employees and their development.

HACA 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 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 Public Housing Authorities (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

The Department of Housing and Urban Development (HUD) writes and publishes regulations in order to implement public housing laws enacted by Congress. HUD contracts with HACA to administer programs in accordance with HUD regulations and provides an operating subsidy to HACA. HACA creates written policies that are consistent with HUD regulations. Among these policies is HACA's Admissions and Continued Occupancy Policy (ACOP). HACA's Board of Commissioners approves the ACOP.

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

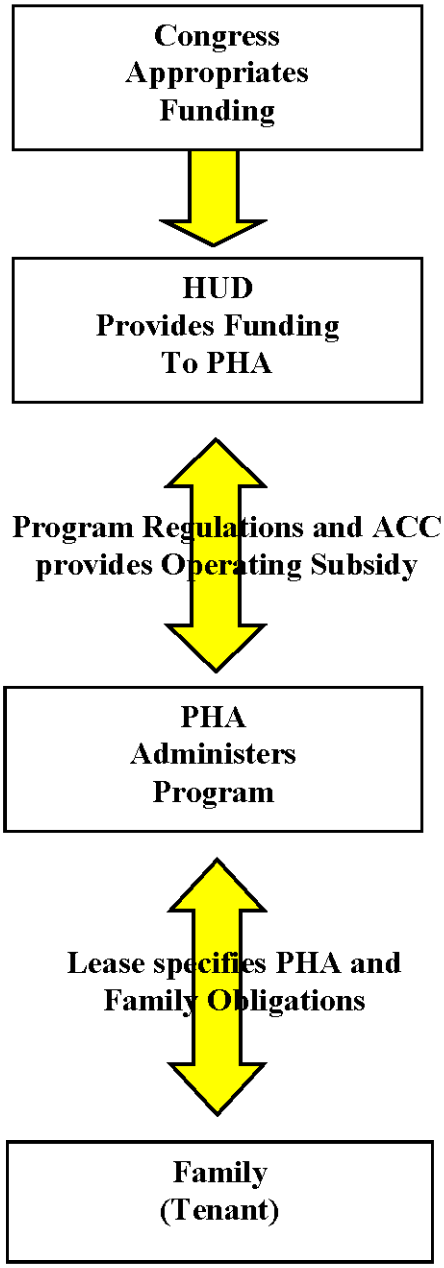
1-II.C. PUBLIC HOUSING PARTNERSHIPS

Relationships between the important parties are defined by federal regulations and by contract. To administer the public housing program, HACA enters into a contractual relationship with HUD through the Annual Contributions Contract (ACC). HACA 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, HACA 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 HACA do?

HACA's responsibilities originate in federal regulations and the ACC. HACA 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 HACA 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, HACA'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 HACA with complete and accurate information, determined by HACA to be necessary for administration of the program.
- Cooperate in attending all appointments scheduled by HACA.
- Allow HACA 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 HACA 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 HACA of any changes in family composition and income.
- 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 35: Lead-Based Paint
- 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 Admissions and Continued Occupancy Policy (ACOP) is HACA's written statement of policies used to carry out the public housing program in accordance with federal law and regulations and HUD requirements. The ACOP is required by HUD and must be available for public review [CFR 24 Part 903]. The ACOP also contains policies that support the objectives contained in the HACA'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. HACA 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 PHA's Admissions and Continued Occupancy Policy (ACOP) supports that goal by clearly defining HACA policy for HACA 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 ACOP 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

HACA will revise this ACOP as needed to comply with changes in HUD regulations. The HACA Board of Commissioners must approve the original policy and any changes and a copy will be provided to HUD.

This ACOP shall supersede and replace all previous ACOP. If there is a conflict between a HACA Standard Operating Procedure (SOP) and this ACOP, the ACOP will supersede the SOP. This ACOP shall be effective the date that it is approved by the HACA Board of Commissioners.

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Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and Department of Housing and Urban Development (HUD) regulations requiring Public Housing Authorities (PHAs) 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 PHA's public housing operations.

This chapter describes HUD regulations and PHA 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 PHA 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 (HUD) 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 PHA to ensure meaningful access to the public housing program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register*.

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require PHAs 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. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The PHA 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)
- The Violence against Women Act of 2013 (VAWA)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register February 3, 2012
- 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.

2-I.B. NONDISCRIMINATION

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

Except as allowed by law, the PHA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin (called "protected classes").

Familial status includes one or more individuals under the age of 18 living with 1) a parent or another person having legal custody of such individual or individuals or 2) the designee of such parent or other person having such custody, with the written permission of such parent or other such person. The familial status protections shall also apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not yet attained the age of 18 years.

The PHA will not discriminate on the basis of marital status, gender identity or sexual orientation [FR Notice 02/03/12].

HACA Policy

HACA will not discriminate against other protected classes including: students or people with Acquired Immune Deficiency or HIV status ("AIDS/HIV" status).

HACA 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 PHA 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 PHA will provide information to public housing applicant families about civil rights requirements.

Discrimination Complaints

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

HACA Policy

HACA shall conspicuously post a Fair Housing and Equal Opportunity poster and the toll-free Discrimination Complaint hotline number at each public housing development's community bulletin board and at the HACA central administration office.

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

HACA will attempt to remedy discrimination complaints made against HACA.

Upon request, HACA 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).

In addition to the policies outlined in the ACOP, HACA further complies with fair housing laws through the implementation of the Affirmatively Furthering Fair Housing Plan as adopted by the HACA Board of Commissioners.

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 PHA must ensure that persons with disabilities have full access to the PHA'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 PHA 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)].

HACA Policy

HACA will advise applicants and resident families in writing of their right to request accommodations, on the intake application, reexamination documents and notices of adverse action by HACA, by including the following language:

> "The Housing Authority is committed to compliance with the Americans with Disabilities Act and the Fair Housing Act. 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 by calling (512) 477-4488. Se habla español."

The applicant or resident can request a reasonable accommodation from the Admissions Director or from their assigned Public Housing Manager. The Vice Presidents of Housing and Community Development will be the Reasonable Accommodation Coordinators for public housing.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

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

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the PHA, 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 PHA shall accommodate the needs of a person with disabilities. Examples may 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 PHA-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 PHA staff.
- Displaying posters and other housing information in locations throughout the PHA'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 PHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

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

If the need for the accommodation is not readily apparent or known to the PHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

HACA Policy

HACA will encourage the family to make its request in writing using a reasonable accommodation request form that is available from the Public Housing Manager or the central administration office. However, HACA will consider the accommodation request 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 that is used for waiting list preferences and income allowances.

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

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

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

When verifying a disability, the PHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. 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 non-medical service agency or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION

[Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26]

The PHA must approve a request for an accommodation if all following four 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 indeed for the purpose of affording a person with a disability an equal opportunity to use and enjoy a program, service or dwelling under the program.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and/or administrative burden on the PHA, or fundamentally alter the nature of the PHA'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 overall size of the PHA's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, 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 PHA 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 PHA may verify the need for the requested accommodation.

HACA Policy

After a request for an accommodation is presented, HACA will respond, in writing, within 30 calendar days.

If HACA denies a request for an accommodation, the notice will inform the family of the right to appeal HACA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

If HACA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and/or administrative burden or fundamentally alter the nature of HACA's operations), HACA will either list recommended alternatives or include a request to 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. The family will be given 30 days from the date of the written notice to respond and discuss alternative accommodations with HACA.

If the family does not respond to HACA within 30 days of the notice, or if HACA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, HACA will notify the family, in writing, of its determination within 30 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 HACA'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 PHA to take reasonable steps to ensure that persons with disabilities related to hearing and vision have reasonable access to the PHA's programs and services [24 CFR 8.6].

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

HACA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display /teletype) communication will be available. This service is available through Relay Texas. Relay Texas provides telephone-interpreting service between people who can hear ('voice' users) and those who are deaf, hard-of-hearing, deaf-blind or speech-disabled.

Additional accommodations include providing sign language interpreters, at HACA's expense, for scheduled appointments and meetings, upon advance request of the hearing impaired resident or applicant.

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 HACA staff, one-on-one assistance will be provided upon request.

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

2-II.G. PHYSICAL ACCESSIBILITY

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

- Notice PIH 2010-26
- 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 PHA'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 PHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally-funded housing programs.
- The PHA Plan provides information about self-evaluation, needs assessment and transition plans.

The design, construction or alteration of PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Notice PIH 2010-26 contains specific information on calculating the percentages of units for meeting UFAS requirements.

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 PHA'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, including persons 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)].

HACA Policy:

The notice shall also stipulate their deadlines in which to request the informal hearing, or the denial shall remain final.

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 PHA's grievance process [24 CFR 966.4(l)(3)(ii)].

HACA Policy:

The notice shall also stipulate their deadlines in which to request the grievance hearing, or the termination decision shall remain final.

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

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

HACA Policy:

The accommodation must be requested with advance notice to allow HACA to make the necessary arrangements, for example, contacting a sign language interpreter agency to schedule an interpreter for a hearing.

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 Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register.*

The PHA 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).

Persons with LEP 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 ACOP, 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 person with LEP, the PHA will balance the following four factors: (1) the number or proportion of persons with LEP eligible to be served or likely to be encountered by the public housing program; (2) the frequency with which persons with LEP 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 PHA and costs. Balancing these four factors will ensure meaningful access by persons with LEP to critical services while not imposing undue burdens on the PHA.

2-III.B. ORAL INTERPRETATION

HACA will offer competent interpretation services free of charge, upon request, to the LEP person.

HACA Policy

HACA will utilize a language line for telephone interpreter services.

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 HACA. The interpreter may be a family member or friend.

HACA 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 and possible, according to its language assistance plan (LAP), HACA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

2-III.C. WRITTEN TRANSLATION

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

HACA Policy

In order to comply with written-translation obligations, HACA has taken the following steps:

HACA has provided written translations of vital documents for the 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. Such documents include but are not limited to: housing application, public housing lease, House Rules, annual lease renewal documents, lease termination notices and grievance hearing notices. Translation of other documents, if needed, can be provided, upon request.

If there are fewer than 50 persons in a different LEP language group, HACA may not translate vital written materials, but will, upon request of the LEP person, provide 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 PHA 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 PHA 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 persons with LEP to the PHA's public housing program and services.

HACA Policy

HACA has developed a written LEP plan/standard operating procedure. The following five steps were taken when developing the plan. HACA: (1) Identified persons with LEP who need language assistance; (2) identified language assistance measures; (3) trained staff; (4) provided notice to persons with LEP; and (5) is monitoring and updating the LEP plan as needed. The plan will be reviewed on an ongoing basis and will be updated as needed to address the needs of HACA's LEP population.

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.
- Has a record of such impairment.
- Is regarded as having such impairment.

The phrase "physical or mental impairment" includes:

- 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; 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, speaking, 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 PHA) 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.

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Chapter 3

ELIGIBILITY

INTRODUCTION

HACA 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 HACA 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 HACA.
- 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 HACA's collection and use of family information as provided for in HACA-provided consent forms.
- HACA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or HACA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and HACA 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 HACA 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**,** FR Notice 02/03/12]

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. *Family* as defined by HUD includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status: a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. The PHA has the discretion to determine if any other group of persons qualifies as a family.

Gender Identity means actual or perceived gender characteristics.
Sexual orientation means homosexuality, heterosexuality, or bisexuality.

HACA Policy

A family also includes two or more individuals who are not related by blood, marriage (either licensed or Texas common law), consensual sexual relationship, legal adoption or other operation of law, 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 and will be living in the same dwelling unit. Notwithstanding anything to the contrary, in order to qualify as a family in the context of a head of household with minors who are not the head of household's children, either:

(1) a court order establishing custody, or

(2) an affidavit from the parent, which establishes custody with the head of household, is required, or

(3) If the parent or legal guardian is deceased, their whereabouts are unknown, or they are unresponsive, the head of household must provide an affidavit declaring one of the foregoing and that the child(ren) is/are residing with him/her and also provide proof of kinship care by producing documents relating to school, TANF, Medicaid or medical records, or

(4) a notarized power of attorney specific to custody and that the child(ren) is/are residing with him/her and also provide proof of kinship care by producing documents relating to school, TANF, Medicaid or medical records.

A family does not include:

(1) a group of unrelated non-elderly and/or disabled persons under 62 years of age living together,

(2) a housekeeper or live-in aide, or

(3) foster children and/or foster adults.

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 HACA'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

HACA 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. The family may request a change of head of household unless HACA determines, in its sole discretion that the requested change is for the purpose of the family obtaining a benefit by circumventing a limitation or requirement of the housing program, federal statute, regulation or other HACA policy.

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

In the absence of a judicial decision or an agreement among the original family members, HACA will determine which family will retain their placement on the waiting list or continue in occupancy. As a general rule, the applicant listed as head of household on the original application will retain the original application date and time. Former family members listed as co-head or other adults will be required to make a new application with a new application date and time. HACA may take into consideration the following factors:

(1) the interest of any minor children, including custody arrangements;

(2) the interest of any ill, elderly or disabled family members;

(3) the interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and provides documentation in accordance with section 16-VII.D of this ACOP;

(4) any possible risks to family members as a result of domestic violence or criminal activity; and

(5) 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.

HACA 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. However, for purposes of establishing a utility account with Austin Energy, an emancipated minor who is designated as head of household may be required to have an adult co-signor on the account.

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.

HACA Policy

A *marriage partner* includes the partner in a "common law" marriage as defined in Texas 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.

HACA 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

HACA 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) is claiming the same dependents as family members, only 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, HACA will make the determination based on available documents such as signed court orders plus school enrollment records, proof of receipt of governmental assistance (i.e. food stamps, TANF, Social Security or SSI benefits) or an IRS return showing which family has claimed the child(ren) 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 educational institution defines the time commitment or subject load that is needed to be full-time.

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 [24 CFR 5.100, 5.403, 945.105, and FR Notice 02/03/12]

Elderly Persons

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

Near-Elderly Persons

A *near-elderly person* is a person who is 50-61 years of age.

Elderly Family

An *elderly family* is one in which the head, spouse, cohead or sole member is an elderly person. 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, FR Notice 02/03/12]

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, HACA 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 HACA 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 PHA premises [24 CFR 966.4(f)].

HACA Policy

A resident family must notify HACA 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 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 or address of record for receipt of benefits or other purposes will be considered to be 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].

HACA 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. HACA will require the applicant or tenant family to provide documentation to support such arrangement in their household.

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

HACA Policy

Generally an individual who is or is expected to be absent from the public housing unit for 90 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 90 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

HACA 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 HACA indicating that the student has established a separate household or the family declares that the student has established a separate household. This applies at time of initial application as well.

To be considered a family member, the individual attending school must be enrolled in an accredited two or four-year college or training institution and the student will reside in the unit during holidays and summer breaks.

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.

HACA Policy

If a child has been placed in foster care, HACA 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 for initial eligibility and continued occupancy purposes. For occupancy standards, the temporarily absent child will be counted as a family member.

Absent Head, Spouse or Cohead

HACA Policy

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

Individuals Confined for Medical Reasons

HACA 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, HACA 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

HACA Policy

The family must request HACA approval for the return of any adult family members that HACA 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, near-elderly persons or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

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

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

HACA Policy

A family's request for a live-in aide must be made in writing. HACA will verify the need for a live-in aide with a reliable, knowledgeable medical professional, such as a doctor, that the live-in aide is essential for the care and well being of the elderly, near-elderly or disabled family member. At each annual reexamination, the head of household requiring the live-in aide as well as the live-in aide must sign the live-in aide addendum to the lease and the live-in aide contact form. The live-in aide addendum to the lease includes a

certification from the family and live-in aide 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.

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

- The person commits or has committed 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.
- The person currently owes rent or other amounts to HACA or to another PHA in connection with the housing choice voucher program or public housing assistance under the 1937 Act.

Within 20 business days of receiving a request for a live-in aide, including all required documentation related to the request, HACA will notify the family of its decision in writing. If HACA denies the request for a live-in aide or denies approval of a particular live-in aide, the family may request a grievance hearing within the required timeframe specified in the decision letter.

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 very low-income family whose annual income does not exceed the higher of:

(1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

(2) Thirty (30) percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

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 PHA's public housing program during a PHA fiscal year from the PHA waiting list must be *extremely low-income* families. This is called the "basic targeting requirement."

If admissions of extremely low-income families to the PHA's housing choice voucher program during a PHA fiscal year exceed the 75 percent minimum-targeting requirement for that program, such excess shall be credited against the PHA'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 PHA fiscal year.
- Ten percent of waiting list admission to the PHA's housing choice voucher program during the PHA 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 PHA'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 PHA to request additional documentation of their status, such as a passport.

HACA Policy

Family members who declare citizenship or national status will be required to provide additional documentation supporting the individual's declaration of citizenship and national status. Documents accepted include original birth certificate, original baptismal certificate, original naturalization certificate, unexpired INS card or Social Security card.

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with HACA's 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. Documentation reviewed and accepted will be in accordance with the Immigration and Nationality Act.

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 PHA 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 PHA 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 PHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

HACA Policy

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

When HACA 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 20 calendar 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 HACA. The informal hearing with HACA 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.

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

For new occupants joining the resident family the PHA 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 PHA 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.

HACA Policy

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2012-10, HUD Streamlining Rule 3/8/2016**]**

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

Note: These requirements do not apply to noncitizens who do not contend eligible immigration status, and they do not apply to existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid.

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been issued a new SSN must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or annual recertification. Participants age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit. The PHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

HACA Policy

If the provided documentation is not acceptable evidence of the social security number, HACA will explain to the applicant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to HACA within 90 calendar days. The explanation and request will be documented in the applicant file. If the applicant family is otherwise eligible to participate in the program, the family will maintain its position on the waiting list for this 90 calendar day period.

If all household members have not disclosed their SSN at the time a unit becomes available, the available unit will be offered to the next eligible applicant family on the waiting list. At the conclusion of the 90 calendar day period and if the applicant family has still not submitted acceptable evidence of the SSN, HACA will grant the family an additional 90 calendar day period to comply with the SSN disclosure and documentation requirement if the family was unable to comply with the requirements due to circumstances that could not have reasonably been foreseen and were outside the control of the family.

If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission, the assistance applicant may become a participant, so long as the documentation required in this section is provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity must grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in this section within the required time period, the housing authority may terminate assistance or tenancy of the individual participant or the entire family.

HACA Policy

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

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 PHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the PHA to obtain information that the PHA 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 HACA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. HACA's authority in this area is limited by the Violence against Women Act (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005].

This part covers the following topics:

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

HACA's developments will not be used as housing of last resort. All applicants for public housing will be screened according to the basic policies and standards set forth in the Authority's Admission and Continued Occupancy Policy (ACOP).

GENERAL PRINCIPLES OF SCREENING

The screening criteria in the Admissions and Continued Occupancy Policy are based on those set forth in the HUD Regulations [24 CFR Part 960.205] and in the applicable sections of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). The regulations require an assessment of the behavior of each applicant with respect to the essential obligations of tenancy as expressed in the PHA's lease. The essential obligations of tenancy may be summarized as follows:

- To pay rent and other charges under the lease in the manner set forth by the PHA in the lease.
- To care for and avoid damaging the unit and common areas, to use facilities and equipment in a reasonable way; not to create or maintain health, safety or sanitary hazards and to promptly report maintenance needs.
- Not to interfere with the rights and enjoyment of others and not to damage the property of others.

- Not to engage in criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents or staff and not to engage in drug-related criminal activity on or off the premises.
- To comply with necessary and reasonable rules and program requirements of HUD and the PHA.
- To comply with health and safety codes.

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

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

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

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

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

  HACA Policy

  HACA will apply its screening criteria on all applicant families, including families evicted from federally-assisted housing within the past 5 years for drug-related criminal activity. The PHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

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

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

  HACA Policy

  In determining reasonable cause, HACA 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. HACA may, at its discretion, 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.

  HACA Policy

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

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

  HACA Policy

  If any household member is currently registered as a sex offender under any State registration requirement, regardless of whether it is for lifetime or not, the family will be denied admission.

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

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

HACA Policy

Preliminary Eligibility Criteria

All applications will be screened for preliminary eligibility before they are added to the HACA public housing waiting list. If an applicant is found to be preliminarily ineligible, their application will not be added to the program's waiting list. The following criteria shall be used to determine preliminary ineligibility:

- HACA shall prohibit admission to the public housing program of an applicant for five years from the date of eviction or termination if a household or family member has been evicted or terminated from federally assisted housing for drug-related criminal activity.
- If the household or family vacated in lieu of eviction from a HACA property due to a household or family member engaging in drug-related criminal activity within 5 years from the date of application, HACA will prohibit the admission to the public housing program if the following criteria have been met:
  - HACA has documentation confirming the household or family member engaged in the drug-related criminal activity (e.g. criminal records, including but not limited to, probable cause affidavits, court records, police reports, criminal background report, and / or other official documents); and
  - HACA has documentation confirming that it started the eviction process with the family (e.g. issuance of a 30 day notice or termination lease letter, issuance of a 3 day notice to vacate letter, notice of intent to vacate in lieu

of eviction signed by tenant, filing a forcible detainer lawsuit against the family and / or other records); and
    - The offender that is identified in the documentation is still listed as a member of the household or family on the new application.
- An applicant is deemed preliminarily ineligible and shall be rejected and not placed on the HACA waiting list if they were the head of household, spouse or cohead at the time of past residency at HACA and owes a move-out balance or debt to HACA which is not barred by a statute of limitations. There is a four-year statute of limitation, which ends the latter of:
    - Four years from the date the debt became delinquent, or
    - Four years from the date the final payment would have been due if a repayment agreement was signed by the former tenant.
- An applicant is deemed preliminarily ineligible and shall be rejected and not placed on the HACA waiting list if they were terminated or evicted for any reason other than drug-related activity from either program within a two-year period from date of new application. Abandonment of unit in the housing choice voucher program is considered a termination; abandonment of unit in the conventional public housing program is considered an eviction. This restriction applies only to the former head of household and/or spouse or co-head.
- If the family vacated in lieu of eviction from any HACA property for any reason other than drug-related criminal activity within the two years from the date of application, HACA will prohibit admission to the public housing program if the following criteria have been met:
    - HACA has documentation supporting the grounds for termination that would have led to the eviction of the household or family (e.g. criminal records including, but not limited to, probable cause affidavits, court records, police reports, criminal background reports, etc.; other records, including but not limited to Elite notes, photographs, resident ledgers, complaint records, HACA incident reports, prior tenant file documentation, etc; and / or other official documents); and
    - HACA has documentation confirming that it started the eviction process with the family (e.g. issuance of a 30 day notice of termination letter, issuance of a 3 day notice to vacate letter, notice of intent to vacate in lieu of eviction signed by tenant, filing a forcible detainer lawsuit against the family, and / or other records); and
    - The family member or members identified in that documentation are still listed as members of the family on the new application.
- An applicant is deemed preliminarily ineligible and shall be rejected if applying for the housing choice voucher program if they have been issued a voucher within one year from the date of application, whether or not the voucher was utilized. Expiration of an unused voucher is not cause for preliminary ineligibility for the public housing program.
- An applicant is deemed preliminarily ineligible and shall be rejected and not placed on the HACA waiting list if currently housed in this same program and listed as the head of household or co-head of household.

- For the purpose of providing a housing opportunity to as many applicants as possible, 12 months should elapse before an applicant is preliminarily eligible to reapply for the same program they have just moved out of. This shall include voluntary withdrawals in the conventional public housing program.
- An applicant is deemed preliminarily ineligible and shall be rejected if applying for the same program for which they have already been denied admissions due to criminal history or derogatory rental history, unreported income or fraud within a 12-month period. The applicant will not be eligible to request an informal review of this rejection due to the fact that the applicant was offered an informal review when they were initially denied admissions for criminal history and/or derogatory rental history. Twelve months should elapse from the date of denial or date of the hearing decision whichever is later.
- An applicant is deemed preliminarily ineligible and shall be rejected if applying for the conventional public housing program and has rejected a public housing unit offer from HACA within the last 12 months from the date of the last housing offer.
- A family is deemed evicted if a lease termination/violation letter had been sent to the family alleging a breach of the lease based upon drug-related criminal activity, criminal activity, non-payment of rent or other breach and the family has voluntarily vacated, or if a judgment for eviction is rendered, or if the family vacated due to the oral threatened termination of the lease.
- HACA complies with all Fair Housing laws. Applicants have the right to request a Reasonable Accommodation. HACA will consider all Reasonable Accommodation requests under the Fair Housing Act and Section 504 of the American Disabilities Act. Information related to the Fair Housing Act, Section 504 and Requests for Reasonable Accommodation will be included in the denial letters.
- If the basis for the denial relates to family violence, the applicant may qualify for an exception under the VAWA Amendments. Information related to VAWA will be included in the denial letters.

Criminal Activity [24 CFR 960.203 (c)]

Under the Public Housing Assessment System (PHAS), PHAs 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 PHA is responsible for screening family behavior and suitability for tenancy. In doing so, the PHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts that would adversely affect the health, safety or welfare of other tenants.

HACA Policy

If any household member has engaged in or attempted any of the following criminal activities regardless of the date committed the family will be denied admission:

- capital murder

- murder/manslaughter
- kidnapping
- child molestation
- rape or crimes of a sexual nature
- incest
- gross lewdness
- arson

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

(1) 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].

(2) 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)].

(3) Illegal possession/discharge/display/carrying of firearm or illegal weapon/ deadly weapon.

(4) Assault, aggravated assault, assault by threat, stalking.

(5) Physical violence to persons or property, or criminal activity that has as one of its elements the use, attempted use or threatened use of physical force against the person or property of another.

(6) Criminal activity that may threaten the health or safety of HACA staff, contractors, subcontractors or agents.

(7) Three or more incidences or convictions of alcohol-related criminal activity, including Driving under the Influence and Public Intoxication.

(8) Burglary of a Habitation.

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

(1) A pattern of abuse of alcohol, including, but not limited to, public intoxication and driving while intoxicated.
(2) A pattern of fraud committed against a governmental entity.
(3) A pattern of theft or fraud.
(4) A pattern of organized criminal activity.
(5) A pattern of prostitution.
(6) A pattern (for the purposes listed above) consists of three or more incidences, with a minimum of one incident occurring within the past three years.

If an applicant has one offense of a Class C misdemeanor within the past four years, HACA will not deny the applicant. More than one Class C misdemeanor will be considered a pattern (for the purpose of determining eligibility) and the applicant may be subject to denial based on the nature of the offenses.

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

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

HACA will not deny an application solely on the basis of an arrest. If HACA receives arrest information which may be for a disqualifying activity, HACA may request additional information. Additional information that may be considered, if available, include the following:

- The police report associated with the arrest which provides the reported circumstances of the arrest.
- Any statements made by witnesses or the applicant not included in the police report
- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the applicant engaged in the disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

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

HUD authorizes the PHA 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, the PHA must consider the time, nature and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Section 3-III.F, the PHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking.

HACA Policy

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

1) Has been evicted for non-payment of rent at a federally subsidized housing program within the past two years.

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

3) Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances). Abandonment of a unit in public housing is considered an eviction. This restriction only applies to the head of household and/or the cohead of household. If the head or cohead owes rent or other amounts to any other PHA or owner in connection with any federally subsidized housing program. Any amounts owed to HACA or other federally

subsidized property will have to be repaid by the applicant before Admissions approval. HACA will not deny admissions if the head or cohead is moving from the HACA Public Housing program to the HACA Section 8 program (or vice versa) and is in compliance with their HACA repayment agreement. There is a four-year statute of limitations that ends the latter of:

a) Four years from the date the debt became delinquent, or

b) Four years from the date the final payment would have been due if a repayment agreement was signed by the former tenant.

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

5) Has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program. This includes intentional misrepresentation of citizenship or immigration status.

6) Refuses to sign and submit consent forms for obtaining information necessary to determine eligibility and continued eligibility for housing assistance.

7) Has engaged in or threatened violent or abusive behavior toward HACA personnel.

Abusive or violent behavior towards HACA 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, HACA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, HACA may, on a case-by-case basis, decide not to deny admission.

HACA 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

PHAs 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 PHA in complying with HUD requirements and PHA 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 PHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

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

HACA Policy

HACA requires criminal background checks for all applicant household and family members 17 years of age or older. HACA will use a third party vendor or other government agency to provide the criminal history reports. The report will be requested after the family member signs a consent form. This report encompasses a national criminal history search.

If the applicant and/or household member 17 years of age or older or the live-in aide applicant has not resided in the state of Texas for the most recent 2 years from the date of application, HACA will require a FBI criminal history report that includes information from the National Crime Information Center (NCIC)..

An online National Sex Offender check covering sex offender registries in all states is performed for all adult applicants. HACA may conduct a criminal history review at a national level (at no cost to the resident).

The PHA is 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 PHA proposes to deny admission based on a criminal record or on lifetime sex offender registration information, the PHA 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)].

HACA Policy

HACA does not obtain criminal conviction records directly from law enforcement agencies at the time of admission. HACA complies with 24 CFR 5.903(f) and 5.905(d) in the following manner:

- HACA will require each household member age 17 and older to sign a consent form allowing HACA to request the criminal history report.

- Once the consent form is signed, HACA will request the criminal history report from its third party vendor or other government agency.

- Upon review of the report, if there is information on the report that may be grounds for a denial, HACA will share the information with the applicant and provide an opportunity for the family to dispute the accuracy of the information or provide additional relevant information.

- After review of the report and any information provided by the family, HACA will determine if a denial is applicable. If a denial is warranted, a written notice of denial will be given to the family if they are present or mailed to the family if not present. The notice will provide the detailed summary of the criminal history that caused the proposed denial.

Additionally, the denial notice will advise the applicant of the right to request an informal hearing to dispute the accuracy of the data and the basis for the denial. The request must be made in writing within 15 calendar days of the date of the denial notice.

- If the family fails to request an informal hearing within 15 calendar days of the date of the official denial letter, the denial shall become final.

An online National Sex Offender check covering sex offender registries in all states is performed for all adult applicants. HACA may conduct a criminal history review at a national level (at no cost to the resident).

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

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

HACA Policy

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

- 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]

HACA has a variety of resources available for determination of the suitability of applicants. Generally, HACA will reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

HACA Policy

In order to determine the suitability of applicants, HACA will examine applicant history as it relates to meeting financial obligations, utilities and a general background check for the past four years. Such background checks will include:

Financial Obligations

PHA and landlords of other federally subsidized housing programs, gathering information on evictions for non-payment of rent and for debts owed to the PHA or landlord. Austin Energy confirmation that the applicant can get utilities turned on in his/her name.

If an applicant has no rental payment history, HACA 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.

If previous landlords or Austin Energy does not respond to requests from HACA, 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 Tenant, or Cause Damage to the Unit or the Development

PHA and landlord references for the past five years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the

development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.

Police and court records within the past five years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction. This includes use of the HACA / Austin Police Department database identifying individuals that have caused disturbances or receive criminal trespass notices from one of HACA's Public Housing properties.

A personal reference may 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

HACA Policy

HACA 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 PHA to consider, at its discretion, 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 PHA 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, the PHA may give consideration to factors, which might indicate a reasonable probability of favorable future conduct.

HACA Policy

HACA will consider the following factors prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents.
- The effects that denial of admission may have on other members of the family who were not involved in the action or failure.
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as

discussed further in section 3-III.F) a victim of domestic violence, dating violence, sexual assault, or stalking.

- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future.
- Evidence of the applicant family's participation in social service or other appropriate counseling service programs.
- In the case of drug or alcohol abuse, whether the culpable household member has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.
- If previously incarcerated, the length of time the culpable family member has been released into society.

HACA will require the applicant to submit evidence of the household member's 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 HACA 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.

HACA 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 HACA's request.

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

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

HACA Policy

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

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

The Violence against Women Act of 2013 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic

violence, dating violence, sexual assault, or stalking [24 CFR 5.2005 (b)]. This section describes how HACA will comply with this prohibition.

Notification

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a notice of rights and the form HUD-50066 at the time the applicant is denied.

HACA Policy

HACA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under HACA's policies. Therefore, if HACA makes a determination to deny admission to an applicant family, HACA will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP as well as including a copy of the form HUD-50066. HACA will request that an applicant wishing to claim this protection provide notice within 14 business days from the date of receipt from HACA of the notice of denial. HACA may extend the 14 business day period upon request from the individual.

Documentation

Victim Documentation [24 CFR 5.2007]

HACA Policy

If an applicant claims the protection that VAWA provides the victims of domestic violence, dating violence, sexual assault, or stalking regarding the denial of admissions, HACA will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-VII.D of this ACOP.

Perpetrator Documentation

HACA Policy

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

- A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit.
- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL

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

If the PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the PHA can move to deny the application. 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)].

HACA Policy

HACA does not obtain applicants' criminal record or sex offender registration information directly from law enforcement agencies. For more information about HACA's screening policies, refer to section 3-III-D of this chapter. Notice requirements related to denying admission to noncitizens are contained in Section 3-II.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, or stalking are contained in Section 3-III.F.

HACA Policy

Notice policies related to preliminary ineligibility are as follows:

If an applicant is determined not to be eligible, the applicant shall be notified in writing of such ineligibility. The notice must specify the reasons for the determination and offer the applicant an opportunity for a review of the decision. If the rejection was based on a debt owed to HACA, the notice shall inform the applicant that she or he has 30 calendar days from the date of the notification letter to pay ½ the amount owed to HACA and sign a payment agreement for the remaining balance in order to keep their application date and time, or has 10 calendar days to request in writing an informal review. In order for the payment agreement to be timely, HACA must receive the payment agreement by 5:00 p.m. on the 30th calendar day. For the purposes of calculating the 30 day time frame above, the date of the letter shall be excluded. If the applicant is denied due to a delinquent debt owed to the utility company, the notice will also inform the applicant that he or she has the option, within 10 calendar days from the date of the notification letter to submit documentation that the applicant has either paid the balance(s) owed or entered into a payment agreement with the utility company that will allow the applicant to obtain utility services. If the documentation is submitted within the specified 10 calendar day period, the Admissions Department will continue to process the applicant's file without requiring an informal hearing.

If the applicant makes a written request for an informal hearing for a rejection based upon a move-out balance due or debts to HACA within the time frame allowed, the Hearing Officer will conduct the informal hearing. This review does not deprive the applicant of other rights if she or he believes that she or he has been discriminated against on the basis of being in a protected classes as defined in 2-I.B. The informal review shall only review the particular decision in question. If the Hearing Officer believes that the rejection was improper, the applicant's application shall be processed in the same manner as all other applications in accordance with the date and time the application was received by HACA. If the rejection is found to be proper, the applicant must pay half of the amount due to HACA and sign a payment agreement for the remaining balance within 10 calendar days from the date that such decision was made in order for the applicant's application date and time to be valid. Payment agreements will be monitored monthly by HACA and

applicants will be removed from the waiting list should they not comply with the terms of the payment agreement. Full payment by money order or certified funds is required before the applicant is offered a housing unit.

If the applicant makes a written request for an informal hearing for a rejection based upon other preliminary eligibility criteria within the time frame allowed, the Hearing Officer will conduct the informal hearing. This review does not deprive the applicant of other rights if she or he believes that she or he has been discriminated against on the basis of race, color, religion, sex, national origin, age or handicap. The informal review shall only review the particular decision in question. If the Hearing Officer believes that the rejection was improper, the applicant's application shall be processed in the same manner as all other applications in accordance with the date and time the application was submitted. The applicant will be entitled to review all documentation, including police reports, which are relied upon by HACA and provided the opportunity to dispute the accuracy and relevance of that record. If the Hearing Officer decides that the rejection was proper, the rejection will be final. The applicant will not be eligible to reapply or have this decision reviewed again until the proper time has elapsed.

Additional policies relating to the informal hearings process can be found in Chapter 14, Part I.

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 of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

(A) IN GENERAL – The term developmental disability means a severe, chronic disability of an individual that:

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age 22;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) self-care, (II) receptive and expressive language, (III) learning, (IV) mobility, (V) self-direction, (VI) capacity for independent living, (VII) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(B) INFANTS AND YOUNG CHILDREN – An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

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 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

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

HACA 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 HACA to receive preferential treatment.

HUD regulations require that HACA 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 HACA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and HACA policies for taking applications, managing the waiting list and selecting families from the waiting list. HACA policies for assigning unit size and making unit offers are contained in Chapter 5. Together, Chapters 4 and 5 of the ACOP comprise the HACA'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 HACA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how HACA'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 HACA will use to keep the waiting list current.

Part III: Tenant Selection. This part describes the policies that guide HACA in selecting families from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that HACA 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 HACA'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 HACA's obligation to ensure the accessibility of the application process.

4-I.B. APPLYING FOR ASSISTANCE

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

HACA Policy

Due to the high volume of applicants seeking public housing, HACA utilizes a two-step application process. Under the two-step application process, HACA initially will require families to provide only the information needed to make an initial assessment of the family's preliminary 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.

The first step in the application process is the submission of the pre-application. Pre-applications are accepted through the application web portal at www.austin.apply4housing.com. HACA will also maintain paper applications, as a reasonable accommodation, if there is the presence of a disability. Under no circumstances will anyone be denied the right to submit an application.

Unless unable due to a disability, the applicant shall complete all required fields of the application through the application web portal. If the applicant is unable to complete the application by verifying the need to make a reasonable accommodation through documentation or visual observation, as applicable, and the applicant has represented that he or she has no one to assist him or her, a HACA employee shall assist the applicant in completing the application based upon the information provided by the applicant.

The entire pre-application must be completed and submitted before the applicant will be placed on the waiting list. The system will confirm submission if all application requirements have been fulfilled. The web portal will apply an electronic date and time received stamp to each application in accordance with the confirmation of successful submission.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

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

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

Limited English Proficiency

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

4-I.D. PLACEMENT ON THE WAITING LIST

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

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

Ineligible for Placement on the Waiting List

HACA Policy

If HACA can determine from the information provided that a family is preliminarily ineligible, the family will not be placed on the waiting list (see Chapter 3 for specific information on preliminary ineligibility). Where a family is determined to be preliminarily ineligible, HACA will send written notification of the preliminary ineligibility determination within 30 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). If, upon conclusion of the informal hearing process, the family's preliminary eligibility is restored, the family's original date and time of the pre-application will be restored on the waiting list.

Eligible for Placement on the Waiting List

HACA Policy

HACA will send written notification of the preliminary eligibility determination within 30 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 HACA preference(s) and the date and time their complete pre-application is received by HACA. Any complete application received by mail or by fax will be file stamped with the date which shall be

the same business day of receipt and the time shall be specified as 5:00 p.m. Applications faxed to HACA after business hours will be file stamped as received the following business day and the time shall be specified as 5:00 p.m.

HACA will assign families on the waiting list according to the bedroom size for which a family qualifies as established according to HACA's 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 HACA standards and local codes). However, in these cases, the family must agree not to request a transfer for two years after admission, unless they have a change in family size or composition.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

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

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

4-II.B. ORGANIZATION OF THE WAITING LIST

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

HACA Policy

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

- Name and address
- Social Security number (on the electronic copy)
- Unit size required
- Amount and source of annual income
- Date and time of application or application number
- Admission preference, if any
- Rank

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

HACA Policy

HACA will maintain a site-based waiting lists for each of its developments. Within the list, HACA 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).

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 PHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs [24 CFR 982.205(a)(2)(i)].

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

HACA Policy

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

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

Closing the Waiting List

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

HACA Policy

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

HACA will announce by public notice the closing of the waiting list. If the list remains open to certain categories of families, this information will be contained in the notice. The notice will be published at least 30 days prior to HACA closing the list.

Reopening the Waiting List

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

HACA Policy

HACA will announce the reopening of the waiting list at least 30 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.

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

- Austin American-Statesman
- El Mundo
- The Villager
- Nokoa
- Ahora Si
- The Austin Chronicle

Notices may also be sent to organizations that typically assist low income families, including but not limited to:

- Salvation Army
- Caritas
- Any Baby Can
- Front Steps

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

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

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

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

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

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

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

HACA Policy

HACA will monitor the characteristics of the population being served and the characteristics of the population as a whole in HACA'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

HACA Policy

While the family is on the waiting list, the family must inform HACA of changes in family size or composition, preference status or contact information, including current residence, mailing address and phone number. The changes must be be requested through the applicant portal or submitted in writing to the Admissions department. Update forms are available at HACA's Central Office in English and in Spanish. Update forms may also be accessed via HACA's website at www.hacanet.org . Forms may be downloaded, printed and completed. Completed update forms may be mailed, faxed or submitted in person to HACA's Admissions department. To avoid unauthorized changes, a photo ID must be presented in person or via fax, to confirm the applicant's identity before any requested changes to the application are made by the Admissions department.

When submitting changes through the applicant portal, applicants will be required to provide identity information (name, date of birth, social security number) to access their account. Once verified, they will receive a username and password for future logins to the Applicant Portal. The portal will be accessible through HACA's website at www.hacanet.org.

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

4-II.F. UPDATING THE WAITING LIST

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

Purging the Waiting List

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

HACA 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, HACA 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 HACA 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 HACA not later than 15 business days from the date of HACA's update request 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 HACA from making an eligibility determination; therefore no informal hearing is required.

If a family is removed from the waiting list for failure to respond, HACA's President/CEO or his or her designee may reinstate the family if s/he determines the lack of response was due to HACA error, or to circumstances beyond the family's control.

Removal from the Waiting List

HACA Policy

HACA will remove applicants from the waiting list if they have requested in writing that their name be removed. In such cases no informal hearing is required and none will be offered.

If HACA 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 HACA has determined the family is not eligible for admission, a notice will be sent to the family's address of record. 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 HACA's decision (see Chapter 14) [24 CFR 960.208(a)].

PART III: TENANT SELECTION

4-III.A. OVERVIEW

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

The order in which families will be selected from the waiting list depends on the selection method chosen by the PHA and is impacted in part by any selection preferences that the family

qualifies for. The availability of units also may affect the order in which families are selected from the waiting list.

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

HACA Policy

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

4-III.B. SELECTION METHOD

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

Local Preferences [24 CFR 960.206]

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

HACA Policy

Eligible applicants shall be offered a dwelling unit based on the date and time of application, after taking into consideration the size of the unit and, if applicable, the appropriate local preference. For purposes of establishing priority, applicants involuntarily displaced because of HACA action involving rehabilitation, demolition or other disposition of dwelling units will receive priority over all other local preference, and then other local preferences are weighted equally and each applicant family can be granted a maximum of one local preference at one time.

HACA will use the following local preferences:

- Current HACA public housing families involuntarily displaced because of HACA action involving rehabilitation, demolition or other disposition of dwelling units will receive highest priority. **(Note: This preference applies to HACA's housing choice voucher waiting list only.)**
- HACA will give preference to elderly or disabled families.

  The following mixed population developments will be reserved for elderly and/or disabled families:

  - Lakeside Apartments
  - Northloop Apartments
  - Gaston Place Apartments

- Salina Apartments

Should the applicant become eligible for housing, and a unit is unavailable within a mixed population development OR the elderly and/or disabled family contains a dependent who is not elderly, disabled or is a minor, the applicant will then be offered a unit within a family site, consistent with HACA occupancy standards.

- Families displaced as a result of natural disaster or government action shall be given preference. The following documentation will be used to verify displacement status:
  - Certification from a unit of government concerning displacement due to natural disaster; or
  - Certification from a unit of government concerning displacement due to code enforcement or public improvement/development or displacement by inaccessibility of a unit.

  The displacement must have occurred within six months of requesting the involuntary displacement preference.

Income Targeting Requirement [24 CFR 960.202(b)]

HUD requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during the PHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30% of the area median income, whichever number is higher (*Federal Register* notice 6/25/14). To ensure this requirement is met, the PHA may skip non-ELI families on the waiting list in order to select an ELI family.

If a PHA also operates a housing choice voucher (HCV) program, admissions of extremely low-income families to the PHA's HCV program during a PHA fiscal year that exceed the 75% minimum target requirement for the voucher program, shall be credited against the PHA'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 PHA fiscal year; (2) ten percent of waiting list admissions to the PHA's housing choice voucher program during the PHA fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of PHA 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.

HACA Policy

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

Mixed Population Developments [24 CFR 960.407]

A mixed population development is a public housing development or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character) or the PHA at some point after its inception obtained HUD approval to give preference in tenant selection for all units in the development (or portion of a development) to elderly and disabled families [24 CFR 960.102]. Elderly family means a family whose head,

spouse, 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 PHA must give elderly and disabled families equal preference in selecting these families for admission to mixed population developments. The PHA may not establish a limit on the number of elderly or disabled families that may occupy a mixed population development. In selecting elderly and disabled families to fill these units, the PHA must first offer the units that have accessibility features for families that include a person with a disability and require the accessibility features of such units. The PHA may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

HACA Policy

HACA has four mixed population developments as follows:

- Lakeside Apartments
- North Loop Apartments
- Gaston Place Apartments
- Salina Apartments

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

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

Among the designated developments, the PHA must also apply any preferences that it has established. If there are not enough elderly families to occupy the units in a designated elderly development, the PHA may allow near-elderly families 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 PHA must make available to all other families any unit that is ready for re-rental and has been vacant for more than 60 consecutive days [24 CFR 945.303(c)(2)].

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

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

HACA Policy

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

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

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

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

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

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

HACA Policy

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

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

HACA Policy

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

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

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

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

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

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

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

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

HACA Policy

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

HACA will ensure for the deconcentration of poverty in public housing by bringing higher income tenants into lower income developments and lower income tenants into higher income developments. It is also the goal of HACA to make housing available to assisted housing tenants in higher income areas than are traditionally available. In furtherance of this goal, HACA will intensify its marketing efforts to promote the participation of housing choice voucher program landlords whose rental properties are in relatively higher income areas.

It is the policy of HACA to utilize mixed-income criteria in the selection of conventional public housing tenants. The purpose of utilizing mixed-income criteria is to provide for the deconcentration of poverty and income-mixing by bringing higher income tenants into lower income developments and lower income tenants into higher income developments. This policy shall not be construed to impose or require any specific income or racial quotas for any development or developments.

When a Public Housing unit becomes vacant in an extremely low to very low income development, such unit will be offered to the first eligible family on the waiting list with a verified income above 30% and lower than 80% of median income, regardless of the applicant's rank on the wait list. This incentive will only

be granted to the extent that it does not exceed the income targeting limits. Due to the nature of public housing needs, currently the majority of applicants on the conventional public housing waiting list have extremely low incomes. Therefore, when a conventional public housing unit becomes vacant in any other area other than those mentioned above, the selection from the waiting list shall be by rank and an incentive is not necessary.

It shall be within the sole discretion of the family being offered an incentive to determine whether to accept or refuse the incentive. If the family refuses the incentive offer, HACA will not take adverse action against the family. If the family refuses the incentive, the family will be placed back on the waiting list according to their original application date and time and local preference, if any. Additionally, the family will not be offered an incentive from the waiting list again; the family will therefore have to wait until their name reaches the top of the waiting list before they are offered a unit again. Accordingly, for purposes of this provision, it shall not be considered an adverse action if a family on the waiting list that has refused an incentive is skipped in order to reach another family to implement this policy.

Order of Selection [24 CFR 960.206(e)]

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

HACA 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 HACA.

When selecting applicants from the waiting list, HACA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. HACA 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 HACA policy.

4-III.C. NOTIFICATION OF SELECTION

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

HACA Policy

When the family is selected from the waiting list, HACA will notify the family by first class mail at least 10 business days in advance of the scheduled interview.

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.

4-III.D. THE APPLICATION INTERVIEW

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

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 201210].

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)].

HACA 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 HACA.

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.

Pending disclosure and documentation of social security numbers, HACA will allow the family to retain its place on the waiting list for 90 days. If not all household members have disclosed their SSNs at the next time a unit becomes available, HACA will offer a unit to the next eligible applicant family on the waiting list.

If the family is claiming a waiting list preference, the family must provide documentation to verify their eligibility for a preference (see Chapter 7). If the family is verified as eligible for the preference, HACA will proceed with the interview. If HACA 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, HACA 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 7 calendar 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, HACA will provide translation services in accordance with HACA's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact HACA in advance of the interview to schedule a new appointment. In all circumstances, if a family fails to attend a scheduled interview, without prior HACA approval, their application will be made inactive based on the family's failure to supply information needed to determine eligibility. The notice of rejection will state that failure to request a rescheduled appointment within 15 calendar days of the missed appointment date will be interpreted to mean that the family is no longer interested and their application will remain inactive. Due to the high volume of applicants on the waiting list, applicant families will only be allowed a maximum of two rescheduled appointments (for a total of three scheduled appointments), unless HACA receives documentation verifying that illness, disability, family death or hospitalization did not allow for attendance.

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

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

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

HACA Policy

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

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

HACA Policy

If HACA determines that the family is ineligible, HACA 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).

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Chapter 5

OCCUPANCY STANDARDS AND UNIT OFFERS

INTRODUCTION

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

Policies in this chapter are organized in two parts.

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

Part II: Unit Offers. This part contains HACA'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 HACA 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 that HACA will use to determine the size unit for which a family qualifies, and includes the identification of the minimum and maximum number of household members for each unit size. This part also identifies circumstances under which an exception to the occupancy standards may be approved.

5-I.B. DETERMINING UNIT SIZE

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

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

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

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

HACA Policy

HACA 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 (efficiency)	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

To ensure appropriate use of needed resources, HACA will use these occupancy standards and the following guidelines. This will serve to ensure that families have the appropriate amount of space and are neither over housed nor under housed.

HACA will use the same occupancy standards for all of its developments. HACA's occupancy standards are as follows:

- Generally,there is a minimum of one person and maximum of two people per bedroom. HACA does not determine who shares a bedroom.
- The family is given the choice of which bedroom size is appropriate for their family, as long as the number of family members is within the range listed in the chart above.
- Once the family has selected an eligible bedroom size they will be placed on the waiting list for that bedroom size. Changes to the bedroom size cannot be made unless a qualifying event occurs. Qualifying events include:
    - Changes in the family composition (removing or adding household members) which result in the family no longer being eligible for the chosen bedroom size.
    - Changes in the ages of children, resulting in two children of the opposite sex, with one at least seven (7) years of age. These children will not be required to share a bedroom.
    - Addition of persons of different generations (grandparent and grandchild, parent and child). These family members will not be required to share a bedroom.
    - Need for a different bedroom size as a reasonable accommodation for a disability.
- Authorized 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 either a zero (efficiency) or one bedroom unit.
- Foster children will be included in determining unit size only if they will be in the unit for at least six (6) consecutive months.

A household that contains a family member (not the head of household or spouse) who is enrolled as a full-time student at an institution of higher learning and who is on the lease will be counted for the purposes of establishing occupancy standards for unit size if:

- the family member is enrolled and actively attending a two-year or four-year college or university; and

- the family member resides in the public housing unit during school breaks and holidays.

A household in which the parent shares joint custody of a dependent child shall include the child on the lease and will be counted for purposes of establishing occupancy standards for unit size if:

- The head of household is legally entitled to physical possession of the child more than 50% or more of the time; and
- The child actually physically resides in the unit with the head of household more than 50% or more of the time; and
- If the child is school age, the head of household is listed as the legal guardian on the child's school enrollment documentation, and the address of record is the head of household's address.

5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS

Types of Exceptions

HACA Policy

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

An exception may be granted to allocate a separate bedroom to a family member, 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. Written verification of disability and need for the medical equipment may be required by HACA prior to allocation of the separate bedroom.

When evaluating exception requests HACA will consider the size and configuration of the unit. In no case will HACA 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, in writing, 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.

If the waiting list of a certain bedroom size has been exhausted, in order to prevent excessive or prolonged vacancies, HACA may assign an eligible applicant family to 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. This requirement will be a provision of the lease agreement and the family will be notified in writing of this stipulation at the time of admission. The family will also be placed on the transfer wait list by the Admissions department.

Processing of Exceptions

HACA 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, HACA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, HACA 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.

If the request was made by an applicant family, the decision to approve or deny the request will be made by the Admissions Director within 30 days of receipt of the request. If the request was made by a family currently housed in public housing, the decision to approve or deny the request will be made by the Vice President of Housing and Community Development for the applicable district within 30 days of receipt of the request. As applicable, approved requests may require a transfer to a larger size unit. The applicable transfer request form, along with supporting documentation, will be forwarded to the Admissions department for processing. HACA cannot guarantee that the family will be transferred to a unit at their current housing development.

If a request is denied, the family will be advised in writing of their right to request either an informal hearing (for applicant families) or a grievance hearing (for current residents). The family must make their request for a hearing in writing within 10 calendar days of receiving the denial letter. Applicant families must submit their request to the Admissions department, and resident families must submit their request to their Public Housing Manager. Families should request a date-stamped copy of the hearing request for their records.

In the event that adding eligible family members to the lease results in exceeding the maximum number of persons allowed in the unit, the resident shall have the right to request a transfer to a larger unit. The Public Housing Manager will forward a transfer request to the Admissions department so that the family is placed on the transfer wait list regardless of whether the family has or has not requested a transfer. The additional household member(s) will be added if such person(s) is/are eligible as determined pursuant to this policy, and the resident meets all other requirements and conditions.

PART II: UNIT OFFERS

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

5-II.A. OVERVIEW

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

In filling an actual or expected vacancy, the PHA must offer the dwelling unit to an applicant in the appropriate sequence. The PHA will offer the unit until it is accepted.

This section describes HACA'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 HACA's policies for offering units with accessibility features.

HACA Policy

HACA will maintain documentation of units offered, including location, date and circumstances of each offer, and each unit acceptance or rejection. The reason for the rejection will also be documented to the fullest extent possible. For example, there may be circumstances in which the applicant family does not respond to the unit offer, thus not supplying HACA with a specific reason for rejection.

5-II.B. NUMBER OF OFFERS

HACA Policy

Due to the high volume of applicants on the public housing wait list, HACA shall offer an eligible applicant only one housing unit each time the applicant is pulled from the waiting list and certified as eligible for such offer. Under this policy, offers shall be made to the unit of the appropriate bedroom configuration and type that has been vacant the longest. The applicant family will not have a choice of which HACA public housing development to which they will be assigned. Unit offers will be made to families who are certified eligible and who have attended the orientation meeting. Unit offers will be made in order of date and time of application and preference.

HACA will assign available units to families according to the following procedures:

1) HACA will make every reasonable effort to assign available units, which are specifically designed for persons with disabilities to the next family on the waiting list who requires such a unit.
2) In order to ensure equal distribution of all applicants to the developments, achieve integration in an uniform, non-discriminatory manner and to ensure that the deconcentration policy is complied with, all housing offers will be made from the active conventional public housing waiting list according to the following:
    a. Vacant units, which have been reported to the Dispatcher as vacant and released to the Admissions department for occupancy, shall be offered first.
    b. Of the remaining units, offers shall be made to the unit of the appropriate bedroom size, which has been vacant the longest.
    c. Lastly, units that are expected to be vacant within the next fifteen days will be offered in order by expected move-out date and appropriate bedroom size.
    d. Available units will be offered to the next eligible applicant on the waiting list who qualifies for such a unit.
    e. Should a unit become vacant in an extremely low to very low income development, such unit will be offered to the first eligible family on the waiting list with a verified annual income above 30% and up to 80% of the area median income regardless of the applicant's place on the wait list. Such family is therefore offered an incentive to occupy the unit in the low income area. The incentive is the offer of housing before the other families on the wait list, including families with a local preference, who do not have the target

income and have an earlier date and time of application. Such incentives will only be granted to the extent that the limit of new tenants with incomes over thirty percent of the median income has not been exceeded.

f. Should the family be pulled from the waiting list strictly to fill a unit at a very low income area, and the applicant's verified income is not at more than 30% to 80% of the median income (target income level), the applicant will be notified of the ineligibility for an incentive and placed back on the waiting list according to their original application date, time and preference, if any.

It shall be within the sole discretion of the family being offered an incentive to determine whether to accept or refuse the incentive. If the family refuses the incentive offer, HACA will not take adverse action against the family. If the family refuses the incentive, the family will be placed back on the waiting list according to their original application date and time and local preference, if any. Additionally, the family will not be offered an incentive from the waiting list again; the family will therefore have to wait until their name reaches the top of the waiting list before they are offered a unit again. Accordingly, for purposes of this provision, it shall not be considered an adverse action if a family on the waiting list that has refused an incentive is skipped in order to reach another family to implement this policy.

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

HACA Policy

Upon offering a unit as stipulated within this policy, the Admissions Director will send the applicant's file to the designated property. The applicant must contact the receiving Public Housing Manager within 3 calendar days of receiving the housing offer for the purpose of coordinating a time to view the unit. The prospective tenant must accept or reject the unit offer in writing. The acceptance or rejection must be received by HACA no later than 5:00 pm on the 2nd business day after viewing the offered unit.

Applicants who accept a unit must obligate themselves to the unit within 3 business days by meeting HACA's deposit requirements and signing the dwelling lease agreement, reflecting a move-in date no later than 3 business days from the date of signing the acceptance form.

Except as required for reasonable accommodation for a verified disability or medical emergency, HACA shall not reschedule the lease meeting beyond the 3 business day period.

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)].

HACA Policy

HACA does not have designated housing. Applicants may refuse to accept a unit offer for "good cause." Good cause includes situations in which an 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] and the applicant presents clear evidence which substantiates the undue hardship to HACA's satisfaction. Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- The family demonstrates to HACA's satisfaction that accepting the unit offer will require an adult family 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 HACA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency or documentation of domestic violence, dating violence, sexual assault, or stalking in accordance with section 16-VII.D of this ACOP.. 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, based on acceptable written verification of disability and need for specified unit features.

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.

HACA will require documentation of good cause for all unit refusals.

Mere inconvenience in traveling to employment, health provider, children's schooling or the like is not an undue hardship. To constitute an undue hardship the employment, benefits or programs or comparable programs must be completely inaccessible. Moreover, an applicant's desire to live within a certain part of town or near family members or desire not to relocate children to another school within the school district does not qualify as an undue hardship.

Unit Refusal without Good Cause

HACA Policy

The unit will be deemed rejected by the applicant if:

- The applicant indicates his/her rejection in writing;
- HACA does not receive written acceptance of the offered unit within the timeframe specified above; or
- The applicant fails to complete the leasing of the unit within the timeframe required by HACA policy.

When an applicant rejects the unit offer without good cause, HACA 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).

An applicant who is removed from the waiting list for rejecting an offered unit may not reapply for admission into public housing for at least 12 months from the date of the unit offer, and only if the appropriate waiting list is open.

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

Housing Offers for Accessible Units

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

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

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

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

HACA Policy

HACA will make every reasonable effort to first assign an available accessible unit to the next current resident family on the transfer wait list in the same development that has requested an accessible unit.

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, HACA will offer the unit to a non-disabled eligible applicant.

When offering an accessible unit to a non-disabled applicant, HACA 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.

Families Waiting for an Accessible Unit

HACA Policy

HACA will make every effort to offer an appropriate accessible unit to all families that are currently housed and are waiting on the transfer list for a unit with an accessible accommodation as well as for families drawn off the waiting list that have been certified eligible to receive Public Housing assistance.

When HACA is unable to offer a unit to a family with the needed accommodation, HACA will offer the family the option to choose a Special Accommodation preference and be placed on the Housing Choice Voucher program waiting list. To qualify for this offer, the family must meet all of the following criteria:

For current Public Housing families waiting on the transfer list to be eligible, they must:

a) Be currently housed in Public Housing and waiting on the transfer list for a unit with the needed special accommodation;

b) Have a documented need for a reasonable accommodation which requires a specific type of housing unit (including but not limited to wheelchair accessibility, no stairs, etc).

c) Have waited more than 9 months since the reasonable accommodation was approved and they were placed on the transfer waiting list without receiving a housing offer specifically because the availability of the needed accommodation is limited within HACA's portfolio and all units with that accommodation are occupied by families needing that accommodation.

   If the needed accommodation is not structurally or economically feasible in HACA's existing Public Housing portfolio, the family will not be required to wait 9 months.

d) Have verified income at the time of their last annual or interim recertification which was below the current income limit for the Housing Choice Voucher program.

For families drawn off the Public Housing waiting list and waiting for their first housing offer, they must:

a) Have a current application on the Public Housing waiting list which was drawn according to the regular rules and guidelines of the Public Housing waiting list.

b) Have completed eligibility certification and are eligible for the Public Housing program.

c) Have a documented need for a reasonable accommodation which requires a specific type of housing unit (including but not limited to wheelchair accessibility, no stairs, etc).

d) Have waited more than 9 months since completing the eligibility process for Public Housing without receiving a housing offer specifically due to either

   a. The needed accommodation is not economically feasible to be done in HACA's existing Public Housing portfolio; or
   b. The availability of the needed accommodation is limited within HACA's portfolio and all units with that accommodation are occupied by families needing that accommodation.

e) Had verified income at the time of their eligibility processing which was below the current income limit for the Housing Choice Voucher program.

For both current Public Housing families and families drawn off the Public Housing waiting list:

a) If the family chooses the special accommodation preference for HCV, they will be placed on the HCV waiting list with the special accommodation preference.
b) When the family's name is drawn from the waiting list, they will be required to meet the eligibility requirements for the HCV program at that time in order to receive a voucher.
c) The total number of families (from the combination of both the current Public Housing families and families drawn off the Public Housing waiting list) eligible to receive this preference will be capped at no more than 10 families per calendar year.

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Chapter 6

INCOME AND RENT DETERMINATIONS

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

INTRODUCTION

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

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

Part II: Adjusted Income. Once annual income has been established HUD regulations require HACA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and HACA 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].

HACA Policy

Generally an individual who is or is expected to be absent from the assisted unit for 90 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 90 consecutive days is considered permanently absent and no longer a family member. Under no circumstances shall a family member be absent from the unit for a period exceeding 90 consecutive days unless HACA determines that exigent circumstances exist and the household has obtained prior written approval from HACA. Exceptions to this general policy are discussed below.

Absent Students

HACA 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 HACA indicating that the student has established a separate household or the family declares that the student has established a separate household.

Absent Due to Military Duty

HACA Policy

When someone who has been considered a family member is away due to military duty, the person will continue to be considered a family member unless information becomes available to HACA indicating that the individual has established a separate household or the family declares that the individual 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].

HACA Policy

If a child has been removed from the assisted unit and placed in foster care, HACA will make every attempt to verify with the appropriate agency whether and when the child is expected to be returned to the assisted unit. Unless the agency confirms that the child has been permanently removed from the assisted unit, the child will be counted as a family member. However, the household will not receive the $480 dependent allowance until the child is reunited with the assisted family. If more than 180 days elapse and the child has not been returned, then if applicable, HACA shall notify the family in writing that they will be subject to transfer to a smaller unit based on their remaining household composition.

Absent Head, Spouse or Cohead

HACA Policy

An employed head, spouse or cohead absent from the unit more than 90 consecutive days due to employment or to serve in the armed forces (not including pay for exposure to hostile fire) will continue to be considered a family member**.** The income from such employment will be included for purposes of determining rent.

Individuals Confined for Medical Reasons

HACA 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, HACA 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.

In the event the individual was a sole occupant of an assisted unit, HACA will contact the individual's emergency contact to make arrangements to remove the individual's belongings within a reasonable agreed upon timeframe. HACA will process this unit as a scheduled move-out.

Joint Custody of Children

HACA 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% or more of the time.

When more than one applicant or assisted family (regardless of program) is 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, HACA 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

HACA Policy

If neither a parent nor a designated guardian remains in a household receiving assistance, HACA 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. During the 90-day timeframe, the caretaker must request to be added to the lease through HACA's admissions process. The caretaker will be subject to HACA's screening criteria and must be deemed eligible in order to be added to the lease. After the 90 days has elapsed and the add-on process has been completed, 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 HACA 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, upon successfully completing the add-on process through the Admissions department. The caretaker will be required to sign an agreement where he/she will agree to preserve the rental assistance for the original household member(s)/children. The caretaker will agree to terminate the lease should the remaining household members move out of the household.

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

6-I.C. ANTICIPATING ANNUAL INCOME

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

Basis of Annual Income Projection

The PHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the PHA 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 PHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

PHAs are required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)].

HUD allows PHAs to use pay-stubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the PHA does not determine it is necessary to obtain additional third-party data.

HACA Policy

When EIV is obtained and the family does not dispute the EIV employer data, HACA will use current tenant-provided documents to project annual income. When the tenant provided documents are pay stubs, HACA will make every effort to obtain a minimum of 2 to 4 current and consecutive pay stubs. HACA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If HACA determines additional information is needed.

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

When HACA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours or suspected fraud), HACA 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. Historical data sources may include but are not limited to: IRS income tax returns; EIV (Enterprise Income Verification) wage reports; Texas Workforce Commission wage record reports; earned wage history printouts from temporary employment agencies.

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

Known Changes in Income

If HACA 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 $8/hour will begin to receive $8.25/hour in the eighth week after the effective date of the reexamination. In such a case HACA would calculate annual income as follows: ($8/hour × 40 hours × 7 weeks) + ($8.25 × 40 hours × 45 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 HACA 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 HACA's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date. EIV quarterly wages will not be used to project annual income at an annual or interim reexamination.

Projecting Income

In HUD's EIV webcast of January 2008, HUD made clear that PHAs are not to use EIV quarterly wages to project 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 are included in annual income.

HACA Policy

For persons who regularly receive bonuses or commissions, HACA will verify and then average amounts received for the previous 12 months preceding admission or reexamination. The family may provide, and HACA may 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, HACA will count only the amount estimated by the employer. The file will be documented appropriately.

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. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

HACA 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. A pattern of temporary employment during the previous 12 months would NOT be considered sporadic income and would be included in the annual income for the purposes of determining rent. The inclusion of this income may be disputed if there has been a change in circumstances.

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 PHA, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.

State and Local Employment Training Programs

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)].

HACA Policy

HACA defines a *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].

HACA 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, HACA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the families most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with HACA'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.

HACA Policy

To qualify as a training program, the program must meet the definition of a *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 adult individuals in families already participating in the public housing program (not at initial examination). The disallowance is not available to adults who do not have eligible immigration status. Income increases that are disallowed pertain strictly to earned income only. 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."

HACA Policy

HACA defines *prior income,* or *prequalifying income,* as the family member's last certified income prior to qualifying for the EID. This income amount will be recorded on the family's last Form 50058.

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.

HACA 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. This applies regardless of whether the eligible member reported the employment or increase in earnings in a timely manner (within 10 days of occurrence) or not. Example: an eligible family member reports a new job to the Housing Manager on June 12, 2008. HACA's third party verification confirms that the family member actually started employment on January 5, 2008. The initial EID exclusion period for this family member will begin on February 1, 2008.

Second 12-Month Exclusion and Phase-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.

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 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.

HACA Policy

During the 24-month eligibility period, HACA 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)]

HACA Policy

HACA chooses not to establish a system of individual savings accounts (ISAs) for Families who qualify for the EID.

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].

HACA Policy

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

Business Expansion

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

HACA Policy

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

Capital Indebtedness

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

HACA Policy

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

Negative Business Income

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

Withdrawal of Cash or Assets from a Business

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

HACA 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, HACA 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

HACA 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), 24 CFR 5.603(b) and 24 CFR 960.259]

Overview

There is no asset limitation for participation in the public housing program. However, HUD requires that the PHA 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 PHA 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 PHA policies related to each type of asset.

General Policies

On January 22, 2013 HUD issued Notice PIH 2013-03 which granted administrative relief to PHAs by allowing applicant and resident self-certification of assets and the income from assets with a net value of less than $5000. This administrative relief was temporary and renewed

through 2015.

On March 8, 2016, HUD published the Streamlining Rule in the Federal Register. This rule made permanent changes to the way assets were verified, although with modifications to the process outlined in Notice PIH 2013-03.

The approved method to reduce administrative burden and streamline income recertification efforts states the following:

- Applicants must provide full third party verification (i.e. bank statements) at the time of determination of income eligibility.
- For a resident family with net assets equal to or less than $5,000, a PHA may accept, for purposes of recertification of income, a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

However, the PHA must obtain full third-party verification of assets every three years., The following HACA forms, which are signed by all adult family members, will serve as documentation of the family's self-declaration of asset income: HACA's Continued Occupancy Form and the Public Housing Update Form. If the family has net family assets equal to or less than $5,000, HACA will not request supporting documentation (e.g. bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets. If the family has net assets in excess of $5,000, HACA will request supporting documentation (e.g. bank statements) from the family to confirm the assets.

Any assets reported by the family will be reported on the HUD Form 50058.

Income from Assets

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

HACA 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 HACA to show why the asset income determination does not represent the family's anticipated asset income. Assets owned by every family member, including minors, are reviewed.

Valuing Assets

The calculation of asset income sometimes requires the PHA 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.

HACA 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) [RHIIP 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 PHA 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 PHA 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 PHA 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."

HACA Policy

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

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

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

Minimum Threshold

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

HACA Policy

HACA 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.

HACA 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

HACA 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. HACA may verify the value of the assets disposed of if other information available to HACA 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.

HACA Policy

In determining the value of a checking account, HACA will use the average monthly balance for the last three months. In determining the value of a savings account, HACA will use the current balance. In determining the anticipated income from an interest bearing checking or savings account, HACA 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.

HACA Policy

In determining the market value of an investment account, HACA 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), HACA 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].

HACA Policy

HACA will determine the current market value through the jurisdictional appraisal district records.

HACA will determine the unpaid balance by first using the payoff amount for the loan (mortgage). If the payoff amount is not available, HACA will use the basic loan balance information.

HACA will determine equity by deducting the unpaid balance from the market value.

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]

The PHA must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

HACA Policy
For the purposes of calculating expenses to convert to cash for real property, HACA will use ten percent of the market value of the home.

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.

HACA 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 HACA 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 PHA 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].

HACA Policy

In determining the value of personal property held as an investment, HACA will use the family's estimate of the value. HACA may obtain an appraisal if there is reason to believe that the family's estimated value is off by $50 or more. 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)].

HACA Policy

Necessary personal property consists of only those items not held as an investment. It may include clothing, furniture, household furnishings, jewelry 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)]. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [FR Notice 11/24/08].

HACA Policy

When a delayed-start payment is received and reported during the period in which HACA is processing an annual reexamination, HACA 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 HACA.

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

Treatment of Overpayment Deductions from Social Security Benefits

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

the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

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)]. This includes kinship payments made on behalf of a related child to the tenant household. Kinship payments are foster care subsidies for children living with a related legal guardian [Notice PIH-2008-40] Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income [Notice PIH 2012-1].

  HACA Policy

  HACA 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 PHA 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 PHA must include in annual income "imputed" welfare income. The PHA must request that the welfare agency inform the PHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

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

For special procedures related to grievance hearings based upon the PHA's denial of a family's request to lower rent when the family experiences a welfare benefit reduction, 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 PHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

HACA Policy

HACA will count court-awarded amounts for alimony and child support unless HACA verifies that (1) the payments are not being made and (2) the family provides

documentation that it 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.

HACA has a written agreement with the Texas Office of Attorney General to access child support income information through an electronic database system. This is a form of upfront income verification. Authorization to access this information is recorded on the Texas OAG Form 1825, which is signed by the family's head of household and retained in the family's tenant file.

Regular Contributions or Gifts

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

HACA 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.

HACA will count as income monetary and nonmonetary contributions or gifts to a family that may come from nonrecurring or different sources, but the family is able to pay an expense on a regular basis. For example, a family pays for cable television service monthly and receives monetary contributions to pay it from a different source each month. The cost of the cable service will be included as income.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by HACA. For contributions that may vary from month to month (e.g., utility payments), HACA 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) and updated by FR Notice 5/20/14 that have not been discussed earlier in this chapter include the following:

- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member [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)].

HACA 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), FR Notice 5/20/14. 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) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
  - (e) Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))

(g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

(h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts

(i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)

(j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))

(k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.,* for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010

(l) 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)

(m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)

(n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))

(o) 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 Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

(p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida

(q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)

(r) 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)

(s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))

(t) 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)

(u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249)

(v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))

(w) 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)

(x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002

(y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))

(z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

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

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

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family;

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable childcare 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

HACA Policy

Generally, HACA 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), HACA will estimate costs based on historic data and known future costs.

If an elderly or disabled family has an accumulated debt for medical or disability assistance expenses, HACA will include as an eligible expense only 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. In addition, the family will be required to provide documentation of the reported debt for medical or disability assistance expenses HACA 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."

HACA Policy

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

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

Families That Qualify for Both Medical and Disability Assistance Expenses

HACA 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, HACA 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.

HACA 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, HACA 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 HACA 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 PHAs to further define and describe auxiliary apparatus [VG, p. 30].

Eligible Auxiliary Apparatus

HACA 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.

HACA 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, HACA 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.

HACA Policy

HACA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, HACA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and HACA 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

HACA 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, HACA 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 childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income."Childcare 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, childcare expenses for foster children that are living in the assisted family's household are included when determining the family's childcare expenses.

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

HACA 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 childcare deduction (seeking work, pursuing an education or being gainfully employed).

In evaluating the family's request, HACA 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

HACA Policy

If the childcare 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 childcare expense being allowed by HACA.

Furthering Education

HACA Policy

If the childcare 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 childcare claimed.

Being Gainfully Employed

HACA Policy

If the childcare 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 childcare 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 childcare – although the care must still be necessary and reasonable. However, when childcare 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, childcare 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 in earned income is included in annual income, childcare expenses are limited to $5,000.

The PHA must not limit the deduction to the least expensive type of childcare. 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].

HACA Policy

When the childcare 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, HACA will limit allowable childcare expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the tenant family. The PHA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide childcare [VG, p. 26].

Allowable Child Care Activities

HACA 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 childcare.

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

If a childcare provider also renders other services to a family or childcare is used to enable a family member to conduct activities that are not eligible for consideration, HACA will prorate the costs and allow only that portion of the expenses that is attributable to childcare 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 childcare 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

Childcare 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 childcare provider verifies, that the expenses are not paid or reimbursed by any other source.

HACA Policy

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For childcare 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 childcare costs, HACA will use the schedule of childcare costs from the local welfare agency. Families may present, and HACA 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 PHA 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.

HACA Policy

HACA will deduct child support payments up to $480 annually, per child, made by any member of the family for the support and maintenance of any child who does not reside in the household. In order to verify payment, such payments must be tendered through an appropriate, governing child support collection entity. Payments must be verifiable by HACA.

PART III: CALCULATING RENT

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

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

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% of the family's monthly adjusted income (adjusted income is defined in Part II).
- 10% 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 PHA.

The PHA 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]

HACA Policy

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

HACA Policy

The minimum rent for this locality is $25.

Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134]

PHAs 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 PHA, 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 PHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to PHA 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.

HACA Policy

HACA 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].

HACA Policy

HACA has implemented ceiling rents, which are set at a level equivalent to the flat rent schedule, plus utility allowance, if applicable.

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

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

HACA Policy

HACA will make utility reimbursements to the family.

6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]

Overview

If the PHA establishes a minimum rent greater than zero, the PHA 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 PHA determines that a hardship exists, the family's TTP is the highest of the remaining components of the family's calculated TTP. The family's TTP does not automatically become zero.

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.

HACA 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.

Loss of eligibility due to fraud will not be considered a hardship under this circumstance.

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. HACA does not consider a family appealing a denial decision under eligibility determination as "awaiting an eligibility determination." 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.

HACA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent.

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

HACA Policy

For a family to qualify under this provision, the loss of employment (or source of income) must have been involuntary, and the income in question must have been included in the calculation of the family's annual income.

(4) A death has occurred in the family.

HACA 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 PHA.

HACA Policy

HACA has not established any additional hardship criteria.

Implementation of Hardship Exemption

Determination of Hardship

When a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

The PHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

HACA Policy

HACA 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 PHA 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 PHA has established a minimum rent of $50.	
TTP – No Hardship	**TTP – With Hardship**
$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent	$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent
Minimum rent applies.	Hardship exemption granted.

TTP = $50	TTP = $15

HACA 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.

A minimum rent hardship exemption waives ONLY the minimum rent amount, not the cost of utilities, maintenance charges or other monthly expenses of the family.

HACA will make the determination of hardship within 30 calendar days.

No Financial Hardship

If the PHA determines there is no financial hardship, the PHA will reinstate the minimum rent and require the family to repay the amounts suspended.

For procedures pertaining to grievance hearing requests based upon the PHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

HACA Policy

HACA will require the family to repay the suspended amount within 30 calendar days of HACA's notice that a hardship exemption has not been granted.

Temporary Hardship

If the PHA determines that a qualifying financial hardship is temporary, the PHA 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 PHA the amounts suspended. HUD requires the PHA to offer a reasonable repayment agreement, on terms and conditions established by the PHA. The PHA 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 PHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

HACA Policy

HACA will offer to enter into a repayment agreement in accordance with HACA's repayment agreement policy (see Chapter 16).

Long-Term Hardship

If the PHA determines that the financial hardship is long-term, the PHA 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.

HACA 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 or equal to 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.

If a family has a credit balance on their dwelling rent account, HACA will continue to charge rent until the balance has been depleted before waiving the minimum rent amount.

The minimum rent hardship exemption waives only the minimum rent amount. Families are still required to pay their utility charges, and any applicable maintenance fees.

If the exemption is granted to a family living at a HACA property that offers reduced-rate cable service, the family will be ineligible for cable until the family no longer receives the exemption.

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 PHA 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, PHAs 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 PHA must review its schedule of utility allowances each year. Between annual reviews, the PHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. 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 PHA's utility allowance schedule [24 CFR 960.253(c)(3)].

HACA Policy

Unless HACA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first interim or 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 PHA must prorate the assistance provided to a mixed family. The PHA 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 PHA must:

(1) Subtract the TTP from the PHA-established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible (family maximum subsidy).

(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 PHA-established flat rent applicable to the unit. 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.

HACA Policy

Revised public housing flat rents will be applied to a family's rent calculation at the first interim or annual reexamination after the revision is adopted. In instances where a mixed family's TTP is higher than the current flat rent amount for the family's bedroom size, HACA will apply the higher TTP for purposes of determining family rent.

For policies related to the establishment of the public housing flat 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.

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 PHA 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 PHA must document that flat rents were offered to families under the methods used to determine flat rents for the PHA.

HACA Policy

The annual HACA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

HACA 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 PHA must provide sufficient information for families to make an informed choice. This information must include the PHA'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 PHA 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 PHA determines that a financial hardship exists, the PHA must immediately allow the family to switch from flat rent to the income-based rent.

HACA Policy

Upon determination by HACA that a financial hardship exists, HACA 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 PHA to be appropriate.

HACA Policy

HACA 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].

Phasing In Flat Rents [Notice PIH 2014-12]

For current residents whose rent would increase as a result of new flat rent requirements, the PHA must restrict the increases to no more than 35 percent of the current tenant rent per year. This would necessitate a phase-in of the rent increase.

Flat Rent Impact Analysis Calculation

In order to conduct a flat rent impact analysis, the PHA must multiply the family's current rent amount by 1.35 and compare the result to the flat rent under the PHA's policies.

Example: A family was paying a flat rent of $500 per month. At their annual recertification, the PHA has increased the flat rent for their unit size to $700. The PHA would conduct a flat rent impact analysis as follows:

$500 x 1.35 = $675

Since the PHA's increased flat rent of $700 would result in a rent increase of more than 35 percent, the PHA would offer the family the choice to pay either $675 per month or an income-based rent. The flat rent increase would need to be phased in.

HACA Policy

HACA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values. As required by Section 210 of the 2014 Appropriations Act, effective June 1, 2014 a PHA must also ensure that established flat rents are no less than 80 percent of the current applicable Fair Market Rents and that they will not cause a family's existing rental payment to increase more than 35 percent. The PHA will conduct a flat rent impact analysis to determine the percentage increase in the family's rent amount. If the increase is greater than 35 percent, the PHA will phase in the rent increase at the maximum amount annually over a three-year period so that it does not exceed 35 percent in any year until the flat rent is fully phased in. If the increase is 35 percent or less, there will be no phase-in. [Notice PIH 2014-12].

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 24 month period would have the 12 months of full (100 percent) and phase-in (50 percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the 24-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 24-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*.

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 260.31[1]; and

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

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

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

(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)

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

HHS DEFINITION OF "ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and childcare 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 childcare 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) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

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

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

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

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

(9) Temporary, nonrecurring or sporadic income (including gifts);

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

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

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

(13) [Reserved]

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

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

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

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

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

a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (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) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

g) 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);

h) 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);

i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));

j) 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.);

k) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

l) 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);

m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));

n) 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);

o) Allowances, earnings and payments to AmeriCorps participants under the National

and Community Service Act of 1990 (42 U.S.C. 12637(d));

p) 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

q) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

r) Any amount received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b), including reduced-price lunches and food under the Special Supplemental food Program for Women, Infants, and Children (WIC).

s) Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990.

t) Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 by Section 2608 of the Housing and Economic Recovery Act of 2008.

u) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al*., United States District Court, District of Columbia, as provided in the Claims Resolution Act of 2010.

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, PHAs 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 therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(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.

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE

24 CFR 960.255 Self-sufficiency incentive–Disallowance of increase in annual income.

(a) *Definitions*. The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person 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 public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, 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 PHA 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.

(b) *Disallowance of increase in annual income*.

(1) *Initial 12-month exclusion.* During the 12-month period beginning on the date on which a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from the annual income (as defined in §5.609 of this title) of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.

(2) *Phase-in of rent increase.* Upon the expiration of the 12-month period defined in paragraph (b)(1) of this section and for the subsequent 12-month period, the PHA must exclude from the annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under paragraph (b)(1) of this section and a maximum of 12 months for disallowance under paragraph (b)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (b)(1) of this section.

(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

(c) *Inapplicability to admission*. The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts*. As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) The PHA must advise the family that the savings account option is available;

(2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA

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 PHA 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 PHA, the welfare agency will inform the PHA 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 PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA 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 PHA'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 PHA 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 PHA 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 PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA 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 PHA 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 PHA 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 PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) *PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA 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 PHA 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 PHA 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 PHA. However, the PHA 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 PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction

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Chapter 7

VERIFICATION

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

INTRODUCTION

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

The PHA will follow the verification guidance provided by HUD in Notice PIH 2010-19, the Streamlining Rule printed in the Federal Register on March 8, 2016 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

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

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

PART I: GENERAL VERIFICATION REQUIREMENTS

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

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

Consent Forms

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

Penalties for Failing to Consent [24 CFR 5.232]

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

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

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

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

HACA Policy

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

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

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

Requirements for Acceptable Documents

HACA Policy

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

A document dated older than 60 days of the date provided to HACA will be acceptable only if the document represents the most recent scheduled report/statement available (example: semi-annual earnings statements or quarterly statements).

Families with checking accounts are required to provide HACA their bank statements that represent the most recent three consecutive months of account activity in order to determine an average balance.

Printouts from web pages are considered original documents.

The HACA staff member who views the original document must make a photocopy of it and date stamp the photocopy to document the date HACA received the document.

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

File Documentation

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

HACA Policy

HACA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing the adjusted income or income-based rent determination

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

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

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

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

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

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

EIV Income Reports

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

HACA Policy

HACA will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process. Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6 and in this chapter.

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

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

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

EIV Discrepancy Reports

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

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

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

HACA Policy

HACA will generate the Income Discrepancy Report at least quarterly.

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

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

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

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

EIV Identity Verification

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

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2012-10].

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

HACA Policy

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

HACA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the tenant. When HACA determines that discrepancies exist due to

HACA errors such as spelling errors, incorrect social security numbers or incorrect birth dates, the errors will be corrected promptly.

Upfront Income Verification Using Non-HUD Systems (Optional)
In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

HACA Policy

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

- HUD's EIV system
- Texas Workforce Commission wage and benefits records portal
- Equifax online credit report portal
- Office of Attorney General child support income portal
- the Work Number
- Other resources that become available to HACA

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

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

Written Third-Party Verification [Notice PIH 2010-19]
Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

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

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

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

HACA Policy

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

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

As verification of earned income, HACA will request pay stubs that are within the 60-day period preceding the reexamination.

The family will be provided a 7 day notice if they do not have acceptable documentation. If the tenant fails to respond to requests for documentation or is unable to provide documentation, HACA will proceed with obtaining written third-party verification.

Written Third-Party Verification Form

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

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

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

HACA Policy

HACA will send third-party verification forms directly to the third party.

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

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

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

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

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

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

HACA Policy

In collecting third-party oral verification, HACA 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 HACA will accept the verbal response as oral verification, but will also request that the source complete and return any verification forms that were provided.

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

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

HACA Policy

If the family cannot provide original documents, HACA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family. The cost of postage and envelopes to obtain third-party verification of income, assets and expenses is not an unreasonable cost [VG, p. 18].

Primary Documents

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

Imputed Assets

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

HACA Policy

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

7-I.E. SELF-CERTIFICATION

Self-certification, or "tenant declaration," is used as a last resort when the PHA is unable to obtain third-party verification. When the PHA relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

HACA 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 HACA. HACA will document the unsuccessful attempts and justification for self-certification in the family's file.

HACA 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 HACA and must be signed by the family member whose information or status is being verified. The tenant must submit an affidavit or notarized statement of reported income and/or expenses to HACA.

Part II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

HACA Policy

HACA 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	Certificate of birth Adoption papers Custody agreement Health and Human Services ID School records School or government-issued photo ID for age 16 and over

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 HACA'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 HACA and be signed in the presence of a PHA representative or HACA notary public. Legal identity will be verified on an as needed basis.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216,Notice PIH 2012-10 and the Streamlining Rule]

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

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

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state or local government agency, which contains the name and SSN of the individual

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

HACA Policy

If the provided documentation is not acceptable evidence of the social security number, HACA will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to HACA within 90 calendar days. The explanation and request will be documented in the tenant file.

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

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

HACA Policy

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

If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission, the assistance applicant may become a participant, so long as the documentation required in this section is provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity must grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in this section within the required time period, the housing authority may terminate assistance or tenancy of the individual participant or the entire family.

HACA Policy

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

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

HACA Policy

HACA will verify each disclosed SSN by:

- Obtaining documentation from applicants and residents that is acceptable as evidence of social security numbers.
- Making a copy of the original documentation submitted, returning it to the individual and retaining a copy in the file folder.

Once an individual's status is classified as "verified" in HUD's EIV system, HACA will retain and secure all SSN documents in the tenant file throughout the family's tenancy in Public Housing. Thereafter, it will be retained in accordance with HACA's record retention policies,

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.

HACA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, HACA 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.

HACA 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

HACA Policy

Certification by the head of household is normally sufficient verification. If HACA has reasonable doubts about a marital relationship, HACA 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 or filing joint income tax returns).

Separation or Divorce

HACA Policy

Certification by the head of household is normally sufficient verification. If HACA has reasonable doubts about a separation or divorce, HACA 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.

Absence of Adult Member

HACA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the head of household will be required to submit a signed and

notarized Removal from Lease certification form to HACA. In addition, the family must provide evidence to support that the person is no longer a member of the household (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Foster Children and Foster Adults

HACA 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

HACA Policy

HACA 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 childcare deduction to enable a family member to further his or her education.

7-II.F. DOCUMENTATION OF DISABILITY

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

The 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].

HACA Policy

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

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 5.403, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

HACA Policy

For family members claiming disability that do not receive SSI or other disability payments from the SSA, a knowledgeable medical professional must provide written third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The family member must provide written consent and contact information for HACA to contact the knowledgeable medical professional and send a request for written verification. The knowledgeable medical professional will verify whether the family member does or does not meet the HUD definition. Based upon the knowledgeable medical professional's response, HACA will or will not grant the family a wait list preference or certain income disallowances and deductions. If HACA does not receive a response from the medical professional within 30 calendar days, the family's claim for disability status is denied. The family will receive written notification of the denial, the reason for the denial and is advised of their right to request an informal hearing or grievance hearing, as applicable.

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

Overview

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

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously assisted occupancy [24 CFR 5.508(g)(5)].

U.S. Citizens and Nationals

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

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

HACA Policy

Family members who claim U.S. citizenship or national status will be required to provide one of the following supporting documents: an original birth certificate, naturalization document, valid unexpired United States passport, an original baptism certificate or U.S. military report of separation (DD214).

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 1 at the end of this chapter summarizes documents family members must provide.

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

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

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

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

7-II.H. VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant.

HACA Policy

Elderly/Disabled Local Preference: HACA will give preference to Elderly or Disabled families in the selection of a family for a unit in the following mixed population developments:

- Lakeside Apartments;
- North Loop Apartments;
- Gaston Place Apartments; and
- Salina Apartments.

Should the applicant become eligible for housing, and a unit is unavailable within a mixed population development OR the elderly/disabled family contains a dependent who is not elderly, disabled or is a minor, the applicant will then be offered a unit within a family site, consistent with HACA occupancy standards.

Verification of Elderly or Disabled Local Preference:

The disabled head of household or co-head of household will be subject to the HACA verification methods as described in 7-II-F of this ACOP. A head of household's or co-

head of household's age will be verified at the time of the intake interview with birth certificates or original Texas DPS identification cards/driver's license in order to verify an elderly local preference. To qualify for this preference, the head of household, co-head or sole occupant must be at least 62 years old or older at time of the initial intake interview.

Displaced Family Local Preference:

Families displaced as a result of natural disaster or government action shall be given preference over families consisting of two or more, and non-elderly, non-handicapped/disabled single persons. The following documentation will be used to verify displacement status:

- Sworn Certification from a unit of government concerning displacement due to natural disaster.
- Sworn Certification from a unit of government concerning displacement due to code enforcement or public improvement/development or displacement by inaccessibility of a unit.

PART III: VERIFYING INCOME AND ASSETS

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

7-III.A. EARNED INCOME

Tips

HACA 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

HACA 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.

HACA 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 HACA may request documents that support submitted financial statements such as manifests, appointment books, cashbooks or bank statements.

If a family member has been self-employed less than 3 months, HACA will accept the family member's certified estimate of income. If the family member has been self-employed for 3 to 12 months, HACA 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

Streamlined Income Determination of Fixed Income Sources [24 CFR 960.257]

On March 8, 2016 HUD published the Streamlining Rule in the Federal Register. According to this rule, for any family member with a fixed source of income, a PHA may elect to determine that family member's income by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

HACA Policy

HACA will apply this streamlined income determination for all fixed income sources in the following way:

- HACA will only use the streamlined income determination as part of a reexamination. HACA will require third-party verification of all income for applicants during the admissions process.
- A "family member with a fixed source of income" is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:
    - Social Security, Supplemental Security Income, Supplemental Disability Insurance;
    - Federal, state, local, or private pension plans;
    - Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or
    - Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.
- HACA will use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. HACA will verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party-generated documentation. If no such verification is available, then HACA will obtain third-party verification of income amounts in order to calculate the change in income for the source.
- For any family member whose income is determined pursuant to a streamlined income determination, HACA will obtain third-party verification of all income amounts every 3 years.

Social Security/SSI Benefits

HACA Policy

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

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

7-III.D. ALIMONY OR CHILD SUPPORT

HACA Policy

The way HACA 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.

- As a form of upfront income verification, HACA will access child support information via the Texas Office of Attorney General (OAG) child support online portal. Information accessed is limited to the custodial parent's case number(s), names of children related to each listed case, and a record of the last 12 payments received for each case, if any. Written consent by the family is secured via the OAG Form 1825, which is kept in the family's file.
- Copy of the receipts and/or payment stubs for the most recent 3 month period prior to the recertification effective date
- Copy of divorce decree to include signed child support and/or alimony order
- If the custodial parent does not have a Social Security number, or if HACA is unable to access the custodial parent's case information for any other reason, HACA will request a third party written verification from the state or local child support enforcement agency
- Third-party verification form from the person paying the support.
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

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

- A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts.
- If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts.

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

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

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

HACA Policy

HACA will verify the value of assets disposed of only if:

- HACA does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly resident reported a $10,000 certificate of deposit at the last annual reexamination and HACA verified this amount. Now the person reports that she has given this $10,000 to her son. HACA 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, HACA will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

HACA 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, HACA 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

HACA Policy

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

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

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

7-III.H. INCOME FROM EXCLUDED SOURCES

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

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

HACA Policy

HACA 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, HACA will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

HACA Policy

HACA 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. In addition, residents will be required to meet with HACA monthly to update their annual income status and answer a zero income questionnaire. Monthly visits, which may include home visits, will continue until the family no longer claims to have zero annual income.

PART IV: VERIFYING MANDATORY DEDUCTIONS

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

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

Dependent Deduction

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

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

Elderly/Disabled Family Deduction

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

7-IV.B. MEDICAL EXPENSE DEDUCTION

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

Amount of Expense

HACA Policy

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- HACA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. HACA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the PHA must verify that:

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

Eligible Household

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

Qualified Expenses

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

Unreimbursed Expenses

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

HACA 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

HACA Policy

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

- The anticipated repayment schedule.
- The amounts paid in the past.
- 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

HACA Policy

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

Expenses for attendant care will be verified through:

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Auxiliary Apparatus

HACA Policy

Expenses for auxiliary apparatus will be verified through:

- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not available.

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

In addition, the PHA must verify that:

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

Family Member is a Person with Disabilities

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

Family Member(s) Permitted to Work

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

HACA Policy

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

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

Unreimbursed Expenses

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

HACA Policy

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

7-IV.D. CHILD CARE EXPENSES

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

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

Eligible Child

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

Unreimbursed Expense

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

HACA Policy

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

Pursuing an Eligible Activity

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

HACA Policy

Information to be Gathered

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

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

Furthering Education

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

Gainful Employment

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

Allowable Type of Child Care

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

HACA Policy

HACA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 (6-II.F).

HACA will verify that the fees paid to the childcare provider cover only childcare 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).

HACA will verify that the childcare 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 childcare costs can be deducted.

HACA Policy

The actual costs the family incurs will be compared with HACA'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, HACA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

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

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

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Elderly Noncitizens

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

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All other Noncitizens

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

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

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

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

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

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- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

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Chapter 8

LEASING AND INSPECTIONS

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

INTRODUCTION

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

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

This chapter is divided into two parts as follows:

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

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

PART I: LEASING

8-I.A. OVERVIEW

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

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

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

8-I.B. PRE-OCCUPANCY ORIENTATION

HACA Policy

Upon being determined eligible for public housing, the head of household and co-head/spouse will be required to attend and successfully complete a pre-occupancy orientation meeting prior to being housed. No applicant will be admitted to HACA housing before attending the pre-occupancy training. In the event that an applicant fails to attend the orientation, no housing offer will be made.

An orientation meeting may be rescheduled in order to provide a reasonable accommodation for a verified disability upon request or if the applicant has an emergency that is supported by written documentation presented to HACA.

Upon successful completion of the pre-occupancy orientation, the family will be eligible to receive a unit offer pursuant to HACA's unit offer policies described in Chapter 5.

Orientation Agenda

HACA Policy

The orientation meeting shall at a minimum provide the following general information to the applicants:

- A copy of HACA's Zero Tolerance Policy
- A copy of HUD Fact Sheet "How Your Rent is Determined"
- A copy of HACA "Things To Remember" fact sheet
- A copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse
- A copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19
- Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault, or stalking (see section 16-VII.C)

Topics to be discussed will include:

- Applicable deposits and other charges
- Review and explanation of lease provisions
- Unit maintenance and work orders
- HACA's reporting requirements
- Explanation of occupancy forms
- Community service requirements
- Family choice of rent
- VAWA protections
- HACA's Rental Integrity and Fraud Prevention Program

8-I.C. EXECUTION OF LEASE

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

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

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

HACA Policy

The head of household, spouse or cohead will be required to sign the public housing lease at move-in.

A lease shall be dated and signed by the head and spouse and by HACA's designee, prior to actual admission and possession. The initial term of a new move-in shall be one (1)

year. For example, if the lease is to begin on June 17, 2008, the initial one-year term will terminate on May 31, 2009. The effective recertification date will be June 1, 2009, and June of each year thereafter. This recertification anniversary does not change regardless of any subsequent transfers to other HACA units by the family.

The head of household will be provided a copy of the executed lease and HACA will retain a copy in the resident's file. The head of household will also receive a copy of the following documents:

- House Rules
- Community Service/Self-Sufficiency Requirements Handbook
- Welcome Binder
- Move-In Inspection Form

Files for households that include a live-in aide will contain file documentation signed by the live-in aide and the head of household that the live-in aide is not a party to the lease and is not entitled to HACA 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 PHA [24 CFR 966.4(a)(3)].

Modifications to the Lease Form

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

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

HACA 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].

HACA Policy

When HACA proposes to modify or revise schedules of special charges or rules and regulations, HACA will post a copy of the notice in the central office and at the property management offices, and will include a description of the changes in the HACA newsletter, which is provided to each resident family.

Other Modifications

HACA Policy

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

If, for any reason, any adult member of the household ceases to reside in the unit, the departing family member will be required to submit a notarized statement named Removal from Lease Certification. An interim adjustment is completed by HACA to reflect changes in household composition and income, allowances and deductions, if applicable. A Notice of Rent Change is completed by HACA and issued to the family, reflecting the changes in household composition and rent, as applicable.

If a new household member is approved by HACA to reside in the unit, an interim adjustment is completed by HACA to reflect changes in household composition and income, allowances and deductions, if applicable. A Notice of Rent Change is completed by HACA and issued to the family, reflecting the changes in household composition and rent, as applicable. If the new member of the household is an adult, s/he will be required to sign and date the following documents:

- Form HUD 9886
- PHA Certification/Attachment I
- HACA's Zero Tolerance Policy
- Client Re-exam Worksheet
- CSSR Certification

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

The following circumstances will require the execution of a new lease:

- Resident transfer within or between development(s).
- Adoption and implementation of a new lease program/development wide.
- Change of HOH.

The following circumstances will require the execution of a Notice of Rent Change:

- A change in income;
- A change in household composition;
- A change in rent; or

- Any other change in the resident's status which results in the need for changing or amending any provision of the lease.

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

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

HACA Policy

Residents must pay a security deposit to HACA and must be paid in full prior to occupancy at the time of move-in. Any other payment arrangement of the security deposit must be approved by HACA.

Non-elderly or Non-disabled Families – A family headed by a non-elderly and non-disabled head of household shall pay a security deposit in the amount of $150.00.

Elderly or Disabled families **–** A family headed by an elderly and/or disabled head of household shall pay a security deposit in the amount of $75.00.

Installments – Upon mutual agreement by both parties, the security deposit may be broken up into payments not exceeding 6 months in duration. Each payment must be equal in amount with an initial payment due upon execution of the dwelling lease agreement.

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

Within 30 days of move-out, HACA will refund to the resident the amount of the security deposit, less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear and other charges due under the lease. HACA will provide the resident with a written itemized list of any charges against the security deposit as part of the move-out packet that is mailed certified to the resident. Within the move-out packet, HACA will advise the resident of their right to dispute any move-out charges within 10 days of receipt of the packet. If the resident disputes the amount charged within the required deadline, HACA will contact the resident to discuss the charges.

If the resident transfers to another unit, HACA will not transfer the security deposit to the new unit. The tenant will be billed for any maintenance or other charges due for the "old" unit.

8-I.F. PAYMENTS UNDER THE LEASE

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

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

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

HACA Policy

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

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

Late Fees and Nonpayment

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

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

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

HACA Policy

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

In addition, if the resident fails to make payment by the end of office hours on the fifth day of the month, a late fee of $15.00 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, HACA 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.

Timetable for Collection of Rents

The first 5 days of the month will be devoted to collection of rent. The legal process of collections will start on the 6th day as follows:

- Hand-deliver and first class mail a 14-Day Notice of Lease Termination to each resident who has not paid rent. The hand delivered Notice must be delivered to the resident or head of household. The Notice will include the date and time of the Informal Settlement Conference. The Acknowledgment of Receipt form shall be signed by the resident if the resident is home. If the resident is not home, the Notice of Lease Termination will be affixed to the inside of the main entry door.

- If applicable, attend the Informal Settlement Conference and complete the summary of Informal Settlement Conference form. The summary will document the outcome of the Informal Settlement Conference. It will also indicate whether the resident failed to attend. The summary will document whether HACA's decision to terminate the resident's lease is being upheld or not. The summary will note that the resident may request a formal grievance hearing within 5 days of receipt of the summary.
- Deliver the summary to the resident.
- If a formal grievance is requested within the permitted timeframe, forward the file to the specified Hearing Officer.
- If a formal grievance is not requested within the time frame required, a 3 day Notice to Vacate will be hand delivered after the 14-Day Notice of Lease Termination has expired. The Notice to Vacate must be hand delivered to the resident or adult household member or affixed to the inside of the main entry door. The Acknowledgment of Receipt of Document should be filled out as applicable.
- If a formal grievance was requested, and the decision is in favor of HACA, the 3 day Notice to Vacate should be hand delivered. The Notice to Vacate must be hand delivered to the resident or adult household member or affixed to the inside of the main entry door. The Acknowledgment of Receipt of Document should be filled out as applicable.
- If the full amount of the delinquent rent and late fees are not received by the date specified within the Notice to Vacate, the Forcible Detainer should be filed as soon as possible. Delinquent rent will not be accepted after the filing of a Forcible Detainer unless the resident tenders the full amount of delinquent rent, late fees and court costs. Should the resident offer to tender the full amount of delinquent rent, late fees and court costs, the Public Housing Manager may, but shall not be required, to accept payment. Full payment must be made via money order or cashier's check. Payments by personal check will not be accepted after the filing of a Forcible Detainer.
- The Public Housing Manager shall promptly file the forcible and attend the hearing. Public Housing Managers shall handle all nonpayment suits unless the complex or the defendant is represented by an attorney; and
- After judgment is obtained, the Public Housing Manager shall file for a writ of possession on the 6th day after the judgment is signed.
- 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 $10.00 will be charged to the family plus a late fee charge. The fees will be due and payable 14 days after billing.

<u>Miscellaneous Charges</u>

Miscellaneous charges are due and payable following the month such charges are incurred.

Application of Money to Accounts

Unless specified otherwise by the applicable Lease, the money received from the resident is to be applied to her or his account in the following order:

- Rent Charge:
    1. Delinquent rent
    2. Current rent
- Excess utilities
- Cable TV
- Air Conditioning
- Late Charge
- NSF Check Fee (Returned Checks)
- Maintenance Charges
    1. oldest Maintenance Charges; and
    2. current Maintenance Charges
- Legal Charge
- Security Deposit
- Pet Deposit
- Fraud
- Non-Dwelling Rent Charge
- Move Out Charge

Credit Balances

If a resident has a credit balance on his/her account, HACA may, at its option, do either of the following:

1. Apply the credit balance against the resident's account as follows: first against future rent as it becomes due and payable; and then against future other charges / fees as they become due and payable in the same order indicated above; or
2. Refund the credit balance directly to the resident.

Partial payments for rent will not be accepted. No extensions or installment agreements for payment of rent will be allowed.

Excess Utility Charges

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

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

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

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

HACA Policy

When applicable, families will be charged for excess utility usage according to HACA's current schedule posted at the Public Housing Management/Development Office. 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, HACA 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.

8-I.G. MAINTENANCE AND DAMAGE CHARGES

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

Schedules of special charges for services and repairs 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 maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after the PHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

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

HACA Policy

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

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. Unless an installment agreement is entered into under the terms set forth below, the total balance of the maintenance charges is due in full. If the family requests a grievance hearing within the required timeframe, HACA may not take action for nonpayment of the charges until the conclusion of the grievance process.

If the resident requests to pay the maintenance charges incurred in installments within 30 days after receipt of the invoice for such charges, HACA at its discretion may agree to such an installment agreement under the following conditions;

- The total outstanding balance is $100.00 or more.
- The total balance will be paid in weekly or monthly installments.
- The maximum length of the installment agreement is 24 months.
- The minimum payment amount must be at least $100, and the entire balance must be paid in 24 months or less.
- Failure to pay the installment when due will result in termination of the lease; and
- HACA determines in its sole discretion that the resident does not have the financial ability to pay the full amount when due.

This section shall supersede any other conflicting sections of the ACOP.

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

Move-Out Charges

Residents will be held responsible for all damages to the unit and appliances incurred prior to the move-out inspection and acceptance of the unit keys by management. All damages, beyond normal wear and tear, will be charged to the resident's account at the time of move-out. The maintenance charge schedule in effect at the time of move-out will be utilized to price labor and materials.

Dispute Procedure for maintenance charges and move-out charges

Upon receipt of the invoice for maintenance/damage charges or move-out charges, the resident/former resident shall have 10 calendar days to submit in writing to the Public Housing Manager (or to a Finance Department representative for move-outs) his/her dispute of said charges. Should the resident/former resident fail to dispute the charges within the time frame and manner set forth above, the charges shall be final. Should the resident dispute any maintenance/damage charges, the Public Housing Manager will forward such dispute form to the Community Director. Thereafter, the Community Director shall make the final decision as to whether such charges shall be approved or dismissed. Only currently housed tenants may invoke the grievance process.

PART II: INSPECTIONS

8-II.A. OVERVIEW

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

8-II.B. TYPES OF INSPECTIONS

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

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

HACA Policy

Only the head of household and/or co-head or spouse may attend the initial inspection and sign the inspection form.

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

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

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

HACA Policy

Once the resident vacates the unit, he or she is expected to turn in the key(s) to the Public Housing Manager by the requested move-out date. At the time the keys are turned in to management, a walk through inspection should be conducted with the resident to assess any move-out damages. The Public Housing Manager shall report the vacancy to the Dispatcher the same day or the next working day should the move-out occur late in the day.

The Public Housing Manager shall conduct a walk through inspection of the unit to assess the resident damages, if any, and document such damages and overall unit condition on the move-out inspection form. The Public Housing Manager will use the information, including any outstanding debt, eviction cost and any other charges, if applicable, to complete the move-out packet. The packet consists of the Notice of Intent to Vacate, Move-Out Maintenance Charges form, the completed Move-Out Inspection form and the Notice of Move-Out Charges Letter. The original is certified first class mailed to the former resident at the provided forwarding address or the last known address. A copy is kept in HACA's Finance department and a copy is secured in the resident file.

The Move-Out Packet shall be submitted to the Finance department no later than 2 business days after the move-out date. This information will be recorded in the Tenant Accounting module by the Finance staff. HACA management shall report the vacancy on the daily vacancy database report that is reviewed by the HACA Admissions department for use in assigning a replacement for this resident from the public housing waiting list.

When applicable, HACA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 30 days of conducting the move-out inspection.

Annual Inspections [24 CFR 5.705]

The PHA is required to inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS). Under the Public Housing Assessment System (PHAS), HUD's physical condition inspections do not relieve the PHA of this responsibility to inspect its units [24 CFR 902.20(d)].

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

HACA Policy

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

Special Inspections

HACA Policy

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

- Housekeeping – conducted on a quarterly basis
- Unit condition
- Suspected lease violation
- Preventive maintenance
- Routine maintenance
- There is reasonable cause to believe an emergency exists

Other Inspections

HACA Policy

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

Pest Control Service

HACA Policy

All units will be treated on a preventive basis according to an established schedule through a contracted pest control service. If HACA determines that additional treatments are required, residents will be notified in accordance with the policies in 8-II.C.

Residents who refuse to allow entry for pest control service will be assessed a fee equal to the charge assessed by the pest control contractor to return to the unit and perform the service. If extra treatments are required in the unit for infestation due to housekeeping habits, the additional charges for such treatments will be assessed to the resident.

8-II.C. NOTICES AND SCHEDULING OF INSPECTIONS

Notice of Entry

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

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

HACA Policy

HACA will notify the resident in writing at least 48 hours prior to any non-emergency inspection or pest control service.

For regular annual inspections, the family will receive at least 10 days 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 HACA to enter the unit.

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

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

Scheduling of Inspections

HACA Policy

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

HACA Policy

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

If no one is at home, the Inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

8-II.D. INSPECTION RESULTS

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

Emergency Repairs [24 CFR 966.4(h)]

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

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

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

HACA Policy

When conditions in the unit are hazardous to life, health or safety, HACA 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 50 degrees Fahrenheit.
- Utilities not in service due to no fault of the resident, including no running hot water.
- Conditions that present the imminent possibility of injury.
- Obstacles that prevent safe entrance or exit from the unit.
- No functioning toilet(s) in the unit.
- Inoperable smoke detectors.

Non-emergency Repairs

HACA Policy

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

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

Alternative Accommodations

HACA Policy

HACA will offer residents alternative accommodations in the following circumstances:

a) If the repairs cannot be completed while the unit is occupied and the time to complete the repairs will be short (less than 2 weeks), HACA will provide alternative accommodations in a local motel/hotel. In addition, HACA will pay for reasonable out of pocket expenses directly related to being displaced.

b) If the repairs cannot be completed while the unit is occupied and the time to complete the repairs will be more than 2 weeks, or if the unit is uninhabitable, or if the unit will need to go into MOD status to repair, HACA will provide alternative accommodations by offering a transfer to another Public Housing unit. If there is a period of time between being displaced and the transfer offer, HACA will provide accommodations through a local motel/hotel. HACA will also coordinate provision of services with local emergency responders (e.g. Red Cross) when applicable.

Resident-Caused Damages

HACA 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 and may result in termination of the Lease.

Housekeeping

HACA Policy

HACA shall conduct housekeeping inspections on a quarterly basis.

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, HACA will provide proper notice of a Lease violation and will place the residents on probationary status for a minimum of one year.

A re-inspection 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(s). Only one warning will be given. A second incidence will result in Lease termination.

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Chapter 9

REEXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

INTRODUCTION

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

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

This chapter discusses both annual and interim reexaminations.

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

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

Part III: Interim Reexaminations. This part includes HUD requirements and HACA 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, HACA 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 PHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. For families who

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

For all residents of public housing, whether those residents are paying income-based or flat rents, the PHA must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point to determine the need for lease enforcement or eviction. The PHA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of the PHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

This part contains HACA's policies for conducting annual reexaminations.

9-I.B. SCHEDULING ANNUAL REEXAMINATIONS

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

HACA Policy

HACA will schedule annual reexaminations to coincide with the family's anniversary date. HACA will begin the annual reexamination process approximately 90 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, HACA will perform a new annual reexamination, but the anniversary date will not change. Example: A family initially moved into a unit on May 12, 2004. The family's anniversary date is May 1, 2005, and every May 1 of each year thereafter. If the family transfers to another unit on October 24, 2008, the family's next annual reexamination will still be effective on May 1, 2009, and every May 1st thereafter.

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

HACA Policy

Families 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 HACA to request a reasonable accommodation.

Advance notice of upcoming annual reexamination interviews will be sent 90 days prior to the family's anniversary date. Notice will be sent by first-class mail and will inform the family that a notice of annual reexamination interview will be received the following month. A copy of the Application for Continued Occupancy will be enclosed for the head of household to complete and bring to the interview.

Sixty days prior to the family's anniversary date, 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. Enclosed with the notification will be HUD Fact Sheet "How Your Rent is Determined" and a "Fraud…Is it Worth It?" HUD flyer.

If the family is unable to attend a scheduled interview, the family should contact HACA at least 2 business days in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview or the rescheduled interview, HACA will send a warning letter 30 days prior to the family's anniversary date. The letter will include a new interview appointment date and time.

If a family fails to attend 2 scheduled interviews without HACA 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.

HACA will provide the family with a copy of Form HUD-92006 at time of interview and will advise the family that completion of the form is optional for the family. HACA will advise the family that the purpose of the form is to allow the family to provide contact information of an individual or agency that HACA may contact in an attempt to obtain needed information to complete the family's recertification.

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)].

HACA Policy

Each resident will be required at the time of reexamination to submit a signed Application for Continued Occupancy on the HACA's current form. All entries in the form are to be made in ink or by typewriter. Corrections or changes are to be made by lining through the original entry and substituting therefore the correcting data. Such changes are to be dated and initialed by the person recording the changed data, the resident and the reasons and authority for such changes incorporated in the record.

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 HACA-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 7 calendar days of the interview. A 7-Day Letter that details what documentation or information must be submitted will be issued to the head of household at the interview. If the family is unable to obtain the information or materials within the required time frame, the family must request an extension from the Public Housing Manager. One extension will be allowed as needed.

If the family does not provide the required documents or information within the required time frame (plus any approved extension), 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

To ensure that the data upon which the determination of eligibility for continued occupancy, rent to be paid and size of dwelling required are accurate and completely adequate in all respects, follow-ups or new efforts to obtain such information are to be made and carried through to conclusion. As verification of all necessary items for each application are completed, a summary of verified information is to be prepared. The summary is to cover the following determinations:

- Amount of rent to be paid.
- Size of unit required.
- Eligibility of the resident as a family or as the Residuum of a Family; and
- Eligibility of the family with respect to other conditions for continued occupancy.

When the verified findings are at substantial variance from the data furnished by the resident in her or his application and documents, the resident is to be re-interviewed and an opportunity is to be given for her or him to explain the apparent discrepancies. If the resident is determined to have knowingly falsified or misrepresented information of the application, or any other occupancy related document, HACA shall terminate the tenancy and evict the resident.

Fraud

If the reexamination discloses that the resident, at the time of admission or at any previous reexamination, made misrepresentations which resulted in her or his being classified as eligible, the resident will be notified in writing of such misrepresentation, and may be required to vacate the dwelling even though she or he may be currently eligible.

If HACA suspects, in its sole discretion, that a family is under-reporting or under-paying the tenant portion of rent by intentionally reducing any forms of income or terminating employment in anticipation of annual recertification for the primary purpose of paying less tenant rent, HACA shall investigate such circumstances as potential fraud.

HACA shall review Texas wage records, credit reports, Enterprise Income Verification reports, and any other sources at its disposal to determine potential patterns of fraud on the family's part.

If HACA determines that the family has indeed committed fraud, HACA will proceed with enforcing its policies regarding tenant fraud as stipulated in Chapter 15. Additionally, HACA may choose to calculate and project annual income based on the family's actual past annual income.

Retroactive Rent

If at the time of reexamination it is found that the resident's misrepresentations have resulted in her or his paying a lower rent than she or he should have paid, she or he will be required to pay the difference between the rent paid and what should have been paid. Such retroactive rent is due in full immediately upon notification. If the amount of rent owed exceeds an established threshold determined by HACA (currently $5,000), the family will be subject to Lease termination due to fraud and the family will be referred to the HUD Office of Inspector General for criminal prosecution. In all circumstances, the family will be advised of their right to review documentation, formally dispute the fraud determination, and request a grievance hearing.

Repayment Agreement.

If within 10 days of the receipt of the written notification of the full amount due, the resident requests to pay the retroactive rent in installments, HACA may agree to such an installment agreement under the following conditions:

- The total outstanding balance is $150.00 or more.
- The total balance will be paid in weekly or monthly installments.
- The maximum length of the installment agreement is 24 months.
- The minimum monthly payment amount must be at least $100.
- Failure to pay the installment when due will result in termination of the Lease; and
- HACA determines in its sole discretion that the resident does not have the financial ability to pay the full amount when due.

If during interim or annual re-examination, the resident claims a zero income status, the resident will be required to make themselves available to a monthly special review. During this review, the resident will fully complete HACA's special review form relating to zero income. In the event a currently housed family subject to a repayment agreement splits, HACA will determine which party will remain financially liable for the remaining balance, and assign such balance to that party's account.

Change in Unit Size

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

Criminal Background Checks

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

HACA Policy

HACA will not routinely conduct criminal background checks as part of the annual reexamination process. HACA may conduct criminal background checks as deemed necessary.

Compliance with Community Service

For families who include nonexempt individuals, the PHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)]. See Chapter 11 for the PHA's policies governing compliance with the community service requirement.

9-I.D. EFFECTIVE DATES

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

HACA 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 HACA 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 HACA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, increases in the tenant rent will be applied retroactively, to the family's anniversary date. The family's tenant file will be documented to reflect how the family caused the delay in processing and explain why the family did not receive the full 30 days notice of increase. 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 HACA 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 HACA.

If the family causes a delay in processing the annual reexamination, decreases in the tenant rent will be applied prospectively, from the first day of the month following completion of the reexamination processing. The family's tenant file will be documented to reflect how the family caused the delay in processing.

Delays in reexamination processing are considered to be caused by the family if one or more of the following occurs: the family fails to attend the scheduled annual reexamination interview; the family fails to attend the rescheduled annual reexamination interview; the family fails to sign paperwork or provide information and/or

documentation requested by HACA by the date specified, and this delay prevents HACA 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 PHA offer all families the choice of paying income-based rent or flat rent at least annually. The PHA's policies for offering families a choice of rents are located in Chapter 6.

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

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

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

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

Frequency of Reexamination

HACA Policy

For families paying flat rents, HACA will conduct a full reexamination of family income and composition once annually.

Reexamination Policies

HACA Policy

In conducting full reexaminations for families paying flat rents, HACA 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. As required by Section 210 of the 2014 Appropriations Act, a PHA must ensure that established flat rents are no less than 80 percent of the current applicable Fair Market Rents and that they will not cause a family's existing rental payment to increase more than 35 percent. At the time of Annual Reexamination, HACA will set the new flat rent at no more than 35 percent of the family's existing rental payment.

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

As noted above, full reexaminations are conducted by HACA every year for families paying flat rents. In the years between full reexaminations, regulations require the PHA to conduct a reexamination of family composition ("annual update") [24 CFR 960.257(a)(2)]. The annual update process is similar to the annual reexamination process, except that the PHA does not collect information about the family's income and expenses, and the family's rent is not

recalculated following an annual update. However, this process does not apply due to HACA's policy of conducting full reexaminations annually for all families regardless of whether the rent paid is flat rent or income-based rent.

Scheduling

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

HACA Policy

Because HACA conducts full reexaminations annually for all families, including families paying flat rent, annual updates are not applicable.

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

9-III.A. OVERVIEW

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

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

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

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

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

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

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

HACA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations. All changes in family composition must be reported in writing within 10 days from the date of occurrence. The participant must complete an update form and provide necessary documentation to support the change.

New Family Members Not Requiring Approval

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

HACA Policy

The family must inform HACA in writing of the birth, adoption or court-awarded custody of a child within 10 calendar days.

New Family and Household Members Requiring Approval

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

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

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

HACA Policy

Families must request HACA 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 7 consecutive days or a total of 14 cumulative days in a calendar year, unless written consent of HACA is first obtained, and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by HACA prior to the individual moving into the unit.

If adding a person to a household (other than a child by birth, adoption, or court-awarded custody) will require a transfer to a larger size unit (under the transfer policy in Chapter 12), HACA will approve the addition only if the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by HACA. Exceptions will be made on a case-by-case basis.

Any person requested to be added on to a current public housing household will be treated as a new applicant. HACA will not approve the addition of a new family or household member unless the individual meets HACA's eligibility criteria, has submitted a completed application, all necessary documentation and has been approved through the Admissions screening process (see Chapter 3) and meets the documentation requirements (See Chapter 7). Under no circumstances will persons be added to the lease that has the effect of violating HACA's Occupancy Standards. HACA shall not approve requests for additions to family composition where the request intends to provide housing assistance to extended families or multiple households. These persons will be required to apply for the conventional public housing program separately. A lease addendum shall be executed only after receipt of the certification from the Admissions department that the person is eligible.

If HACA determines that an individual does not meet HACA's eligibility or documentation requirements, HACA 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.

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

Departure of a Family or Household Member

HACA Policy

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

A head of household or co-head will only be removed from the lease upon the following conditions:

- Receipt of a written notarized statement requesting removal from the lease by the person who will be removed; and
- An executed agreement by the person being removed as to the terms and conditions for removal.

HACA will not remove a head of household or Co-Head from the lease based upon a protective order unless the said order specifically orders HACA to remove the said person from the lease. Additional stipulations for removal of the head of household or co-head may include and involve compliance with the Violence Against Women's Act (VAWA).

Household members will be removed at the request of the head of household, unless the reason for removal, in HACA's sole discretion, is to attempt to avoid the termination of the lease due to the behavior of the household member, or to circumvent a limitation or requirement of federal statute, regulation, or HACA policy.

The head of household may not be removed from the lease if there is no co-head who has also executed the Lease. In such event, the resident shall be required to provide his or her intent to vacate the unit on behalf of the resident and household members. Exceptions to this policy are stipulated in Chapter 6-I.B and reviewed on a case-by-case basis.

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

9-III.C. CHANGES AFFECTING INCOME OR EXPENSES

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

HACA Policy

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

PHA-initiated Interim Reexaminations

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

HACA Policy

HACA will conduct interim reexaminations in each of the following instances:

Interims as a result of Earned Income Disallowance (EID)

For families receiving the Earned Income Disallowance (EID), HACA will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent phase in period).

Zero Income

If the family has reported zero income HACA will conduct a zero income interview monthly as long as the family continues to report zero income. During the interview, the zero-income checklist will be completed, reviewing the family's income and expenses

- If it is determined during the interview that the family has income and failed to report it within the required time-frame, an interim will be conducted and made effective retroactively to the first of the month after they started receiving the income. A Fraud Checklist will be completed and the tenant will be required to pay back any underpaid rent. HACA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16 of this ACOP. If the family fails to repay the amount owed or the amount owed exceeds HACA's established thresholds for repayment, HACA will terminate the family's lease in accordance with the policies in Chapter 13 of this ACOP
- If it is determined that the family has obtained income but that the required time-frame for reporting has not yet expired, an interim will be conducted effective on the first of the month following a 30-day written notice to the family

If at the time of the annual reexamination, less preferable verification documents were used on a provisional basis due to the lack of up-front income verification or third-party verification, and a superior form of verification becomes available, HACA will conduct an interim reexamination if the superior form of verification reveals a discrepancy.

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

If there has been a change in circumstances for a tenant or a tenant disputes the income calculation. HACA may conduct an interim reexamination.

Family-Initiated Interim Reexaminations

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

Reporting

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

HACA Policy

Required Reporting

The family is required to report the following in writing within 10 calendar days from the date of occurrence, which will result in an interim:

- Income increase of $600 a month or more or $7,200 or more annually
- All changes in family composition
- If the family is on zero income, the family must report any changes in income, regardless of the amount

Not Required to Report

The family is not required to report the following until their next annual re-examination:

- Cost of living adjustments to recipients of Social Security, TANF and Veterans Assistance.
- Income increases of less than $600 monthly or less than $7,200 annually.

Optional Reporting

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

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

FSS participants may request an income increase be processed to increase the escrow account, regardless of amount.

9-III.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

HACA Policy

The family must notify HACA of changes in writing. The family will be required to attend an interview for an interim reexamination

Based on the type of change reported, HACA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 7 calendar days of receiving a request from HACA. This time frame may be extended for good cause with HACA approval. HACA will accept required documentation by mail, by fax or in person.

Effective Dates

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

HACA Policy

If the tenant rent is to *increase*:

- The increase will be effective on the first of the month following 30 days' notice to the family.
- HACA will not process the increase (regardless of the amount) if it was reported

within 4 months of their annual reexamination date. HACA will wait until the Annual to process these reported increases.

- 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 first day of the month following the month in which the change occurred. The family's tenant file will be documented to reflect how the family caused the delay in processing and explain why the family did not receive the full 30 days notice of increase. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16 of this ACOP.

If the tenant 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.
- No adjustments will be made for temporary family conditions not exceeding 30 days. Families experiencing a temporary loss of income shall be referred to various social service agencies for possible assistance

PART IV: RECALCULATING TENANT RENT

9-IV.A. OVERVIEW

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

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

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

HACA Policy

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

9-IV.C. NOTIFICATION OF NEW TENANT RENT

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

When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the

tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA's grievance procedure [24 CFR 966.4(c)(4)].

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

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Chapter 10

PETS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

INTRODUCTION

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

The chapter is organized as follows:

Part I: Service Animals and Assistance Animals. This part explains the difference between service animals and assistance animals and pets and contains policies related to the designation of a service animal or 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: SERVICE ANIMALS AND ASSISTANCE ANIMALS

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

10-I.A. OVERVIEW

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

Notice FHEO 2013-01 was published April 25, 2013. The notice explains the difference between service animals and assistance animals. While the ADA applies to the premises of public housing agencies and to “public accommodations” such as stores and movie theaters, it does not apply to private-market rental housing. Therefore, in public housing the PHA must evaluate a request for a service animal under both the ADA and the Fair Housing Act. Service animals are limited to trained dogs.

Neither service animals nor assistance animals are pets, and thus, are not subject to the PHA’s pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705; Notice FHEO 2013-01].

10-I.B. APPROVAL OF SERVICE ANIMALS AND ASSISTANCE ANIMALS

Notice FHEO 2013-01 states that the PHA should first evaluate the request as a service animal under the ADA. The PHA may only ask whether the dog/animal is a service animal required due to a disability, and what tasks the animal has been trained to perform.

The PHA cannot require proof of training or certification for a service animal, even if the disability and/or tasks performed are readily apparent. If the disability and/or tasks performed are not readily apparent, no further inquiries may be made.

PHAs may only deny a request for a service animal in limited circumstances:

- The animal is out of control and the handler does not take effective action to control it
- The animal is not housebroken, or
- The animal poses a direct threat to health or safety that cannot be eliminated or reduced by a reasonable modification of other policies

A service animal must be permitted in all areas of the facility where members of the public are allowed.

If the animal does not qualify as a service animal under the ADA, the PHA must next determine whether the animal would qualify as an assistance animal under the reasonable accommodation provisions of the Fair Housing Act. Such assistance animals may include animals other than dogs.

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

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

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

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation;
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others;
- The presence of the assistance animal would pose an undue financial and administrative burden to the provider; or (Page 179 of the PH Occupancy Guidebook)
- The presence of the assistance animal would fundamentally alter the nature of the provider's services. (Page 179 of the PH Occupancy Guidebook)

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

HACA Policy

The Pet Policy shall not be applied in a manner that would prohibit those individuals regarded as persons with disabilities from realizing the benefits of housing via a

reasonable accommodation of exemption to the pet policy, provided such exemption would not cause an undue administrative burden. Such an exemption must be accompanied by a professional medical opinion attesting to the resident's disability. The documentation shall state the physician's conclusion that in his/her professional medical opinion, a disability exists which meets HACA's definition of handicapped/disabled.

For an animal to be excluded from the pet policy and be considered a service animal, it must be a trained dog, and there must be a person with disabilities in the household who requires the dog's services.

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 HACA must 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 PHA may have to regulate service animals and assistance animals under federal, state and local law [24 CFR 5.303; 24 CFR 960.705].

HACA Policy

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

Residents must ensure that service animals and 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.

Residents shall not allow their assistance animal to disturb, interfere or diminish the peaceful enjoyment of other residents. The terms disturb, interfere and diminish shall include, without limitation, excessive barking, defecating and/or urinating in hallways, common areas or doorways, howling, chirping, biting, scratching and other like activities.

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

PHAs may require registration of the pet with the PHA [24 CFR 960.707(b)(5)].

HACA Policy

Prior written HACA approval, evidenced by a signed Pet Lease Agreement, must be obtained prior to a resident owning or keeping a common household pet in the dwelling unit.

Pets must be registered with HACA 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

HACA Policy

HACA 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.
- HACA 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 HACA refuses to register a pet, a written notification will be sent to the pet owner within 10 business days of HACA'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 HACA's grievance procedures.

Pet Agreement

HACA Policy

Residents who have been approved to have a pet must enter into a Pet Agreement with HACA by signing the Pet Lease Agreement, or the approval of the pet will be withdrawn.

The Pet Lease Agreement is the resident's certification that he or she has received a copy of HACA'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 Lease Agreement that he or she understands that noncompliance with HACA's Pet Policy and applicable House Rules may result in the withdrawal of HACA approval of the pet or termination of tenancy.

10-II.C. STANDARDS FOR PETS [24 CFR 5.318; 960.707(b)]

PHAs 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 PHA classifies as dangerous, provided that such classifications are consistent with applicable state and local law.
- Prohibitions on individual animals, based on certain factors, including the size and weight of the animal.
- Requiring pet owners to have their pets spayed or neutered.

PHA'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 PHAs to define the term [24 CFR 5.306(2)].

HACA 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, including but not limited to chickens and rabbits
- Pot-bellied pigs
- Animals used for commercial breeding

Pet Restrictions

HACA Policy

The following animals are not permitted:

- Any animal whose adult weight will exceed 30 pounds.
- Notwithstanding anything to the contrary, residents are prohibited from owning or keeping in the unit pets which HACA reasonably believes to be dangerous or vicious to other pets, residents or staff including, without limitation, pit bulls, Doberman pinschers, Rottweilers, chow or boxer breeds, including any mixed breeds thereof. Residents are prohibited from dog-sitting such animals in their units as well.
- 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.
- Residents are prohibited from feeding or harboring stray animals. The feeding of

stray animals shall constitute having a pet without the written permission of HACA.

Should a resident's pet give birth to a litter, the resident shall within 6 weeks from birth remove all animals (including the litter and mother) except resident will be allowed to retain 2 common household pets in the unit as provided herein.

Number of Pets

HACA Policy

Residents may own a maximum of 2 pets.

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

HACA 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.

The resident must be present during a scheduled dwelling unit inspection of a unit occupied by any and all pets, unless the pets consist only of fish or other self-contained animals. Otherwise, if the resident cannot be present, the pet must be placed in a kennel or cage. If the resident fails to restrain the pet as required and the pet gets loose, HACA staff will not be held responsible.

10-II.D. PET RULES

Pet owners must maintain pets responsibly, in accordance with PHA 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

HACA 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 adult at all times. Pets other than dogs or cats must be kept in a cage or carrier at all times.

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 only permitted to exercise pets or permit pets to deposit waste on project premises on the areas designated for such purposes, if a designated area exists.

Designated Pet/No-Pet Areas [24 CFR 5.318(g), PH Occ GB, p. 182]

PHAs 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.

PHAs may direct initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA 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 PHA 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.

PHAs may not designate an entire development as a no-pet area, since regulations permit residents to own pets.

HACA Policy

With the exception of common areas as described in the previous policy, HACA has not designated any buildings, floors of buildings or sections of buildings as no-pet areas. In addition, HACA has not designated any buildings, floors of buildings or sections of buildings for residency of pet-owning tenants.

Cleanliness

HACA Policy

The residents are solely responsible for cleaning up all pet droppings, if any, outside the unit and/or on the development grounds. Droppings must be disposed of by being placed sealed plastic bag and disposing of it in a container provided by the HACA.

The resident 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.

Pet food must be sealed in a container inside the unit.

Alterations to Unit

HACA 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.

Residents are responsible for all damages caused by their pets including, without limitation, the cost of cleaning of carpets or fumigation of units.

Noise

HACA 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

HACA 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 HACA property.

No animals may be tethered or chained inside or outside the dwelling unit at any time.

Responsible Parties

HACA Policy

The pet owner will be required to designate at least one responsible party (alternate custodian) 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 PHA and sign a statement that they agree to abide by all of the pet rules.

Pets Temporarily on the Premises

HACA 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 HACA in advance. HACA may make exceptions to this rule on a case by case basis.

Pet Rule Violations

HACA Policy

HACA has the right to inspect a resident’s unit without prior notice if HACA has reason to suspect the pet is not being cared for or that the resident is unable to properly care for the pet.

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 or request a meeting by the stated deadline, or failure to 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

HACA Policy

If the pet owner and HACA are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by HACA, HACA may serve notice to remove the pet.

The notice will contain:

- A brief statement of the factual basis for HACA'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

HACA 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 HACA after reasonable efforts cannot contact the responsible party, HACA may contact the appropriate state or local agency and request the removal of the pet. HACA accepts no responsibility for the animal under such circumstances.

If pets are left unattended by the pet owner for a period of (24 hours or more), HACA may enter the dwelling unit, contact the appropriate state or local agency and request the removal of the pet. HACA accepts no responsibility for the animal under such circumstances.

Termination of Tenancy

HACA Policy

HACA 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 by HACA.
- The pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease.

Emergencies

HACA Policy

HACA 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 HACA 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 PHA'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 PHA 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 PHA on a per dwelling unit basis, is the higher of the total tenant payment (TTP) or such reasonable fixed amount as the PHA may require. The PHA 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)].

HACA Policy

Pet owners are required to pay a pet deposit in addition to any other required deposits. The amount of the deposit is $50 per pet, and must be paid in full before the pet is brought on the premises. This deposit is separate from the unit security deposit and will not be divided into installments.

Refund of Deposit [24 CFR 5.318(d)(1)]

The PHA 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 PHA 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.

HACA Policy

HACA 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.

The resident will be billed for any amount that exceeds the pet deposit.

HACA will provide the resident with a written list of any charges against the pet deposit within 30 days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, HACA will provide a meeting to discuss the charges.

10-III.C. OTHER CHARGES

Pet-Related Damages During Occupancy

HACA Policy

All reasonable expenses incurred by HACA as a result of damages directly attributable to the presence of the pet in the housing development 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 housing development.

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 HACA's ability to impose charges for house pet rule violations. However, charges for violation of HACA pet rules may be treated like charges for other violations of the lease and HACA tenancy rules.

HACA Policy

A separate pet waste removal charge of $15 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 notice. If the family requests a grievance hearing within the required timeframe, HACA 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 & FEES IN GENERAL OCCUPANCY DEVELOPMENTS

10-IV.A. OVERVIEW

This part describes the PHA's policies for pet deposits and fees for those who reside in general occupancy developments.

10-IV.B. PET DEPOSITS

A PHA 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 PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. The PHA 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

HACA Policy

Pet owners are required to pay a pet deposit of $50 per pet 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

HACA Policy

HACA 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.

HACA will provide the resident with a written list of any charges against the pet deposit within 30 days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, HACA will provide a meeting to discuss the charges.

10-IV.C. NON-REFUNDABLE NOMINAL PET FEE

PHAs 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)].

HACA Policy

HACA does not require a pet owner to pay a non-refundable nominal pet fee.

10-IV.D. OTHER CHARGES

Pet-Related Damages During Occupancy

HACA Policy

All reasonable expenses incurred by HACA as a result of damages directly attributable to the presence of the pet in the housing development 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 housing development

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 HACA's ability to impose charges for house pet rule violations. However, charges for violation of HACA pet rules may be treated like charges for other violations of the lease and PHA tenancy rules.

HACA Policy

A separate pet waste removal charge of $15 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.

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Chapter 11

COMMUNITY SERVICE AND SELF-SUFFICIENCY REQUIREMENT

INTRODUCTION

This chapter explains those HUD regulations which require HACA to enforce the Community and Self-Sufficiency Requirement (CSSR). This chapter describes HUD regulations and HACA policies related to CSSR in two parts:

Part I: Community Service and Self-Sufficiency Requirement (CSSR). This part describes who is subject to the CSSR, who is exempt and HUD's definition of qualifying community service and economic self-sufficiency programs.

Part II: HACA Implementation of the Community Service and Self-Sufficiency Requirement (CSSR). This part provides HACA policy regarding PHA implementation and program design.

PART I: COMMUNITY SERVICE AND SELF-SUFFIENCY REQUIREMENT

11-I.A. OVERVIEW

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

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

11-I.B. REQUIREMENTS

Each nonexempt adult resident of the PHA 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).

HACA Policy

Community service activities must be performed within the community and not outside HACA's jurisdictional area, unless HACA makes an exception for good cause. Families must request exceptions in writing. Within 10 business days of receiving the family's request, HACA will notify the family in writing of its decision. HACA may require the family to provide documentation to support their request.

An individual may complete 8 hours each month or may aggregate the hours across the year. Any blocking of hours is acceptable as long as 96 hours is completed by each

annual certification. No hours may be "donated" or performed by any individual other than the family member who is required to perform the community service.

Individuals who have special circumstances which they believe will prevent them from completing the CSSR hours for a given month, must notify HACA in writing of the circumstances becoming known. HACA will review the request and make a determination. .

Definitions

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

An *exempt individual* is at resident who is:

- Under 18 years of age
- Age 62 years or older
- Blind or disabled (as defined under section 216[i][l] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions
- A primary caretaker of an individual who is blind or disabled (as defined under section 216[i][l] or 1614 of the Social Security Act) .
- Engaged in work activities

  HACA Policy

  HACA will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

- Able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state of Texas, including a state-administered welfare-to-work program; or
- A member of a family receiving assistance, benefits or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state of Texas, 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.
  - HUD has determined that the Supplemental Nutrition Assistance Program (SNAP) qualifies as a welfare program of the state. Therefore, if a tenant is a member of a family receiving assistance under SNAP, and has been found by the administering State to be in compliance with the program requirements, that tenant is exempt from the CSSR.

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

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

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

- Volunteer work at local or nonprofit institutions such as schools, head start programs, before or after school programs, childcare centers, hospitals, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food

banks (distributing either donated or commodity foods) or clothes centers (distributing donated clothing).

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

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

HACA Policy

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

Economic Self-Sufficiency Program [24 CFR 5.603(b), Notice PIH 2009-48]

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

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

- Job readiness or job training while not employed;
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers;
- Employment counseling, work placement, or basic skills training;
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes;
- Apprenticeships (formal or informal);
- English proficiency or English as a second language classes;
- Budgeting and credit counseling;
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF); and
- Any other program necessary to ready a participant to work (such as substance abuse or

mental health counseling);

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

As it relates to an exemption from the CSSR, *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;
- 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; and

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

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

HACA Policy

At lease up, regardless of exemption status, HACA will provide each family with a copy of the HACA CSSR Information Packet. The packet includes the CSSR policy (outlining resident and HACA responsibilities), a list of agencies in the community that provide volunteer and/or training opportunities and 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. Each adult family member will be required to sign a certification that they have received the packet and understand that if they are not exempt, failure to comply with the CSSR will result in nonrenewal of their lease. At each annual reexamination thereafter, the HACA Housing Manager will provide the CSSR Information Packet to all nonexempt residents and again secure certification of receipt.

The CSSR Information Packet will also be provided during an interim reexamination when, due to the interim, a family member's exemption status changes from exempt to nonexempt.

At lease-up, annual reexamination and those interims that involve CSSR status changes, HACA will notify the family of its determination, identifying the family members who are subject to the service requirement and the family members who are exempt.

Each time the CSSR Information Packet is distributed, the certification of receipt must be signed by all nonexempt family members as well as the head of household, regardless of

exemption status. This will ensure that the head of household is aware of the CSSR status and requirements of all household members.

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

Annual Determination

Determination of Exemption Status

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

HACA Policy

At least 60 days prior to lease renewal, HACA 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 HACA 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, HACA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

Determination of Compliance

The PHA must review resident family compliance with the CSSR annually, at least 30 days prior to the end of the 12-month lease term [24 CFR 960.605(c)(3)]. As part of this review, the PHA must verify that any family member that is not exempt from the CSSR has met his or her service obligation.

HACA Policy

Approximately 90 days prior to the end of the lease term, HACA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will be required to submit HACA required documentation form(s) at their scheduled annual reexamination interview.

If the family fails to submit the required documentation at the interview, or by the HACA 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

HACA Policy

Exempt to Nonexempt Status

If an exempt individual becomes nonexempt during the 12-month lease term, it is the family's responsibility to report this change to HACA within 10 calendar days.

Within 10 business days of a family reporting such a change, or HACA determining such a change is necessary, HACA will provide a 30-day written

notice of the effective date of the requirement, and a copy of the CSSR Information Packet which includes the CSSR policy, 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 non-exemption will be the first of the month following 30-day notice.

Nonexempt to Exempt Status

If a nonexempt person becomes exempt during the 12-month lease term, it is the family's responsibility to report this change to HACA within 10 calendar days. Any claim of exemption will be verified by HACA 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 HACA determining such a change is necessary, HACA will provide the family written notice that the family member is no longer subject to the CSSR, if HACA is able to verify the exemption.

The exemption will be effective immediately.

11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4) and 24 CFR 960.607]

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

Documentation and Verification of Exemption Status

HACA Policy

All family members who claim they are exempt from the CSSR will be required to sign the CSSR exemption certification form. HACA will provide a completed copy to the family upon request and will keep a copy in the tenant file.

HACA will verify that an individual is exempt from the CSSR by following the verification hierarchy and documentation requirements in Chapter 7.

HACA makes the final determination whether or not to grant an exemption from the CSSR. If a resident does not agree with HACA determination, s/he can dispute the decision through the HACA's grievance procedures (see Chapter 14).

Documentation and Verification of Compliance

At each regularly scheduled reexamination, each nonexempt family member presents documentation of CSSR activities performed over the last 12 months.

Acceptable documentation demonstrating compliance include the following:

- A signed certification to the PHA by such other organization where the family performed the qualifying activities stating who performed the activities, when they were performed and for how many hours.
- A signed self-certification to the PHA by the family member stating that he or she has performed the qualifying activities. The signed self-certification must include the following:

- A statement that the family member contributed at least 8 hours per month of community service not including political activities within the community in which the adult resides; or participated in an economic self-sufficiency program (as that term is defined in 24 CFR 5.603(b)) for at least 8 hours per month;
- The name, address, and a contact person at the community service provider; or the name, address, and contact person for the economic self-sufficiency program;
- The date(s) during which the tenant completed the community service activity, or participated in the economic self-sufficiency program;
- A description of the activity completed; and\
- A certification that the tenant's statement is true.

Copies of the certification forms and supporting documents must be retained in the PHA files. If the PHA accepts self-certifications, the PHA must validate a sample of these self-certifications using third-party verification.

HACA Policy

HACA will accept both third-party verification and self-certification of completion of the CSSR. If anyone in the family is subject to the CSSR, HACA will provide the family with CSSR documentation forms at move-in, at lease renewal, when a family member becomes subject to the 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 CSSR 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. Or the family member can provide the self-certification as outlined above.

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

If HACA has reasonable cause to believe that the certification provided by the family is false or fraudulent, HACA has the right to request additional documentation be provided by the resident to verify CSSR participation.

An individual subject to the CSSR must complete the hours him/ herself. No other resident may perform the CSSR hours on another resident's behalf. CSSR hours may not be "donated" by another resident to an individual subject to completion of community service.

HACA will validate a sample of self-certifications. On an annual basis (beginning at the anniversary date of the implementation of self-certification), HACA will determine the number of family members that self-certified their CSSR for the previous 12 months. Then, using the chart below, HACA will determine the appropriate sample size and validate the self-certifications. [PIH Notice 2016-06, Attachment C]

Universe Size	Sample Size AT LEAST
< or = 10	ALL
15	13
20	16
25	19
30	21

35	24
40	26
50	29
60	33
100	41
150	47
200	51
250	54
300	56
350	57
400	58
450	59
500	60
600	61
700	62
800	63
900	63
1000	64
1500	65
2500	66

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 CSSR. Violation of the requirement is grounds for nonrenewal of the lease at the end of the 12-month lease term, but not for termination of tenancy during the course of the 12-month lease term [24 CFR 960.603(b)].

If the tenant or another family member has violated the CSSR, the PHA may not renew the lease upon expiration of the 12-month term of the lease, unless the tenant and any other noncompliant family member enter into a written work-out agreement with the PHA. Under this agreement the tenant or noncompliant family member must agree to cure the noncompliance by completing the additional CSSR hours needed to make up the total number of hours required, over the 12-month term of the new lease. In addition, all other members of the family who are subject to the requirement must be in compliance or must no longer be residing in the unit [24 CFR 960.607(c)], Notice PIH 2009-48].

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

If the PHA determines that there is a family member who is nonexempt, but who has failed to comply with this obligation (noncompliant resident), the PHA must provide written notification to the tenant of the noncompliance which must include:

a) A brief description of the noncompliance.

b) A statement that the PHA will not renew the lease at the end of the 12-month lease term unless the tenant, and any other noncompliant family member(s), enter into a written work-out agreement with the PHA, or the family provides written assurance satisfactory to the PHA that the noncompliant tenant(s) no longer resides in the unit.

Such written work-out agreement must include the means through which a noncompliant family member will comply with the CSSR requirement.

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

HACA Policy

During the annual reexamination, the HACA staff member conducting the re-exam will examine all documentation and determine whether the family is in compliance with the CSSR. If it is determined that the family is not in compliance, HACA will issue the family a Notice of Noncompliance with Housing Lease. An Acknowledgment of Receipt of Document form will be signed by the head of household and retained in the family's tenant file.

The family will have 10 calendar days from the date of the Notice of Noncompliance to enter into a written work-out agreement explaining the means through which a noncompliant family member will comply with the CSSR requirement, 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 HACA will agree to continued occupancy of the family. Documentation must consist of a notarized Removal from Lease 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 calendar day timeframe, HACA 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 work-out agreement period, the family member is still not compliant, the PHA must terminate tenancy of the entire family, according to the PHA's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

HACA Policy

Notices of lease termination due to 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 calendar days from the date of the Notice of Noncompliance 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 HACA will agree to continued occupancy of the family. Documentation must consist of a notarized Removal from Lease 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 calendar day timeframe, the family's lease and tenancy will automatically terminate at the end of the current lease term without further notice.

Enforcement Documentation [Notice PIH 2009-48]

- Should a family member refuse to sign a written work-out agreement, or fail to comply with the terms of the work-out agreement, PHAs are required to initiate termination of tenancy proceedings at the end of the current 12 month lease (see 24 CFR 966.53©) due to the fact that the family is failing to comply with lease requirements. When initiating termination of tenancy proceedings the PHA will provide the following procedural safeguards:
- Adequate notice to the tenant of the grounds for terminating the tenancy and for non-renewal of the lease.
- Right of the tenant to be represented by counsel.
- Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have.
- A decision on merits.

PART II: IMPLEMENTATION OF COMMUNITY SERVICE

11-II.A. OVERVIEW

Each PHA must develop a policy for administration of the CSSR for public housing. It is in the PHA's best interest to develop a viable, effective CSSR program, providing residents the opportunity to engage in the community and to develop competencies.

PHA Implementation of CSSR

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

HACA Policy

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

HACA will notify its insurance company if residents will be performing community service at HACA. In addition, HACA 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, HACA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

PHA Program Design

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

HACA Policy

HACA will attempt to provide the broadest choice possible to residents as they choose qualifying CSSR activities.

HACA'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. HACA will work with resident organizations and community organizations to design, implement, assess and recalibrate its CSSR program.

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

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

EXHIBIT 11-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(l) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE

Social Security Act:

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

Section 1416 (excerpt):

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

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

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

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

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

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

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Chapter 12

TRANSFER POLICY

INTRODUCTION

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

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

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

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

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

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

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

PART I: EMERGENCY TRANSFERS

12-I.A. OVERVIEW

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

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

12-I.B. EMERGENCY TRANSFERS

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, the PHA must offer standard alternative accommodations,

if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

HACA 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, toxic contamination, serious water leaks, etc.

12-I.C. EMERGENCY TRANSFER PROCEDURES

HACA Policy

If the transfer is necessary because of maintenance conditions not caused by the resident and beyond the resident's control, and an appropriate unit is not immediately available, HACA 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, HACA will transfer the resident to the first available and appropriate unit after the temporary relocation. Emergency transfers are mandatory for the tenant.

Notwithstanding anything to the contrary contained within this chapter, when a transfer is approved and if in HACA's sole determination it is deemed that the immediate transfer is necessary to protect life and/or property, the transfer may occur prior to the completion of the procedures set forth in this chapter.

12-I.D. COSTS OF TRANSFER

HACA Policy

HACA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers due to an emergency, if any, due to emergency conditions, if the cause of the transfer was not due to negligence by the resident.

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

HACA will coordinate all of the packing, moving and unloading expenses and will pay the company directly. The resident will be charged for such expenses if it is determined that the resident caused the emergency.

PART II: PHA REQUIRED TRANSFERS

12-II.A. OVERVIEW

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

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

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

12-II.B. TYPES OF PHA REQUIRED TRANSFERS

HACA Policy

The types of transfers that may be required by HACA, 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, transfers to comply with income eligibility requirements at properties that will be converting to RAD with layered tax credits or other federal, state or local finance guidelines or restrictions, and emergency transfers as discussed in Part I of this chapter.

Transfers required by HACA are mandatory for the tenant.

Transfers to Make an Accessible Unit Available

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

HACA Policy

When a non-accessible unit becomes available, HACA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. HACA 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. This policy is incorporated into the housing lease.

Occupancy Standards Transfers

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

HACA Policy

HACA 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 HACA's occupancy standards as described in Section 5-I.B.

HACA 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 HACA's occupancy standards, when HACA determines there is a need for the transfer.

HACA 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 HACA 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.

The Public Housing Manager should complete a Transfer Request Form immediately after the family composition has changed where a different size of unit is required and the head of household does not submit a transfer on their own. The Transfer Request Form shall be forwarded to the Admissions department. An additional copy of the request form will be maintained in the resident's folder. The Public Housing Manager will make the appropriate notes on the tenant's computer file. The Admissions department will maintain a transfer waiting list where each preliminary eligible transfer request will be listed by the date the Admissions department received the request initiated by the Public Housing Manager.

Demolition, Disposition, Revitalizations or Rehabilitation Transfers

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

HACA Policy

HACA 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. HACA'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.

Rental Assistance Demonstration (RAD) Relocation due to Demolition, Disposition, Revitalization or Rehabilitation

HACA Policy

In lieu of a transfer, HACA may give preference on the Housing Choice Voucher program waiting list to families currently housed in Public Housing properties that are undergoing significant renovation or redevelopment through RAD and would require long term (more than 6 months) relocation of residents. If HACA chooses to exercise this option for valid business purposes, HACA will have a special opening of the waiting list only for the identified properties. Families that select this option and apply during the open period will receive this preference.

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

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

12-II.D. COST OF TRANSFER

HACA Policy

HACA will bear the reasonable costs of transfers that HACA 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.

HACA will coordinate all of the packing, moving and unloading expenses and will pay the company directly.

PART III: TRANSFERS REQUESTED BY TENANTS

12-III.A. OVERVIEW

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

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

12-III.B. TYPES OF RESIDENT REQUESTED TRANSFERS

HACA Policy

The types of requests for transfers that HACA 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 and transfers to a different unit size as long as the family qualifies for the unit according to HACA's occupancy standards. No other transfer requests will be considered by HACA.

HACA will consider the following as high priority transfer requests:

- When a transfer is needed to alleviate verified medical problems of a life-threatening nature.
- When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at HACA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime or domestic violence, dating violence, sexual assault or stalking.
- When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features.

HACA will consider the following as regular priority transfer requests:

- When a family requests a larger bedroom size unit when the family meets HACA's definition of overcrowded.

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

Transfers will not be considered during the first year of occupancy, except where the transfer would assist in correcting a violation of the occupancy standards under the terms

and conditions within this Policy or to accommodate for a request for reasonable accommodation.

HACA does not conduct split-family transfers. Therefore, such requests from residents will not be considered.

12-III.C. ELIGIBILITY FOR TRANSFER

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

HACA Policy

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

- Have resided in public housing for a minimum of one year.
- Have not engaged in criminal activity or activity in general that threatens the health and safety of residents and/or staff.
- Owe no back rent or other charges, or have no pattern of late payment.
- Have no housekeeping lease violations or history of disturbances or of damaging property.
- Can get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities).
- No pending eviction.

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 HACA's advantage to make the transfer. Exceptions may also be made when the PHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, or stalking and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP.

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

HACA Policy

All transfers will be treated as move-outs since the account will be closed at the original unit and a new account opened and a Dwelling Lease Agreement signed for the new unit. No transfer of deposit will be made since it will be used to offset any move-out damages and the balance, if any, will be credited to the resident's dwelling account. In addition to pro-rated rent, the resident will be required to pay in advance the required security deposit at the new development. The receiving property will be responsible for setting up maintenance or other repayment agreements if necessary.

12-III.E. COST OF TRANSFER

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

HACA Policy

The resident will bear all of the costs of transfer s/he requests. However, in cases of documented financial hardship, HACA will consider assuming the transfer costs only when the transfer is done as a reasonable accommodation.

12-III.F. HANDLING OF REQUESTS

HACA Policy

Transfers may only be requested by the head of household by filling out a Request for Transfer Form and such form must be submitted to the Public Housing Manager, with any supporting documentation as to the reason for the request. The request must be signed and dated by the head of household. In cases involving reasonable accommodation transfers, HACA will encourage the resident to make the request in writing using a Reasonable Accommodation Request Form. However, HACA 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 request will be date stamped upon receipt and reviewed by the Public Housing Manager and a recommendation will be noted as to whether the transfer should be approved or denied. The Public Housing Manager will forward the request to the Admissions department for processing no later than 2 business days from date of receipt. The Admissions department 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 request for transfer will be denied.

HACA will respond within 30 days of the submission of the family's request. If HACA denies the request for transfer, the family will be informed of its grievance rights.

Because all HACA mixed population developments are designated for elderly and disabled residents only (elderly means at least sixty-two (62) years of age, near-elderly is at least fifty (50) years of age) non-elderly and non-disabled families shall not be transferred to mixed population developments. Notwithstanding anything to the contrary, neither non-disabled persons under the age of 50, including children nor elderly residents with minor household members qualify to reside at the HACA elderly and disabled designated developments.

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

HACA Policy

HACA 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 cannot be resolved by a temporary accommodation, and the resident requires a permanent transfer, that household will be placed at the top of the transfer list. Not all requests for emergency transfer will be approved.

Approved transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions)
2. High-priority transfers (verified life-threatening medical condition, imminent threat of harm or criminal activity and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standards
6. Other HACA-required transfers
7. Other tenant-requested transfers

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

With the approval of the President/CEO, HACA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow HACA to meet the demolition or renovation schedule.

When an accessible unit becomes available, priority will be given to residents needing and awaiting transfer to such unit, over housing applicants.

If the Admissions department preliminarily approves the transfer request, he/she will place the resident's name on the transfer waiting list. The transfer waiting list will be maintained according to the date and time of the receipt of the request by the Public Housing Manager.

All transfers will be treated as move-outs since the account will be closed at the original unit and a new account opened and a Dwelling Lease Agreement signed for the new unit.

Processing In and Out of Developments

Both the losing and gaining developments involved must have a definite agreement as to the following:

- When the losing development will move the resident out and the gaining development will move him/her in. This should be completed within 7 days of the offer. Both Public Housing Managers must coordinate with the resident so as to complete the transfers as soon as possible. Public Housing Managers should limit the number of vacancy days attributed to the transfer.
- There should be no lapsed time between move-out and move-in. Effective dates must not overlap nor should both developments carry the same resident in their books at the same time.
- The resident's records should show a continuous residency in public housing in one development or the other, but NOT in two developments at the same time.

Example: A resident transfers from Meadowbrook Apartments to Chalmers Courts on August 31, 2008. The move-out date for Meadowbrook Apartments would be August 31, 2008, while the move-in date for Chalmers Courts would be September 1, 2008.

- Losing Development: Transfers to other developments will be processed in the same manner as move-outs. The move-out packet will be submitted to the Tenant Accounting Office and will be done within two business days from the date of the move-out. The vacancy must be reported to maintenance the same day the vacancy occurred or the next working day if the move-out occurred after 4:00 p.m. or during the weekend.
- Residents with disabilities have the right to request a Reasonable Accommodation regarding the transfer process.

12-IV.C. TRANSFER OFFER POLICY

HACA Policy

Residents will receive one offer of a transfer. The resident must accept or reject the housing offer in writing within 7 calendar days of the date of the letter offering the unit. For the purposes of calculating the 7 day time frame above, the date of the letter shall be included. Example: the date of the transfer offer is dated September 1, 2008. The unit must be accepted or rejected no later than September 7, 2008. The unit will be deemed rejected by the resident if the resident indicates her or his rejection or if HACA does not receive written acceptance of the offered unit within the time frame set forth above.

When the transfer is required by HACA, 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. The Admissions department will notify the resident informing him/her and the Public Housing Manager of such deletion from the transfer waiting list. The family must wait one year from the date of removal from the transfer waiting list to reapply for another transfer.

12-IV.D. GOOD CAUSE FOR UNIT REFUSAL

HACA Policy

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

- The family demonstrates to HACA's satisfaction that accepting the unit will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child with disabilities out of day care or an educational program for children with disabilities.
- The family demonstrates in writing to HACA's satisfaction that there is a verifiable medical condition of the principal household member or other members that warrant another unit.
- The family demonstrates in writing to HACA'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 or documentation of domestic violence, dating violence, or

stalking in accordance with section 16.VII.D of this ACOP. 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 or other household members (as listed on final application). 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 future notice to move.

Mere inconvenience in traveling to employment, health provider, children's schooling or the like is not an undue hardship. To constitute undue hardship the employment, benefits or programs or comparable programs must be completely inaccessible. Moreover, an applicant's desire to live within a certain part of town or near family members or desire not to relocate children to another school does not qualify as an undue hardship.

HACA will require documentation of good cause for unit refusals within a specific timeframe stipulated by HACA. Failure to provide such documentation within the required timeframe will constitute refusal without good cause.

Residents with disabilities have the right to request a Reasonable Accommodation regarding the transfer process.

12-IV.E. DECONCENTRATION

HACA Policy

If subject to deconcentration requirements, HACA 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 HACA'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

HACA Policy

The reexamination date for a transferred family will continue to be in alignment with the family's anniversary of initial occupancy.

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Chapter 13

SMOKE-FREE HOUSING POLICY

INTRODUCTION

This policy applies to any and all persons entering the Housing Authority of the City of Austin ("HACA") residential public housing properties including HACA residents, their guests and visitors, HACA partners, contractors, and HACA employees. HACA's Smoke-Free Housing Policy is focused on the act of smoking, not the smoker. The purpose of the policy is to create a healthier, safer, and cleaner living environment for all of its residents. The U.S. Surgeon General has warned that breathing second hand smoke for even a short time is dangerous. Smoke migrates between units in multi-family housing. HUD has strongly encouraged public housing authorities to adopt a smoke free policy since 2009.

13-I POLICY:

a. Smoking is prohibited in residential units and common areas. This includes outdoor patios, hallways, stairwells and parking lots.
b. Smoking is only allowed in outdoor areas designated with a sign. Designated smoking area(s) will have a proper receptacle to dispose of butts and used matches.
c. Definition of smoking: SMOKING means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, e-cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
d. HACA staff shall inform current residents, applicants on waiting lists, HACA employees, partners, and HACA contractors of this policy.
e. Residents shall inform household members, guests, and visitors of the smoke-free housing policy and will be responsible for any violations of this policy by the resident's household members, guests, and visitors.
f. HACA staff shall post proper signs at entrances and exits and common areas, and enforce compliance with this policy.
g. Failure to comply with the terms of this policy/addendum may be cause for lease enforcement action, up to and including eviction/lease termination.

13-II ENFORCEMENT:

- **1st violation** – written warning and referral to cessation services
- **2nd violation** – written letter of lease violation and referral to cessation services
- **3rd violation –** Probation and referral to cessation services
- **4th violation** – 30-day notice of lease-termination.
    - HACA may suspend lease termination process if the family agrees to attend a HACA approved smoking cessation class and present HACA with a certificate of completion and a signed commitment to comply with HACA's Smoke-free Housing Policy.

Enforcement progression is based on violations per household, not per tenant.

Chapter 14

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 that is in good repair. The PHA may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a PHA can terminate a family's lease, and give PHAs authority to determine other reasons.

When determining PHA policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern both the family's and HACA's termination of the lease. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the HACA's requirements for voluntary termination of the lease by the household.

Part II: Termination by HACA – Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by HACA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by HACA – Other Authorized Reasons. This part describes HACA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires the PHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PHA has full discretion whether to consider the options as just cause to terminate as long as the PHA policies are reasonable, nondiscriminatory and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PHA may consider in lieu of termination, and the criteria the PHA will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and PHA policies regarding the timing and content of written notices for lease termination and eviction and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

PART I: TERMINATION BY TENANT

14-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

HACA Policy

If a family desires to move and terminate their tenancy with HACA, they must give at least 15 calendar days advance written notice to their Public Housing Manager of their intent to vacate. In general, if a family gives less than 15 days advance written notice of intent to vacate, the family will be charged rent for the number of days needed to equate 15 days advance notice prior to move-out. When a family must give less than 15 days notice due to circumstances beyond their control HACA, at its discretion, may waive the 15 day requirement.

The notice of intent to vacate must be signed by the head of household, spouse or cohead.

The copy of such notice shall be filed in the resident's folder. Any changes in the date of such move will require a new form to be completed.

Once the resident vacates the unit, he or she is expected to turn in the key(s) to the Public Housing by the requested move-out date. Failure to return unit and mailbox keys will result in maintenance fees assessed as part of the move-out inspection.

PART II: TERMINATION BY PHA – MANDATORY

14-II.A. OVERVIEW

HUD requires the PHA to terminate the lease in certain circumstances. In other circumstances HUD requires the PHA to establish provisions for lease termination, but it is still a PHA option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, the PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the PHA to terminate the lease.

14-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The PHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

14-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The PHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such

termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter 7 for a complete discussion of documentation requirements.

14-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2012-10]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

HACA Policy

HACA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline. See Chapter 7 for a complete discussion of documentation and certification requirements.

14-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

14-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

See Part 13-III.B. below for the HUD definition of *premises.*

14-II.G. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household. **No policy decisions are required.**

14-II.H. H .NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

The PHA is prohibited from renewing the lease at the end of the 12-month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

14-II.I. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2012-10]

The PHA must immediately terminate program assistance for deceased single member households.

PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS

14-III.A. OVERVIEW

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires the PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. The PHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PHA may, as an alternative to termination, require the exclusion of the culpable household member. The PHA must make policy decisions concerning these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. The PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the PHA lease. In the development of the terms of the lease, the PHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

The PHA may consider alternatives to termination and must establish policies describing the criteria the PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PHA must take when terminating a family's lease.

14-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore PHA policies are needed.

Definitions **[24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

Affiliated individual is defined in section 16-VII.B.

Covered person means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.

Dating violence is defined in section 16-VII.B.

Domestic violence is defined in section 16-VIIB.

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 PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

Other person under the tenant's control means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for a legitimate commercial purpose 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.

Sexual assault is defined in section 16-VII.B.

Stalking is defined in section 16-VIIB.

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.

HACA Drug Free Zones

Anyone who violates HACA Drug Free Zones by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of the real property comprising public housing owned by HACA is subject to (1) twice the maximum punishment; and (2) at least twice any term of supervised release. A fine up to twice that authorized may be imposed in addition to any term of imprisonment authorized; and, other enhanced penalties in 21 U.S.C. sec. 860, if applicable.

HACA Policy

HACA Zero Tolerance Policy

HACA's mission is to provide safe, decent and sanitary housing to its residents. In order to achieve its goal to provide safe housing, as well as, protect the solvency of the agency by lessening the agency's liability, HACA has a zero tolerance policy for criminal

activity, drug-related criminal activity, acts of physical violence or threats of physical violence, or other acts or disturbances engaged in by residents, household members or guests who violate the applicable lease. It shall be the policy of HACA to terminate this lease for the authorized reasons and described behavior. Neither an arrest nor a conviction is required to terminate the lease for the authorized reasons and described behavior in HACA's occupancy policies.

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.

HACA Policy

HACA 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 (including unauthorized occupants) and any such activity engaged in on the premises by any other person under the tenant's control.

HACA will consider all credible evidence, including but not limited to, neighbors' complaints, HACA-contracted police officer activity logs, evidence or activity witnessed and documented by HACA staff, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, HACA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety or right to peaceful enjoyment of the premises by other residents.

HACA Policy

HACA will terminate the lease when HACA determines that a household member is illegally using a drug or HACA 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 6 months.

HACA will consider all credible evidence, including but not limited to, neighbors' complaints, HACA-contracted police officer activity logs, evidence or activity witnessed and documented by HACA staff, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, HACA 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, HACA may, on a case-by-case basis, choose not to terminate the lease.

Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]

The lease must provide that any criminal activity by a covered person that threatens the health, safety or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

HACA Policy

HACA 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 HACA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

Immediate vicinity means within a 3-block radius of the premises. HACA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity. HACA will also consider the evidence of HACA contracted Peace Officers.

In making its decision to terminate the lease, HACA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

HACA Policy

HACA will terminate the lease if HACA 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 6 months.

HACA 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. HACA will also consider the evidence of HACA contracted Peace Officers.

In making its decision to terminate the lease, HACA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate the lease.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse or rehabilitation of illegal drug users or alcohol abusers.

HACA Policy

HACA will terminate the lease if HACA 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.

HACA 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. HACA will also consider the evidence of HACA contracted Peace Officers.

In making its decision to terminate the lease, HACA 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, HACA may, on a case-by-case basis, choose not to terminate the lease.

Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking [24 CFR 5.2005(c)(1)].

HACA Policy

HACA 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.
- Discontinuation of utilities by a utility supplier because of the resident's failure to pay utility bills.
- Resident's misrepresentation or failure to report information required in connection with the lease or rent re-determinations.
- 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 HACA for the benefit and well being of the housing community and the tenants that 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 the intended and reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, appliances 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 housing community.
- To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the housing community (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, HACA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate the lease.

14-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes PHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]

HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples. The Violence against Women Act of 2013 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking as "other good cause" for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1)].

HACA Policy

HACA 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 of facts after admission to the program that would have 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 attend the family's scheduled and rescheduled annual reexamination

interview.

- Failure to furnish by the required deadlines such information and certifications regarding family composition and income as may be necessary for HACA to make determinations with respect to rent, eligibility and the appropriateness of dwelling unit size.
- Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by HACA that such a dwelling unit is available.
- Failure to permit access to the unit by HACA 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 HACA 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 of the head of household to report his/her marriage within 10 business days of the event.
- Failure to abide by the provisions of HACA's pet policy.
- Failure to abide by the provisions of HACA's smoke-free housing policy as outlinted in Chapter 13 of this ACOP. *Smoking* is defined as the use of tobacco product including cigarettes, cigars, pipes, and electronic cigarettes. Smoking is prohibited in residential units and common areas including outdoor patios, hallways, stairwells, and parking lots. Smoking is only allowed in designated areas for all people entering the property, including residents, guests, contractors and employees. The smoke-free housing policy is part of the lease agreement and violation of the policy is good cause for lease enforcement action, including up to lease termination.
- If the family has breached the terms of a repayment agreement entered into with HACA.
- 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 HACA personnel.

  Abusive or violent behavior towards HACA 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, HACA will review all pertinent factors during the family's history in housing, including but not limited to, history of lease violations, probationary status, payment history, etc. HACA may consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate the lease.

Family Absence from Unit [24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the PHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

HACA Policy

The family must supply any information or certification requested by HACA to verify that the family is living in the unit, or relating to family absence from the unit, including any HACA-requested information or certification on the purposes of family absences. The family must cooperate with HACA for this purpose.

The family must promptly notify HACA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 15 calendar days. Under no circumstances shall the entire family be absent from the unit for a period exceeding 60 days unless HACA determines that exigent circumstances exist and the resident has obtained prior written approval from HACA. In such a case promptly means within 10 business days of the start of the extended absence.

If an entire family is absent from the public housing unit for more than 60 consecutive days, and the family does not adequately verify that they are living in the unit or have approval from the department Vice President; HACA will terminate the lease for other good cause.

Abandonment of the unit. If the family appears to have vacated the unit without giving proper notice, HACA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, HACA will secure the unit immediately to prevent vandalism and other criminal activity.

For HACA to consider a unit abandoned, the following steps must have been taken:

1. The unit must be inspected for furniture, food, clothing and other household belongings.
2. HACA must check to see if there is any evidence of the existence of the subjective resident's intent to not return to the unit. Such evidence should come in the form of: (a) written notices from the resident; or (b) neighbors that may have witnessed the admission by the resident that he/she will not be returning; or (c) verbal admission by the resident that he/she will not be returning made to maintenance or management staff.
3. Verify with the utility company as to the voluntary termination of services by the resident.

After obtaining this information, a reasonable determination on whether the unit is actually abandoned should be made. Based on criterion stipulated herein, whether in combination, or any single item listed, should the Public Housing Manager make a reasonable determination that the unit has indeed been abandoned, the Public Housing Manager must post the required 48-hour abandonment notice and change the unit locks. If after 48-hours, the resident has not contacted the Public Housing Manager for entry into the unit, the Public Housing Manager will take possession of the unit.

HACA may remove and store any of the resident's property at the dwelling unit or the development when the resident moves out. HACA may sell any such property at a public or private sale (subject to any recorded security agreement or financing statement) after 30 days written notice of the time and place of sale has been sent to the resident at the dwelling unit's address or resident's forwarding address, if such forwarding address has been provided to HACA by the resident. A prior court hearing shall not be required for HACA to exercise its rights under this section. If HACA sells the property, the money received will first be used to pay for the cost of storage and the sale, and then charges

owed by the resident, if any. If there is any money left, it will be sent to resident at resident's forwarding address. Nothing in this section shall limit HACA's right to immediately dispose of trash or other property of no value to HACA.

Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]

Subject to certain restrictions, HUD authorizes PHAs to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, the PHA may not evict or terminate the tenancy of a family solely because the family is over income if: (1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or (2) the family is currently receiving the earned income disallowance. This rule does not require PHAs to evict over-income residents, but rather gives PHAs the discretion to do so thereby making units available for applicants who are income-eligible.

HACA Policy

HACA will not evict or terminate the tenancies of families that are participating in the FSS program, HACA's Home Ownership program or that are receiving the earned income disallowance solely because they are over income.

Due to the need for affordable housing in our community, HACA will terminate the tenancy of families that are over the eligibility income limits when all the following criteria have been met:

(1) The family is not a participant in the FSS program or HACA's Home Ownership Program;
(2) The family is not receiving the earned income disallowance;
(3) There are no disabled family members;
(4) The total household income is at or above 125% of the eligibility income limit for the household size; and
(5) The household income has remained at or above 125% of the eligibility income limit for 6 consecutive months.

If there are disabled family members, HACA will terminate the tenancy for families over the eligibility income limits when all of the following criteria have been met:

(1) The family is not a participant in the FSS program or HACA's Home Ownership Program;
(2) The family is not receiving the earned income disallowance;
(3) The total household income is at or above 145% of the eligibility income limit for the household size; and
(4) The household income has remained at or above 145% of the eligibility income limit for 6 consecutive months.

HACA will provide 60 days notice to the family that their tenancy will be terminated. If the family reports a decrease in income, eviction or termination of tenancy will be put on hold until the verification of the change of income is complete. If the family remains above 125% of the income limit, or 145% of the income limit if there is a disabled family member, the termination process will continue as scheduled. If the family refuses to vacate the unit, HACA will follow its regular policy for eviction.

14-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the PHA may consider exclusion of the culpable household member. Such an alternative can be used according to PHA policy for any other reason where such a solution appears viable.

HACA Policy

HACA 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 HACA request.

Repayment of Family Debts

HACA Policy

If a family owes amounts to HACA, as a condition of continued occupancy, HACA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from HACA of the amount owed. See Chapter 16 for policies on repayment agreements.

14-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

A PHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

Evidence [24 CFR 982.553(c)]

For criminal activity, HUD permits the PHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

HACA Policy

HACA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

HACA Policy

HACA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents.
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, sexual assault, or stalking.
- The effect on the community of HACA's failure to terminate the tenancy.
- The effects that the eviction will have on other family members who were not involved in the action or failure to act.
- The effect of HACA's decision on the integrity of the public housing program.
- The demand for housing by eligible families who will adhere to lease responsibilities.
- The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action.
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future.
- In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family.

Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

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

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, the PHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

HACA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, HACA will determine whether the behavior is related to the disability. If so, upon the family's request, HACA will determine whether alternative measures are appropriate as a reasonable accommodation. HACA 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)]

HACA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

14-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

This section addresses the protections against termination of tenancy that the Violence against Women Act of 2013 (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, or stalking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP, where definitions of key VAWA terms are also located.

VAWA Protections against Termination [24 CFR 5.2005(c)]

VAWA provides that "criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy of, occupancy rights of, or assistance to the victim, if the tenant or affiliated individual of the tenant is the victim." [24 CFR 5.2005(c)(2)].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1)].

Limits on VAWA Protections [24 CFR 5.2005(d) and (e)]

While VAWA prohibits a PHA from using domestic violence, dating violence, sexual assault, or stalking as the
cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault, or stalking providing that the PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.
- VAWA does not limit the PHA's authority to terminate the tenancy of any tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm

- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

HACA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, HACA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest HACA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

Documentation of Abuse [24 CFR 5.2007]

HACA Policy

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, HACA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

HACA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases HACA will document the waiver in the individual's file.

Terminating or Evicting a Perpetrator of Domestic Violence Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or remove a household member from a lease, "in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant." [24 CFR 5.2009(a)]. Moreover, HUD regulations impose on the PHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4(e)(9)].

Specific lease language affirming the PHA's authority to bifurcate a lease is not necessary and the authority supersedes any local, state or federal law to the contrary. However, if the PHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state or federal law for eviction, lease termination or termination of assistance. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

HACA Policy

HACA will bifurcate a family's lease and terminate the tenancy of a family member if HACA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, HACA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to HACA by the victim in accordance with this section and section 16-VII.D. HACA will also consider the factors in section 13.III.E. Upon such consideration, HACA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

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.

14-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA policy determines when the PHA will conduct such checks.

HACA Policy

HACA will obtain public criminal records when it has come to the attention of HACA, 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.

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

HACA Policy

Upon notification of the criminal activity, drug-related criminal activity, acts of physical violence or threats of physical violence, or other acts or disturbances engaged in by residents, household members or guests, the Public Housing Manager is to determine: (1)

the type of notice required in the lease; (2) the provisions of the Lease violated; (3) the availability of police or security reports; and (4) whether the resident is entitled to the Resident Grievance Procedure.

If the resident is not entitled to the Resident Grievance Procedure, the Public Housing Manager shall terminate the lease by a Lease Termination Notice, which must be hand delivered and first class mailed to the resident. The hand delivered Notice must be delivered to the resident or adult household member and the Acknowledgment Receipt signed.

A three-day Notice to Vacate shall be hand delivered the day after the date of termination specified within the Lease Termination Notice. The Notice to Vacate must be hand delivered to the resident or adult household member or affixed to the inside of the main entry door. The Acknowledgment of Receipt of Document should be filled out as applicable.

If the resident is entitled to the Resident Grievance Procedure, the Public Housing Manager shall terminate the lease by a Lease Termination Notice that must be hand delivered and first class mailed to the resident. The hand delivered Notice must be delivered to the resident or adult household member and the Acknowledgment Receipt signed.

If applicable the Public Housing Manager shall attend the informal hearing and complete the summary of Informal conference form. If a formal grievance is requested, the Public Housing Manager shall forward the file to the specified Hearing Officer;

If a formal grievance is not requested within the time frame required, a Three-day Notice to Vacate shall be hand delivered. The Notice to Vacate must be hand delivered to the resident or adult household member or affixed to the inside of the main entry door. The Acknowledgment of Receipt of Document should be filled out as applicable;

If a formal grievance was requested, and the decision is in favor of HACA, the Three-day Notice to Vacate shall be hand delivered. The Notice to Vacate must be hand delivered to the resident or adult household member or affixed to the inside of the main entry door. The Acknowledgment of Receipt of Document should be filled out as applicable;

Upon the expiration of the Notice to Vacate, HACA shall file the Forcible Entry and Detainer. The file should then be immediately forwarded to the Community Director and the Vice President of Housing and Community Development, if requested.

14-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if the PHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the PHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

HACA Policy

HACA does not conduct criminal records checks during occupancy. HACA utilizes public information to enforce the lease provisions.

14-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 996.4(m)].

When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the PHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises.

HACA Policy

HACA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.

All notices of lease termination will include information about the protection against termination provided by VAWA for victims of domestic violence, dating violence, sexual assault, or stalking (see section 16-VII-C). The PHA will also include a copy of the form HUD-50066. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in Sections 13-III.F and 16-VII.D.

Timing of the Notice [24 CFR 966.4(l)(3)(i)]

The PHA must give written notice of lease termination of:

- 14 calendar days in the case of failure to pay rent.
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days).

If the health or safety of other residents, PHA employees or persons residing in the immediate vicinity of the premises is threatened.

If any member of the household has engaged in any drug-related criminal activity or violent criminal activity.

If any member of the household has been convicted of a felony.

- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply.

HACA Policy

HACA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations HACA will give 30 days' written notice or, if state or local law allows less than 30 days, such shorter notice will be given. For lease terminations involving drug-related criminal activity or physically violent criminal activity, HACA may give 3 days' written notice.

The Notice to Vacate, if necessary, will be issued upon expiration of the notice of lease termination.

Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When the PHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

HACA 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 lease termination due to continued noncompliance. The notice will be sent in accordance with the policies in Section 11-I.E. and will 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 PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the PHA's informal hearing procedures.

14-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The PHA may only evict the tenant from the unit

by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing and without a court determination of the rights and liabilities of the parties.

HACA Policy

When a family does not vacate the unit after Receipt of a Termination Notice, by the deadline given in the notice, HACA 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, HACA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PHA may not proceed with an eviction action if the PHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

14-IV.F. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

HACA Policy

A written record of every termination and/or eviction will be maintained by HACA for a period of 7 years 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.

Such information will be maintained in the resident file.

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Chapter 15

GRIEVANCES AND APPEALS

INTRODUCTION

This chapter discusses grievances and appeals pertaining to HACA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

15-I.A. OVERVIEW

When the PHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the PHA policies necessary to respond to applicant appeals through the informal hearing process.

15-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants in the PHA grievance procedure [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available and to claim mitigating circumstances if possible.

Use of Informal Hearing Process

While the PHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the PHA could make the informal hearing process available to applicants who wish to dispute other PHA actions that adversely affect them.

HACA Policy

HACA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

Notice of Denial [24 CFR 960.208(a)]

The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

Scheduling an Informal Hearing

HACA Policy

A request for an informal hearing must be made in writing and delivered to the HACA either in person, by fax or by first class mail, by the close of the business day, no later than 15 calendar days from the date of HACA's notification of denial of admission.

HACA will send written notice of the informal hearing within 30 business days of the family's request. HACA will make every effort to hold the hearing within 45 calendar days of receiving the request for the hearing.

Conducting an Informal Hearing [PH Occ GB, p. 58]

HACA Policy

The informal hearing will be conducted by an appointed Hearing Officer who is 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 HACA.

The Hearing Officer will render a decision on whether admission should be granted or denied.

Informal Hearing Decision [PH Occ GB, p. 58]

HACA Policy

HACA will notify the applicant of HACA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, HACA 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 HACA 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. HACA 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, HACA will uphold the decision to deny admission.

- If the facts prove the grounds for denial, the Hearing Officer will make the final decision to deny admissions.

HACA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 15 calendar 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. HACA will make every effort to resume the screening process for reinstated applicants within 20 calendar days of the hearing decision.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

The applicant may request that the Hearing Officer consider a request for Reasonable Accommodations under the Fair Housing Act and Section 504 with respect to past conduct (see below).

If the basis for the denial relates to family violence, the applicant may qualify for an exception under the Violence Against Women Amendments.

The Notice of Denial letter will include information for the tenant regarding who to contact for legal representation.

Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the PHA must consider such accommodations. The PHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

15-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing.

HACA Policy

HACA will notify the family in writing of the results of the USCIS secondary verification within 10 calendar days of receiving the results.

The family will have 30 calendar days from the date of HACA's notification to appeal the results directly to the USCIS.

The family must provide HACA with a copy of the written request for appeal and proof of mailing within 10 calendar days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

HACA Policy

HACA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the PHA provide a hearing. The request for a hearing must be

made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

HACA Policy

The family will be allowed to copy any documents related to the hearing at a cost of $.10 per page.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the PHA is still obligated to provide oral translation services in accordance with its LEP Plan.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required, to provide a transcript of the hearing.

HACA Policy

HACA will not provide a transcript of an audio taped informal hearing.

Hearing Decision

The PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 10 business days of the date of the informal hearing. The notice must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

15-III.A. REQUIREMENTS [24 CFR 966.52]

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies that adversely affect their rights, duties, welfare, or status.

The PHA grievance procedure must be included in, or incorporated by reference in, the lease.

HACA Policy

HACA grievance procedure will be incorporated by reference in the tenant lease.

The PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by the PHA before adoption of any grievance procedure changes by the PHA.

HACA Policy

Residents will have 30 calendar days from the date they are notified by HACA of any proposed changes in the HACA grievance procedure, to submit written comments to HACA.

15-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.
- **Complainant** – any tenant whose grievance is presented to the PHA or at the project management office.
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction.
  - Right of the tenant to be represented by counsel.
  - Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have.
  - A decision on the merits.
- **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto.
- **Tenant** – the adult person (or persons) (other than a live-in aide).
  - Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit.
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.
- **Resident Organization** – includes a resident management corporation.

15-III.C. APPLICABILITY [24 CFR 966.51]

Potential grievances could address most aspects of a PHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PHA. It is not applicable to disputes between tenants not involving the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

If HUD has issued a due process determination, a PHA may exclude from the PHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA.
- Any violent or drug-related criminal activity on or off such premises.
- Any criminal activity that resulted in felony conviction of a household member.

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described in Section 14-III.E. below, to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, the PHA may evict through the state/local judicial eviction procedures. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure as described above.

HACA Policy

HACA is located in a due process state. Therefore, HACA will not offer grievance hearings for lease terminations involving criminal activity that resulted in a felony arrest or conviction of a household member or that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of HACA, or for drug-related criminal activity on or off the premises.

The judicial eviction procedure used by HACA is a forcible detainer lawsuit in the appropriate Justice Court pursuant to Chapter 24 of the Texas Property Code. HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

See Chapter 13 for related policies on the content of termination notices.

15-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

HACA Policy

HACA will accept requests for an informal settlement of a grievance either orally or in writing, to the HACA main office or to the Public Housing Manager's office where the tenant resides within 10 calendar days of the grievable event. Within 10 calendar days of receipt of the request HACA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

HACA automatically schedules informal settlement conferences for all tenants who have failed to make payment of rent on time. The date and time of the informal settlement conference is stipulated on the 14-Day Notice of Lease Termination.

If a tenant fails to attend the scheduled informal settlement conference for no good cause, HACA will not reschedule the appointment and the tenant will waive their right to a formal hearing.

If a tenant fails to attend the scheduled meeting without prior notice, HACA 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 that seriously affects the health, safety or welfare of the family. In addition, HACA will take into consideration the family's obligations such as work schedule, medical appointments or school attendance when scheduling and rescheduling the informal settlement conference.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the PHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

HACA Policy

HACA will provide the tenant with a summary of the informal settlement within 5 business days. The summary is provided to the tenant whether or not the tenant appeared for the informal settlement conference. One copy is to be given to the tenant and one copy is to be retained in HACA tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

15-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.

HACA Policy

Tenants must attend an informal settlement meeting prior to requesting a grievance hearing, unless the tenant can show good cause for failure to proceed with the informal settlement process. The tenant must submit a written request for a grievance hearing to HACA within 5 business days of the tenant's receipt of the summary of the informal settlement. If the tenant has shown good cause for failure to request an informal settlement conference, the tenant must make the request for a grievance hearing within 15 calendar days of the grievable event.

If the complainant does not request a hearing, the PHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.55(c)].

Escrow Deposits [24 CFR 966.55(e)]

Before a hearing is scheduled in any grievance involving the amount of rent that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the Hearing Officer/panel.

The PHA must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income [24 CFR 5.630(b)(3)].

Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

HACA Policy

When a family is required to make an escrow deposit, the amount is the amount of the rent the tenant contends is due. The payment is due at the first of the month following the month in which the family's act or failure to act took place.

Scheduling of Hearings [24 CFR 966.55(f)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the Hearing Officer/panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

HACA Policy

Within 10 business days of receiving a written request for a hearing, the Housing and Community Development department representative will schedule and send written notice of the hearing to both the complainant and the Hearing Officer. HACA will make every effort to hold the hearing within 20 calendar days of receiving the request for the hearing.

The PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

HACA 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 that seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing at least 48 hours prior to the hearing date. At its discretion, HACA may request documentation of the "good cause" prior to rescheduling the hearing.

Expedited Grievance Procedure [24 CFR 966.55(g)]

The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents or employees of the PHA, or
- Any drug-related criminal activity on or near such premises.

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

The PHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling or provisions for expedited decision on the grievance.

HACA Policy

HACA will not offer expedited grievance procedures in cases involving criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents or employees of HACA, or drug-related criminal activity.

15-III.F. SELECTION OF HEARING OFFICER/PANEL

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review or a subordinate of such person.

HACA Policy

HACA grievance hearings will be conducted by a single Hearing Officer and not a panel. HACA has designated the following to serve as Hearing Officer:

Hearing Officer, Department of Compliance Oversight

The PHA must determine the methodology for appointment of the Hearing Officer and it must be stated in the grievance procedure and in the lease.

HACA Policy

HACA 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.

HACA will include the procedures for selection of a hearing officer in the lease.

15-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)]

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

HACA Policy

The tenant will be allowed to copy any documents related to the hearing at a cost of $.10 per page.

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.

HACA Policy

Hearings may be attended by the following applicable persons:

- A HACA representative(s) and any witnesses for HACA
- The tenant and any witnesses for the tenant
- The tenant's counsel or other representative

- Any other person approved by HACA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

Decision without Hearing [24 CFR 966.56(c)]

The Hearing Officer/panel may render a decision without proceeding with the hearing if the Hearing Officer/panel determines that the issue has been previously decided in another proceeding.

Failure to Appear [24 CFR 966.56(d)]

If the complainant or the PHA fails to appear at a scheduled hearing, the Hearing Officer/panel may make a determination to postpone the hearing for not to exceed 5 business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the PHA must be notified of the determination by the Hearing Officer/panel: provided, that a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances that are out of their control and are no fault of their own.

HACA Policy

If the tenant does not appear at the scheduled time of the hearing, the Hearing Officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 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 (as defined above in the Scheduling Hearing section), the tenant must contact HACA 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 that seriously affects the health, safety or welfare of the family.

General Procedures [24 CFR 966.56(e), (f), and (g)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed [24 CFR 966.56(e)].

The hearing must be conducted informally by the Hearing Officer/panel. The PHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].

HACA Policy

Any evidence to be considered by the Hearing Officer must be presented and/or discussed at the time of the hearing. At the Hearing Officer's discretion, the Hearing Officer may grant the complainant an extension to provide documents/evidence that was discussed at the hearing. There are four categories of evidence.

- **Oral evidence:** the testimony of witnesses.
- **Documentary evidence**: a document that is relevant to the case, for example, a letter written to HACA. Documents 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 HACA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine HACA documents prior to the grievance hearing), the Hearing Officer will refuse to admit such evidence.

Other than the failure of HACA to comply with discovery requirements, the Hearing Officer has the authority to overrule any objections to evidence.

The Hearing Officer/panel must require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(g)].

HACA Policy

If the complainant would like HACA to record the proceedings by audiotape, the request must be made and received in writing to the Hearing Officer by 12:00 p.m. at least 2 business days prior to the hearing.

HACA will consider an audio tape recording of the proceedings as a transcript.

Accommodations of Persons with Disabilities [24 CFR 966.56(h)]

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations or attendants.

If the tenant is visually impaired, any notice to the tenant that is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the PHA's responsibilities pertaining to reasonable accommodation.

15-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 PHA. The PHA must retain a copy of the decision in the tenant's folder. The PHA must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or his/her representative [24 CFR 966.57(a)].

HACA Policy

In rendering a decision, the Hearing Officer will consider the following matters:

- **PHA Notice to the Family:** The Hearing Officer will determine if the reasons for the HACA'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 HACA policy.
- **HACA Evidence to Support the HACA 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 HACA'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, HACA policies and/or other mitigating circumstances. If the grounds for termination are not specified in the regulations or in compliance with HACA policies, then the decision of HACA will be overturned.

The Hearing Officer will issue a written decision to the family and HACA no later than 15 calendar days after the hearing. The Hearing Officer will create a report, which will contain the following information:

- **Hearing information:**
  - Name of the complainant
  - Date of the hearing
  - Name of the Hearing Officer
  - Name of the HACA 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 HACA's decision.
- **Order:** The hearing report will include a statement of whether HACA's decision is upheld or overturned. If it is overturned, the Hearing Officer will instruct HACA to change the decision in accordance with the Hearing Officer's determination. In the case of termination of tenancy, the Hearing Officer will instruct HACA to restore the family's status.

Consideration of the Circumstances

HACA Policy

The Hearing Officer may consider:

- All relevant circumstances will be reviewed: such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.
- Whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

If the family includes a person with disabilities, the Hearing Officer's decision will be subject to consideration of reasonable accommodation requests made by the head of household or their representative. The Hearing Officer's decision will also be consistent with fair housing and equal opportunity provisions of Fair Housing Act, and with the requirements regarding protection for victims of domestic violence, dating violence, or stalking.

Procedures for Further Hearing

HACA 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 grieved action of HACA will take effect and another hearing will not be granted.

Final Decision [24 CFR 966.57(b)]

The decision of the Hearing Officer/panel is binding on the PHA which must take the action, or refrain from taking the action cited in the decision unless the PHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA policies which adversely affect the complainant's rights, duties, welfare or status; or

- The decision of the Hearing Officer/panel is contrary to Federal, state or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA

  HACA Policy

  When HACA considers the decision of the Hearing Officer to be invalid due to the reasons stated above, it will present the matter to the HACA Board of Commissioners within 10 business days of the date of the Hearing Officer's decision. The Board of Commissioners has 30 calendar days to consider the decision. If the Board of Commissioners decides to reverse the Hearing Officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the Hearing Officer/panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

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Chapter 16

PROGRAM INTEGRITY

INTRODUCTION

HACA is committed to ensuring that funds made available to HACA are spent in accordance with HUD requirements.

This chapter covers HUD and HACA 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 HACA policies related to preventing, detecting and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures HACA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING AND INVESTIGATING ERRORS AND PROGRAM ABUSE

16-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and residents with form HUD-52675, "Debts Owed to PHAs and Terminations."
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file.

HACA Policy

HACA anticipates that the vast majority of families and HACA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the HACA's program is administered effectively and according to the highest ethical and legal standards, HACA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

HACA will provide each applicant and resident with a copy of *"Is Fraud Worth It?"* (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

HACA will provide each applicant and resident with a copy of *"What You Should Know about EIV,"* a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, HACA will require the head

of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

HACA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. HACA 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.

HACA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

HACA staff will be required to review and explain the contents of all HUD- and HACA-required forms prior to requesting family member signatures.

HACA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key HACA forms and form letters that request information from a family member.

HACA will provide each HACA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

At each regular reexamination the PHA staff will explain any changes in HUD regulations or PHA policy that affect residents.

For purposes of this chapter the term *error* refers to an unintentional error or omission. P*rogram abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission or concealment of a substantial fact, made with the intent to deceive or mislead or for personal gain.

16-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, HACA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

HACA Policy

HACA will employ a variety of methods to detect errors and program abuse, including:

- HACA routinely will use available sources of up-front income verification, including HUD's EIV system and other non-HUD sources, 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.
- HACA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

HACA Policy

HACA 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 HACA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

HACA Policy

HACA will encourage staff, residents and the public to report possible program abuse.

16-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the PHA Will Investigate

HACA Policy

HACA 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 HACA 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.

HACA will investigate inconsistent or contradictory information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 960.259]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require applicant/resident families to give consent to the release of additional information.

Analysis and Findings

HACA Policy

HACA 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 HACA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed HACA and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

HACA Policy

In the case of family-caused errors or program abuse, HACA 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 and (4) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

HACA Policy

HACA 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 HACA 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

16-II.A. UNDER- OR OVERPAYMENT

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect rental determination is an overpayment or underpayment, the PHA must promptly correct the tenant rent and any utility reimbursement prospectively.

HACA Policy

Increases in the tenant rent will be implemented on the first of the month after the family has received 30 days notice, and only if the error was not family-caused.

Any decreases in tenant rent will become effective the first of the month following the discovery of the error or retroactively to the first of the month after the decrease occurred if HACA caused the error.

Reimbursement

Whether the family is required to reimburse HACA or HACA 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.

16-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA

HACA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. HACA may, but is not required, to offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, HACA will terminate the family's lease in accordance with the policies in Chapter 13. If the amount owed exceeds HACA's established thresholds for repayment due to fraud, HACA will terminate the family's lease in accordance with the policies in Chapter 13.

HACA Reimbursement to Family

HACA Policy

HACA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

Prohibited Actions

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the PHA [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l)(2)(iii)(C)].

HACA Policy

Any of the following will be considered evidence of family program abuse:

- Offering bribes or illegal gratuities to the HACA Board of Commissioners, employees, contractors or other HACA representatives.
- Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to HACA 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, expenses 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.
- Allowing unauthorized occupants to reside in the assisted unit.

HACA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to PHA).
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 13 (for residents).

- The PHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

16-II.C. PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets and expenses, and (2) errors in calculation.

Repayment to the PHA

The family is not required to repay an underpayment of rent if the error, or program abuse, is caused by PHA staff.

PHA Reimbursement to Family

HACA Policy

HACA 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

HACA Policy

Any of the following will be considered evidence of program abuse by HACA 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 HACA.
- Disclosing confidential or proprietary information to outside parties, including other residents or applicants.
- Gaining profit as a result of using or disclosing insider knowledge of HACA activities, policies or practices.
- Misappropriating or misusing public housing funds.
- Falsifying, forging or altering documents related to the public housing and/or HACA-related programs or services.
- 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.

16-II.D. CRIMINAL PROSECUTION

HACA Policy

When HACA determines that program abuse by a family or HACA staff member has occurred and the amount of underpaid rent or fraudulently obtained amount meets or exceeds the threshold for prosecution under local or state law or HACA's threshold, HACA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds HACA's threshold or the fraudulent act 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.

16-II.E. FRAUD AND PROGRAM ABUSE RECOVERIES

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that the PHA recovers [Notice PIH 2007-27 (HA)].

If the PHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the PHA's grievance process.

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Chapter 17

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 seven 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 HACA-furnished utilities.

Part II: Establishing Flat Rents. This part describes the requirements and policies related to establishing and updating flat rent amounts.

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 HACA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (PHAS). This part describes the PHAS indicators, how HACA is scored under PHAS and how those scores affect HACA.

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 HACA will follow.

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the HACA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

Part VII: Violence against Women Act (VAWA). Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims

PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

17-I.A. OVERVIEW

PHAs must establish allowances for PHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

PHAs must also establish surcharges for excess consumption of PHA-furnished utilities [24 CFR 965.506].

The PHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

17-I.B UTILITY ALLOWANCES

The PHA must establish separate allowances for each utility and for each category of dwelling units the PHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a PHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage and solid waste disposal for a dwelling unit. In addition, if the PHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV and Internet services are not considered utilities [PH Occ GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ GB, p. 138].

Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to the PHA about establishing utility allowances.

Air-Conditioning

"If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible." [24 CFR 965.505(e)].

HACA Policy

HACA offers residents the option to choose air-conditioning at its elderly and disabled mixed population properties only. None of these properties are sub metered for air conditioning use and installation of such meters would not be practical or feasible to HACA; therefore, residents are surcharged in accordance with 24 CFR 965.506. These properties include Lakeside Apartments, Salina Apartments and North Loop Apartments.

Utility Allowance Revisions [24 CFR 965.507]

The PHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate

changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

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.

HACA Policy

HACA shall establish for each development, by bedroom size, an allowance based upon units of commodity which will afford a reasonable consumption of utilities by an energy conservative household of modest circumstances consistent with the requirement of a safe, sanitary and healthful living environment. Monthly allowance shall be established at a uniform monthly amount based on an average monthly utility requirement for a year.

Schedules of utility allowances for each development will be posted on the bulletin board in each development office and the Central Office and will be made available to the resident upon request.

HACA will review and revise its allowances in accordance with the regulatory requirements. Between annual reviews of utility allowances, HACA will only revise its utility allowances due to a rate change, when required to by the regulation.

17-I.C. SURCHARGES FOR PHA-FURNISHED UTILITIES [24 CFR 965.506]

For dwelling units subject to allowances for PHA-furnished utilities where check meters have been installed, the PHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption and must be based on the PHA's average utility rate. The basis for calculating the surcharges must be described in the PHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in the PHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by PHA-furnished utilities where check meters have not been installed, the PHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

HACA Policy

HACA furnishes and pays for the following utilities at all of its public housing properties with the exception of its scattered site houses:

- Water
- Gas

HACA furnishes electricity through a master meter at the following properties:

- Gaston Place Apartments

HACA offers residents the option to choose air-conditioning at its elderly and disabled-mixed population properties. These properties do not have check meters for air-

conditioning installed. A surcharge schedule for air conditioning has been established at the following properties:

- Lakeside Apartments
- Salina Apartments
- North Loop Apartments

17-I.D. NOTICE REQUIREMENTS [965.502]

The PHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges or revisions.
- Describe the basis for determination of the allowances, scheduled surcharges or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
- Notify residents of the place where the PHA's documentation on which allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges or revisions.

17-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]

On request from a family that includes a disabled or elderly person, the PHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

PART II: ESTABLISHING FLAT RENTS

17-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 flat rents are also used to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how the PHA establishes and updates flat rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships and use of flat rents for prorating assistance for mixed families are discussed in Chapter 6.

17-II.B. FLAT RENTS [24 CFR 960.253(b), United States Housing Act of 1937 (42 U.S. Code § 1437a(a)(2)(B)(i),Notice PIH 2014-12 and Notice PIH 2015-13]

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 PHA could promptly lease the public housing unit after preparation for occupancy. As required by Section 210 of the 2014 Appropriations Act and further amended by the 2015 Appropriations Act, PHAs must ensure that the flat rent is no less than the lower of 80 percent of:

1. the applicable Fair Market Rents established under Section 8(c) of the Unites States Housing Act of 1937; or
2. at the discretion of the Secretary, such other applicable fair market rental established by the Secretary that the Secretary determines more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used for purposes of the applicable fair market rental under Section 8(c) of the United States Housing Act of 1937.

Notice PIH 2015-13 further identifies that the Small Area Fair Market Rentals (SAFMR) established by HUD satisfies the criteria identified as the second option. Whether the PHA chooses the FMR or the SAFMR, the flat rent is subject to utility adjustments. PHAs are now required to apply a utility allowance to flat rents. Flat rents at 80 percent of the FMR or SAFMR must be reduced by the amount of the unit's utility allowance, if any. Should the 80 percent threshold increase a family's existing rental payment by more than 35 percent, the new flat rent must be phased in to ensure existing rental payments do not increase by more than 35 percent annually.

Review of Flat Rents

The PHA must ensure that flat rents continue to mirror market rent values as well as comply with the provisions laid out in the 2014 Appropriations Act and PIH Notice 2014-12. No later than 90 days after HUD publishes new annual FMRs, PHAs must revise flat rents as necessary based on the rent reasonableness analysis and changes to the FMR. The PHA must offer changes to the flat rent to all new admissions and to existing families at the next annual rent option.

If the FMR falls from year to year, the PHA may, but is not required to, lower the flat rent to 80 percent of the current FMR.

HACA Policy

HACA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values, are no less than 80% of the current applicable Fair Market Rents (FMR) or Small Area Fair Market Rents (SAFMR)and will not cause a family's existing rental payment to increase more than 35%. If the FMR or SAFMR is lower than the previous year, HACA may reduce flat rents to at least 80 percent of the current FMR or SAFMR.

PHAs that determine that reasonable rents would be less than 60 percent of the applicable FMR may choose to request an exception flat rent. In order to demonstrate the need for an exception flat rent, PHAs are required to submit a market analysis methodology that demonstrates the value for the unit. While HUD does not prescribe a particular formula for determining the market analysis, PHAs must compare the public housing unit in the area using the following factors:

- Location, quality, size, unit type, age of the unit, and
- Amenities, housing services, maintenance, and utilities the PHA will provide under the lease.

HACA Policy

If HACA determines that reasonable rents would be less than 60 percent of the applicable FMR, the HACA will request an exception flat rent and conduct the market survey.

Posting of Flat Rents

HACA Policy

HACA will publicly post the schedule of flat rents in a conspicuous manner in the applicable HACA community's bulletin board as well as at HACA's Central Office.

Documentation of Flat Rents [24 CFR 960 Interim Rule]

The PHA is not required to maintain documentation regarding the PHA's methods of determining a unit's flat rent, as the process setting flat rents is now less reliant upon discretionary actions by the PHA, except in the case of exception requests, which require documentation provided by PHAs.

PART III: FAMILY DEBTS TO THE PHA

17-III.A. OVERVIEW

This part describes the PHA's policies for recovery of monies owed to the PHA by families.

HACA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, HACA holds the family liable to repay any difference between underpayments to HACA and the actual amounts owed to HACA.

HACA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover actual amounts owed as determined by HACA. When a family refuses to repay monies owed to HACA, HACA 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

17-III.B. REPAYMENT POLICY

Family Debts to the PHA

HACA Policy

Any amount owed to HACA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days of receipt of written notification of the full amount, HACA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement or breaches a repayment agreement, HACA will terminate the family's tenancy in accordance with the policies in Chapter 13. HACA will also pursue other modes of collection.

General Repayment Agreement Guidelines

Payment Thresholds

Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii).

HACA Policy

For fraud cases, any amounts owed in the amount of more than $5,000, HACA will not enter into repayment agreement, unless approval is granted by the Vice President of Housing and Community Development. HACA may pursue lease termination and refer the case to HUD's Office of Inspector General for prosecution.

For amounts owed by the family due to incidents involving extraordinary destruction to the unit, including but not limited to fires and vandalism, the balance must be repaid within the time frame specified below:

- Amounts over $5,000 must be repaid within 48 months.
- Amounts $4,999 and under must be repaid within 36 months.

For all other balances owed, including but not limited to maintenance/repair charges, all applicable utility charges, fraud resulting in amounts owed under HACA's established threshold, repayment timeframes will be established as listed below:

- Amounts between $4,000 and $5,000 must be repaid within 48 months.
- Amounts between $3,000 and $3,999 must be repaid within 36 months.
- Amounts between $2,000 and $2,999 must be repaid within 24 months.
- Amounts between $1,000 and $1,999 must be repaid within 18 months.
- Amounts between $500 and $999 must be repaid within 12 months.
- Amounts under $500 must have a minimum monthly payment of $100 and cannot exceed 5 months.

For security deposits at move-in, HACA may offer an installment agreement with the family that does not exceed 3 months. The first installment is due and payable upon lease execution.

Exceptions to this schedule may be made at the discretion of the Vice President of Housing and Community Development.

Execution of the Agreement

HACA Policy

Any repayment agreement between HACA and a family must be signed and dated by HACA and by the head of household and spouse/cohead (if applicable).

Due Dates

HACA Policy

All payments are due by the close of business on the 5th day of the month. If the 5th does not fall on a business day, the due date is the close of business on the first business day after the 5th.

Late or Missed Payments

HACA Policy

If the family fails to make any payment as required by the terms set forth within the repayment agreement, HACA retains the right to demand immediate payment of the remaining unpaid balance. If the family fails to make payment of the full balance, it will be considered a breach of the agreement and HACA will terminate tenancy in accordance with the policies in Chapter 13.

No Offer of Repayment Agreement

HACA Policy

HACA will generally not enter into a new repayment agreement with a family if there is already a current repayment agreement in place with the family, or if the amount owed by the family exceeds federal or state threshold for criminal prosecution and/or HACA's established threshold under fraud cases.

Repayment Agreements Involving Improper Payments

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act.
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner.
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases.
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy.

PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)

17-IV.A. OVERVIEW

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

17-IV.B. PHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]

The table below lists each of the PHAS indicators, the points possible under each indicator and a brief description of each indicator. A PHA's performance is based on a combination of all four indicators.

Indicator 1: Physical condition of the PHA's projects

Maximum Score: 40

- The objective of this indicator is to determine the level to which a PHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary and in good repair.
- To determine the physical condition of a PHA's projects, inspections are performed of the following five major areas of each public housing project: 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 each project in the PHA's public housing portfolio.

Indicator 2: Financial condition of the PHA's projects

Maximum Score: 25

- The objective of this indicator is to measure the financial condition of the PHA's public housing projects for the purpose of evaluating whether the PHA has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.
- A PHA's financial condition is determined by measuring each public housing project's performance in each of the following subindicators: quick ratio, months expendable net assets ratio, debt service coverage ratio.

Indicator 3: Management operations of the PHA's projects

Maximum Score: 25

- The objective of this indicator is to measure certain key management operations and responsibilities of a PHA's projects for the purpose of assessing the PHA's management operations capabilities.
- Each project's management operations are assessed based on the following sub-indicators: occupancy, tenant accounts receivable and accounts payable.
- An on-site management review may be conducted as a diagnostic and feedback tool for problem performance areas, and for compliance. Management reviews are not scored.

Indicator 4: Capital Fund

Maximum Score: 10

- The objective of this indicator is to measure how long it takes the PHA to obligate capital funds and to occupy units.
- The PHA's score for this indicator is measured at the PHA level and is based on the following subindicators: timeliness of fund obligation and occupancy rates (advisory).

17-IV.C. PHAS SCORING [24 CFR 902.63 and 902.67]

HUD's Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the subindicators under each indicator. The PHA's indicator scores are based on a weighted average of the PHA's public housing projects' scores. PHAS scores translate into a designation for each PHA as high performing, standard, substandard or troubled.

A high performer is a PHA that achieves an overall PHAS score of 90 or greater, and achieves a score of at least 60 percent of the points available under the physical, financial and management indicators and at least 50 percent of the points available under the capital fund indicator.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator..

A substandard performer is a PHA that has an overall PHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical, financial, or management indicators.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 50 percent of the total points available under the capital fund indicator.

These designations can affect a PHA in several ways:

- High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- PHAs that are standard performers may be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(1)].
- PHAs that are substandard performers will be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(2)].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].
- PHAs that fail to execute or meet MOA requirements may be referred to the Assistant Secretary to determine remedial actions, including, but not limited to, remedies available for substantial default [24 CFR 902.75(g) and 24 CFR Part 907].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and designation [24 CFR 902.64(b)(2)]..

PART V: RECORD KEEPING

17-V.A. OVERVIEW

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

This includes data on current applicants and residents, and applications from people who were never admitted. HACA will maintain records of the dwelling units offered to every applicant, including the location, date and circumstances of each offer and each rejection or acceptance in accordance with the General Records Schedules.

17-V.B. RECORD RETENTION

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

HACA Policy

During the term of each public housing tenancy, and for at least 4 years thereafter, HACA will keep all documents related to a family's eligibility, tenancy and termination.

In addition, HACA will keep the following records for at least 4 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.
- Documentation supporting the establishment of utility allowances and surcharges.
- Documentation related to PHAS.
- Accounts and other records supporting HACA budget and financial statements for the program.
- Other records as determined by HACA 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.

17-V.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

HACA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized HACA staff.

HACA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data*.

HACA Policy

HACA has adopted and implemented EIV security procedures as required by HUD.

Criminal Records

The PHA may only disclose the criminal conviction records that the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

HACA Policy

In order to ensure compliance with federal statute and protect the confidentiality of HACA's applicants and residents, all criminal records shall be maintained as follows:

- D.P.S. records obtained for the purpose of applicant screening shall be maintained by the Admissions department in a separate depository for a period of 2 years, unless required for a pending matter. A notation of the nature, type and identification of the criminal record shall be noted in the applicant's file. Destruction of such criminal records will consist of shredding and thereafter proper disposal. Under no circumstances shall such information be improperly disseminated to any person who does not have a legitimate reason for such information.
- Any criminal records produced by the applicant for the purpose of applicant screening shall be maintained by the Admissions department in a separate depository for a period of 2 years, unless required for a pending matter. A notation of the nature, type and identification of the criminal record shall be noted in the applicant's file. Destruction of such criminal records will consist of shredding and thereafter proper disposal. Under no circumstances shall such information be improperly disseminated to any person who does not have a legitimate reason for such information.
- Any other criminal records used by HACA in its review for applicant screening shall be maintained by the Admissions department in a separate depository for a period of 2 years, unless required for a pending matter. A notation of the nature, type and identification of the criminal record shall be noted in the applicant's file. Destruction of such criminal records will consist of shredding and thereafter proper disposal. Under no circumstances shall such information be improperly disseminated to any person who does not have a legitimate reason for such information.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical

condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

Domestic Violence, Dating Violence, Sexual Assault, or Stalking Records
For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 16-VII.E.

Eligible Immigration Status Documents

The following documents will be retained for a minimum of 5 years if provided as part of the INS appeal or informal hearing process: the application; form completed by family for family reexamination; photocopies of any original documents (front and back), including original INS documents; signed verification consent form; INS verification results (primary and secondary); request for an INS appeal; final INS determination; request for an informal hearing; and final informal hearing decision.

PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

17-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The PHA must report the name and address of a child under 6 years of age identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. The PHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

HACA Policy

HACA will provide the public health department written notice of the name and address of any child under 6 years of age identified as having an environmental intervention blood lead level within 5 business days of being so notified by any other medical health care professional.

HACA will provide written notice of each known case of a child under 6 years of age with an environmental intervention blood lead level to the HUD field office within 5 business days of receiving the information.

PART VII: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, AND CONFIDENTIALITY

17-VII.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, and stalking who are applying for or receiving assistance under the public housing program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation and confidentiality. Specific VAWA requirements and PHA policies are located in Chapter 3, “Eligibility” (sections 3-I.C and 3-III.F); Chapter 5, “Occupancy Standards and Unit Offers” (section 5-II.D); Chapter

8, “Leasing and Inspections” (section 8-I.B); Chapter 12, “Transfer Policy” (sections 12-III.C, 12-III.F, and 12-IV.D); and Chapter 13, “Lease Terminations” (sections 13-III.F and 13-IV.D).

17-VII.B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any individual, tenant or lawful occupant living in the household of that individual
- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

17-VII.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its public housing program are aware their rights under VAWA.

HACA Policy

HACA will post the following information regarding VAWA in its offices and on its web site. It will also make the information readily available to anyone who requests it.

- A summary of the rights and protections provided by VAWA to public housing applicants and residents who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (see sample notice in Exhibit 16-1).
- The definitions of domestic violence, dating violence, sexual assault, and stalking provided in VAWA (included in Exhibit 16-1).
- An explanation of the documentation that HACA may require from an individual who claims the protections provided by VAWA (included in Exhibit 16-1).
- A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence or Stalking.
- A statement of HACA's obligation to keep confidential any information that it receives from a victim unless (a) HACA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibit 16-1).
- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibit 16-1).
- Contact information for local victim advocacy groups or service providers.

Notification to Applicants and Tenants [24 CFR 5.2005(a)(1)]

PHAs are required to inform public housing applicants and tenants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

HACA Policy

HACA will provide all applicants with information about VAWA at the time they request an application for housing assistance. HACA will also include such information in all notices of denial of assistance (see section 3-III.F).
HACA will provide all tenants with information about VAWA at the time of admission (see section 8-I.B) and at annual reexamination. HACA will also include such information in all lease termination notices (see section 13-IV.D).

The VAWA information provided to applicants and tenants will consist of the notice in Exhibit 16-1 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2006-42 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.

HACA Policy

Whenever HACA has reason to suspect that providing information about VAWA to a public housing tenant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim.

DOCUMENTATION [24 CFR 5.2007]

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1. A completed and signed HUD-approved certification form (HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim
2. A federal, state, tribal, territorial, or local police report or court record
3. Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. Acceptable documentation also includes a record of an administrative agency, and documentation from a mental health professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [VAWA final rule].

HACA Policy

Any request for documentation of domestic violence, dating violence, sexual assault, or stalking will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline. HACA may, in its discretion, extend the deadline for 10 business days. Any extension granted by HACA will be in writing.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

HACA Policy

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, HACA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

HACA Policy

If HACA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault, or stalking, HACA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

17-VII.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the PHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

HACA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, HACA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

EXHIBIT 17-1: SAMPLE NOTICE TO PUBLIC HOUSING APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, or stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for public housing, the housing authority cannot refuse to admit you to the public housing program solely because you are a victim of domestic violence, dating violence, sexual assault, or stalking.

If you are the victim of domestic violence, dating violence, sexual assault, or stalking, the housing authority cannot evict you based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you if you were the victim of the abuse.

Reasons You Can Be Evicted

The housing authority can still evict you if the housing authority can show there is an *actual* and *imminent* (immediate) threat to other tenants or housing authority staff if you are not evicted. Also, the housing authority can evict you for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking against you. The housing authority cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

Removing the Abuser from the Household

The housing authority may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the public housing unit. If the housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, the housing authority must follow federal, state, and local eviction procedures.

Proving That You Are a Victim of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The housing authority can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, sexual assault, or stalking. It must give you at least 14 business days (i.e. Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority is free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the violence. You are only required to provide the name of the abuser if it is safe to provide and you know their name.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."
- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the housing authority may evict you.

Confidentiality

The housing authority must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority to release the information.
- The housing authority needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority to release the information.

If release of the information would put your safety at risk, you should inform the housing authority.

VAWA and Other Laws

VAWA does not limit the housing authority's duty to honor court orders about access to or control of a public housing unit. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

For Additional Information

If you have any questions regarding VAWA, please contact _____ at _____.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Definitions

For purposes of determining whether a public housing applicant or tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines ***domestic violence*** to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines ***dating violence*** as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines ***sexual assault*** as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA defines ***stalking*** as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.