BUFFALO MUNICIPAL HOUSING AUTHORITY

Admissions and Continued Occupancy Plan

Adopted – April 3, 2014

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CHAPTER 1 - OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

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

PART I: Buffalo Municipal Housing Authority

1-I.A. OVERVIEW

Authorized under New York State Housing Law, Buffalo Municipal Housing Authority was created in 1934 to develop and operate housing and housing programs to low-income families within the City of Buffalo. BMHA is governed by a 7-person Board of Commissioners which consists of five (5) appointed positions by the Mayor of the City of Buffalo and two (2) resident commissioners who are duly elected by the residents of BMHA.

1-I.B. ORGANIZATION AND STRUCTURE OF BUFFALO MUNICIPAL HOUSING AUTHORITY

Public housing is funded by the federal government and administered by the **Buffalo Municipal Housing Authority** for the jurisdiction of **the City of Buffalo in the State of New York.**

The board of commissioners establishes policies under which BMHA conducts business, and ensures that those policies are followed by BMHA staff. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability and success.

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

The principal staff member of Buffalo Municipal Housing Authority is the Executive Director (ED), who is selected and hired by the board. The ED oversees the day to day operations and is directly responsible for carrying out the policies established by the commissioners. The ED's duties include hiring, training, and supervising the staff, as well as budgeting and financial planning for the agency. Additionally, the ED is charged with ensuring compliance with federal and state laws, and program mandates.

1-I.C. Buffalo Municipal Housing Authority MISSION

Buffalo Municipal Housing Authority's mission is to provide safe, decent and sanitary affordable housing for families and to manage resources efficiently. BMHA seeks to promote personal,

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economic and social upward mobility to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

1-I.D. BUFFALO MUNICIPAL HOUSING AUTHORITY'S COMMITMENT TO ETHICS AND SERVICE

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

- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.

- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human service's needs.

- Promote fair housing and the opportunity for 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 BMHA'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 BMHA's support systems and commitment to our employees and their development.

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

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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 PHAs more remedies to replace or revitalize severely distressed public housing developments. Highlights of the Reform Act include: the establishment of flat rents; the requirement for PHAs to develop five-year and annual plans; income targeting, a requirement that 40% of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and resident self-sufficiency incentives.

1-II.B. PUBLIC HOUSING PROGRAM BASICS

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

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

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

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"resident" are used interchangeably in this policy. Additionally, this policy uses the term "family" or "families" for residents or applicants, depending on context.

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

1-II.C. PUBLIC HOUSING PARTNERSHIPS

To administer the public housing program, the PHA must enter into an Annual Contributions Contract (ACC) with HUD. The PHA also enters into a contractual relationship with the tenant through the public housing lease. These contracts define and describe the roles and responsibilities of each party.

In addition to the ACC, the PHA and family must also comply with federal regulations and other HUD publications and directives. For the program to work and be successful, all parties involved – HUD, the PHA, and the tenant – play an important role.

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

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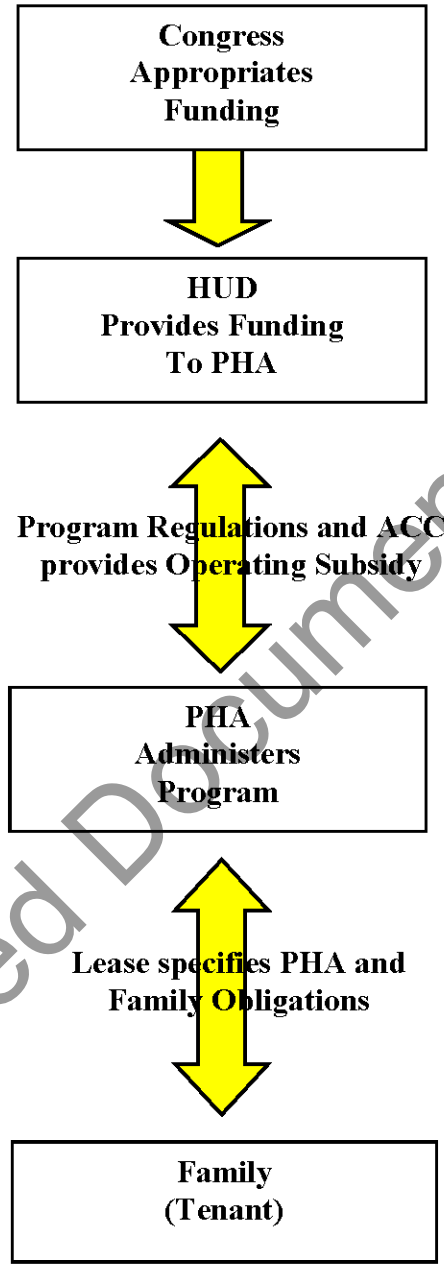
The Public Housing Relationships



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What does HUD do?
Federal law is the source of HUD responsibilities. HUD has the following major responsibilities:

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

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

- Ensure compliance with all non-discrimination, equal opportunity, and fair housing laws, and ensure that the program is accessible to persons with disabilities
- Establish local policies and procedures for operating the program
- Accept applications from interested applicant families and determine whether they are income eligible for the program
- Maintain waiting list and select families for admission
- Screen applicant families for suitability as renters
- Maintain housing units by making any necessary repairs in a timely manner
- Make unit offers to families (minimize vacancies without overcrowding)
- Maintain properties to the standard of decent, safe, sanitary, and in good repair (including assuring compliance with uniform physical conditions standards)
- Make sure the PHA has adequate financial resources to maintain its housing stock
- Perform regular reexaminations of family income and composition in accordance with HUD requirements
- Collect rent due from the assisted family and comply with and enforce provisions of the lease

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- Ensure that families comply with program rules
- Provide families with prompt and professional service
- Comply with HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's ACOP, and other applicable federal, state and local laws.

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

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

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

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- 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

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PART III: THE ADMISSIONS AND CONTINUED OCCUPANCY POLICIES

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

The ACOP is the BMHA's written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements. The ACOP is required by HUD and it must be available for public review [CFR 24 Part 903]. The ACOP also contains policies that support the objectives contained in the BMHA's Agency Plan. In compliance with HUD Agency Plan requirements, changes to the discretionary polices contained in this document are subject to review and comment by the BMHA Resident Advisory Board and inclusion in the annual Agency Plan public review and hearing process.

Changes made to satisfy statutory requirements or to annually update flat rent schedules, utility allowance schedules, and the schedule of other charges to tenants that are reflective of actual costs are not subject to review by the Resident Advisory Board. Such changes become effective upon approval by the BMHA Board of Commissioners and completion of any mandated posting period.

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. BMHA 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. UPDATING AND REVISING THE POLICY

BMHA will review and update the ACOP as needed to reflect changes in regulations, BMHA operations, or when needed to ensure staff consistency in operation.

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CHAPTER 2 - FAIR HOUSING AND EQUAL OPPORTUNITY

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require BMHA 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. BMHA 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 2005 (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

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

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

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

Buffalo Municipal Housing Authority 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

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

Discrimination Complaints

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

BMHA will attempt to remedy discrimination complaints made against the housing authority.

BMHA 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).

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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.

BMHA will ensure that persons with disabilities have full access to BMHA'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].

BMHA will 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)].

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

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

A specific position and phone number will be provided as the contact person for requests for accommodation for persons with disabilities.

2-II.B. Definition of REASONABLE Accommodation

A "reasonable accommodation" is a change, exception, or adjustment to a 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 BMHA, 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 include but are not limited to:

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- Permitting applications and reexaminations to be completed by mail
- Providing “large-print” forms
- 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 BMHA-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 BMHA staff
- Displaying posters and other housing information in locations throughout the BMHA’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 BMHA 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 BMHA’s programs and services.

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

BMHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, verbal requests will be considered.

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2-II.D. Verification of Disability

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

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

- BMHA must request only information that is necessary to evaluate the disability-related need for the accommodation. BMHA 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 BMHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, BMHA will dispose of it. In place of the information, BMHA 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]

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

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

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

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If the PHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation BMHA will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal the BMHA'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

To meet the needs of persons with hearing impairments, New York State Relay Service communication will be utilized. (1-800-662-1220)

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

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

2-II.G. Physical Accessibility

The 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 design, construction, or alteration of BMHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS).

Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the public housing program.

2-II.H. Denial or Termination of Assistance

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

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

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)].

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

2-III.A. OVERVIEW

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

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

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

2-III.B. ORAL INTERPRETATION

BMHA 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.

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

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

2-III.C. WRITTEN TRANSLATION

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

> BMHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
>
> If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, BMHA may not translate vital written materials, but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

2-III.D. IMPLEMENTATION PLAN

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

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

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

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

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

The phrase "physical or mental impairment" includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and 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, 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.

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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

BMHA Buffalo Municipal Housing Authority 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 BMHA 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 BMHA.
  - 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 household members as required.
  - Consent to BMHA's collection and use of family information as provided for in BMHA-provided consent forms.
- BMHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or BMHA.

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.

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),

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an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. BMHA 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. A family also includes two or more individuals of legal capacity who are not related by blood, marriage, adoption, or other operation of law, but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.
>
> Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes. Failure to provide update family composition may result in re-evaluation eligibility.

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

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

Family Breakup
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 submit 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 retain occupancy of the unit.

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

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

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.

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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.

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.

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.

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.

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,

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

A *dependent* is a family member who is under 18 years of age <u>or</u> 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** Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 50 percent or more of the time.
>
> When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, BMHA will make the determination based on available documents such as court orders, an IRS income tax return showing which family has claimed the child for income tax purposes, school records, or other credible documentation.

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

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

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

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [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 the elderly family allowance and the medical allowance..

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, BMHA must make all aspects of the public housing program accessible to persons with disabilities and consider requests for reasonable accommodations when a person's disability limits their full access to the unit, the program, or BMHA's services.

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 the disabled family allowance and the medical allowance as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

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Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent BMHA from denying admission or taking action under the lease for reasons related to alcohol and drug abuse.

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.

A resident family must notify BMHA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 14 consecutive days during any 12 month period with written permission from BMHA authorized representative.

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.

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

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

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.

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].

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

Generally an individual who is or is expected to be absent from the public housing unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the public housing unit

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for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

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

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

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

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

Absent Head, Spouse, or Cohead

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

Individuals Confined for Medical Reasons

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, BMHA 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

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

3-I.M. LIVE-IN AIDE

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the person(s), (2) is not obligated for the support of the person(s), 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 for a person with disabilities in accordance with 24 CFR 8.

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A live-in aide is considered a household member but not a family member. The income of the live-in aide is not counted in determining the annual income of the family [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.

A family's request for a live-in aide must be made in writing. BMHA will verify the need for a live-in aide with a reliable, knowledgeable professional as provided by the family, such as a doctor, social worker, or case worker. For continued approval, the family must submit a new, written request—subject to BMHA verification—at each annual reexamination.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) Person of legal capacity, (2) not obligated for the support of the person(s) needing the care, and (3) would not be living in the unit except to provide the necessary supportive services.

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

> The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
>
> The person has a history of drug-related criminal activity or violent criminal activity; or
>
> The person currently owes rent or other amounts to BMHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

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

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to establish income limits that determine the income 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 the median incomes for families of different sizes in a particular area or county.

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.

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Extremely low-income family. A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size. (Used for income targeting only, not program eligibility.)

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, the annual income of an applicant must be within the *low-income* limit.

A family may not be admitted to the public housing program from another assisted housing program (e.g., tenant-based Section 8) or from a public housing program operated by another housing authority without meeting the income requirements of the BMHA.

When a family is being considered for admission to a Mixed Finance development with units subsidized by both Low Income Housing Tax Credits and HUD Operating Subsidy, the income limits established for tax credits apply.

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 BMHA'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 BMHA to request additional documentation of their status, such as a passport Or a birth certificate

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

Eligible Noncitizens

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

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

Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. BMHA 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.

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

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

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

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

The notice will explain the reasons for the denial of assistance and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with BMHA. The informal hearing with BMHA 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.

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

For new occupants joining the resident family BMHA 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, BMHA 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.

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2012-10]

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. ***Note:*** These requirements do not apply to noncitizens who do not contend eligible immigration status.

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 reexamination or 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.

BMHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

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

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information Privacy Act Notice, and **other consent forms** as needed to collect information relevant to the family's eligibility and level of assistance..

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BMHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow BMHA to obtain information that BMHA 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 BMHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. BMHA's authority in this area is limited by the Violence against Women Act of 2005 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, or stalking
[24 CFR 5.2005(b)].

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

HUD requires BMHA 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 BMHA 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).

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

- BMHA 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)].

- BMHA 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.

    In determining reasonable cause, BMHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of

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household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. BMHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

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

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

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

Criminal Activity [24 CFR 960.203(c)]

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

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

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

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

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

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

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

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past 10 years. A conviction for such activity will be given more weight than an arrest or an eviction.

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

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

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

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

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

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

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

Does not supply information or documentation required by the application process and fails to respond to a written request for information or a request to declare their continued interest in the program

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

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

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

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

BMHA 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

BMHA will perform criminal background checks through local law enforcement for all adult household members. and minors of age 16 years and older.

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If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, BMHA will request verification from local law enforcement.

BMHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under New York State sex offender program as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

PHA Policy

BMHA will use the Dru Sjodin National Sex Offender database to screen applicants for admission.

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

Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]

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

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

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

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

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

BMHA has adopted the following policy:

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BMHA will submit a request for information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents BMHA may also request information for household members who freely admit to past involvement with illegal drugs and who represent that their current participation or past completion of a substance abuse program has addressed their past reported problem(s).

When BMHA chooses to obtain such information, it will comply with the HUD requirements for records management and confidentiality as described in 24 CFR 960.205(f).

PHA Policy

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

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

In order to determine the suitability of applicants BMHA will examine applicant history in private housing for the past three years. BMHA will also consider applicant history while a public housing resident for up to 10 years. Such background checks will include:

Past Performance in Meeting Financial Obligations, Especially Rent

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

PHA references will be considered in their totality for up to 10 years.

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

If an applicant has no rental payment history BMHA will check court records of eviction actions and other financial judgments, and credit

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reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may.

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

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

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

PHA references for the past 10 years and private landlord references for the past 3 years will be used for, 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 will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction.

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

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

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

Evidence

PHA Policy

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

In the event BMHA 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, BMHA may give consideration to factors which might indicate a reasonable probability of favorable future conduct.

BMHA 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 a victim of domestic violence, dating violence, or stalking

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

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

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully for minimum of 12 months.

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

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Removal of a Family Member's Name from the Application

Should BMHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, BMHA 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, BMHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, BMHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 960.203(c)(3)(i)].

> PHA Policy
>
> As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit.
>
> After admission to the program, the family must present evidence of the former family member's current address upon PHA request.

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

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

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

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

The Violence against Women Act of 2005 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking.

Definitions of key terms used in VAWA are provided in section 16-VII of this ACOP, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

Notification

> BMHA acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under BMHA's policies.

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Therefore, if BMHA makes a determination to deny admission to an applicant family, BMHA 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 and will request that an applicant wishing to claim this protection notify BMHA within 10 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

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

Perpetrator Documentation

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

After all the required information on an application is gathered, the assigned BMHA designated representative will make a determination of eligibility. All determinations are subject to review by Housing Assistance Administrative Staff.

All families who qualify as eligible upon completion and screening of their applications will be notified of the approval of their applications. This approval notification will be in writing. These families will also be informed of the estimated time for their placement by designated Property staff.

All families determined to be ineligible after completion and screening of their applications will be notified by letter of their denial of eligibility. The letter will advise the denied applicant of the basis for their denial, of their right of appeal to an informal hearing, of their right to appear with counsel or other representation at that hearing, and of their right to present evidence to refute the reason for their rejection. They will also be advised that if they do not challenge the denial they will remain ineligible to reapply to the BMHA for one year from the date of denial. The applicant, upon request within 30-days of the denial, is entitled to an Informal hearing.

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

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

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(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 an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(1) Physical or mental impairment includes:

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

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

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

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

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

> Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how the PHA will handle the applications it receives.
>
> Part II: Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process the PHA will use to keep the waiting list current.
>
> Part III: Tenant Selection. This part describes the policies that guide the PHA in selecting families from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that the PHA has the information needed to make a final eligibility determination.

PART I: THE APPLICATION PROCESS

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4-I.A. OVERVIEW

This part describes the policies that guide BMHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the BMHA'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 how such applications will be made available to interested families and how applications will be accepted by the PHA. However, the PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application [Notice PIH 2009-36].

PHA Policy

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

> Families may obtain application forms from Buffalo Municipal Housing Authority's Housing Assistance Office located at 245 Elmwood Ave., Buffalo, NY 14222 during normal business hours or at any Management Office located throughout the BMHA. Families may also request – by telephone or by mail – that an application form be sent to the family via first class mail. Application forms may also be printed down from the BMHA website at http://www.city-buffalo.com/Home/CityServices/Buffalo_Municipal_Housing_Authority
>
> Completed applications must be returned to the BMHA Housing Assistance Office by mail, or submitted in person during normal business hours. Applications must be filled out completely in order to be accepted by BMHA for processing. If an application is incomplete, BMHA will attempt to contact the family at a telephone number provided to obtain the additional information required. If no telephone number is available, the application will be returned in the mail with an explanation noting the information needed.

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 standard PHA application process.

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

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The PHA must provide reasonable accommodation as needed for persons with disabilities to make the application process fully accessible. The facility where applications are accepted and the application process must be fully accessible, or the PHA must provide an alternate approach that provides equal access to the program. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

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

4-I.D. PLACEMENT ON THE WAITING LIST

The PHA must review each completed application received and make a preliminary assessment of the family's eligibility. Applicants for whom the waiting list is open must be placed on the waiting list 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]. No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list.

BMHA uses a preliminary application process. Unless family income information provided with the application shows that the family is over income, or that a unit is needed that the BMHA cannot provide, the application will be accepted and placed onto the waitlist; a final determination of program eligibility will be delayed until such time as the applicant can be reached on the waitlist.

Ineligible for Placement on the Waiting List

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

Eligible for Placement on the Waiting List

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

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

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

Placement on the waiting list does not indicate that the family is, in fact, eligible for admission. When the family is selected from the waiting list, BMHA will verify any preference(s) claimed and determine eligibility and suitability for admission to the program.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

BMHA must have policies regarding the type of waiting list it will utilize as well as how the waiting list will be organized and managed. This includes policies on notifying the public on the opening and closing of the waiting list to new applicants, updating family 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 BMHA 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

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

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

Name and social security number of head of household

Unit size required (number of family members)

Amount and source of annual income as provided by applicant

Accessibility requirement, if any

Date and time of application or application number

Household type (family, elderly, disabled)

Admission preference, if any

Race and ethnicity of the head of household

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The specific site(s) selected (In compliance with the BMHA site-based waiting list policy)

Preliminary waitlist placement

As each preliminary application is received at the BMHA Housing Assistance Office, it is dated, time stamped, checked for duplicates on file, and for monies owed from past tenancies. Applications received that fall at or below the 80% of median income level are eligible for placement onto the preliminary application waitlist. Applicants owing the BMHA monies from past tenancies will not be placed onto any waitlist until all monies owed are paid in full.

The BMHA sub-divides the wait lists based on the size and type of apartments available in its Public Housing Program. The various sub-lists range in size from one-bedroom to six-bedrooms, and applications are classified as elderly, near elderly, disabled, family, or handicapped. The date of application and preferences verified are used to determine position on the preliminary application waitlist. An applicant's position on a Site-based waitlists is determined by the date of development selection, and by verified preferences.

Site Based Waitlists

(1) Initial Placement onto Site Waitlists

BMHA will maintain current offer letters for all types and sizes of apartments in our inventory. Each offer letter will include the estimated wait times for an appropriate apartment to become available at every site where units of similar size and type exist in the BMHA. Applicants will be given or mailed a current copy of the offer letter /letters that they qualify to receive under BMHA occupancy standards upon receipt of their completed application

Applicants/transferees who receive offer letters will be expected to choose the development that they wish to be considered for. They will have their name placed onto the waitlist for that site; applicants/transferees may place their names onto one site list only. Waitlist placement on the Site list will be determined by the date/time of receipt of the completed site selection offer letter by the Housing Assistance Office, and by verified preferences. Applicants choosing a site where there are units currently available will be scheduled for screening interviews. Applicants choosing sites where there are no units currently available will not be scheduled for a interview until units are expected. Applicants failing to reply to an offer letter within the time specified on the letter are assumed to no longer be interested, their applications will be withdrawn. If an applicant subsequently responds to the offer letter within 30 days of the withdrawal of their application, the application will be reactivated and placed onto the site waitlist chosen as of the date and time that the response was received by BMHA.

(2) Subsequent addition onto Site Waitlists

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Applicants/transferees who wish to change their site selection may do so at any time. They will have their name entered onto the new list of their choice as of the date/time that they make the new selection; transfer priorities and verified preferences may also apply. Their name will be removed from their old site choice at this time.

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)].

(1) Monitoring of Site Based Waitlists

In compliance with the regulations at 24CFR903.7, BMHA will provide annual reports on the current race and ethnicity of tenants in residence,and of any change in racial or ethnic composition that occurred during the year. A report on the disability related change in tenant composition will also be prepared. These reports will be attached as an exhibit to the annual agency plan submission to HUD.

At least once every three years, the BMHA will use the services of independent testers to assure that the site based waiting list procedures contained herein are not being implemented in a discriminatory manner, and to ascertain that no patterns or practices of discrimination exist. The results of these studies will be submitted to HUD.

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 fully lease units in all of 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].

Waitlists that are closed to new applicants will remain open for current BMHA residents who qualify for transfer under the provisions of chapter 12 of this policy.

Reopening the Waiting List

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

<u>PHA Policy</u>

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

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

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

The Buffalo News…

BMHA Website

Regional Newspaper

Public Access Channel

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 admit 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

<u>PHA Policy</u>

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

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

PHA Policy

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

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

4-II.F. UPDATING THE WAITING LIST

HUD requires the PHA to establish policies that describe the circumstances under which applicants will be removed from the waiting list [24 CFR 960.202(a)(2)(iv)].

Purging the Waiting List

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

PHA Policy

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

To update the waiting list, BMHA will send an update request as needed 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 BMHA 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.

Waiting list with constant movement will be considered self-purging if all applications are less than 9 months.

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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 BMHA not later than 15 business days from the date of BMHA 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 BMHA from making an eligibility determination; therefore no informal hearing is required.

If a family is removed from the waiting list for failure to respond, BMHA may reinstate the family within 30 days of removal, if the lack of response was due to PHA error, or to circumstances beyond the family's control.

Removal from the Waiting List

BMHA will remove an applicant from the waiting list upon request by the applicant family. In such cases no informal hearing is required.

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

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

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

PHA Policy

When an applicant or resident family requests a copy of BMHA's tenant selection policies, they will be informed that the complete ACOP inclusive of the tenant selection policy is maintained on the BMHA website for public review. BMHA will provide a printed copy of the ACOP to any member of the public free of charge upon request.

4-III.B. SELECTION METHOD

Local Preferences [24 CFR 960.206]

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

PHA Policy

The PHABuffalo Municipal Housing Authority will use the following local preferences in determining waitlist placement. Applicants must verify that they qualify for a preference before it will be granted. Preferences are not cumulative; only one preference will apply at any time.

In compliance with the Regulatory and Operating agreements for the BMHA Tax credit properties these applicant waitlist preferences will not apply to the waitlists maintained for the BMHA Tax Credit assisted sites (ADPII, ADPI, LWSH) .

Working Families Preference (1 point)

In order to bring higher income families into public housing, the PHA will establish a preference for "working" families, where the head, spouse, cohead, or sole member is employed at least 20 hours per week. As required by HUD, families where the head and spouse, or sole member is a person age 62 or older,

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or is a person with disabilities, will also be given the benefit of the working preference [24 CFR 960.206(b)(2)].

Veterans Preference (1 point)

A one-point waitlist preference will be granted to any honorably discharged veteran who has served in the armed forces of the United States, including veterans called to active duty from a State National Guard. Any veteran who documents that they have received a general discharge or above is eligible to receive this preference. Currently serving members of the military are also eligible to receive this preference.

BMHA employee (1point)

A one-point waitlist preference will be granted to any current BMHA employee in good standing or former BMHA employee who was in good standing at the time of separation from service.

Families displaced by government action (2 points)

A two point preference will be granted to any applicant family that has been displaced from their residence by direct government action such as a property condemnation or an eminent domain seizure. This preference will also be granted to families whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Successful completion of a residential transitional housing program (1 point)

A one point preference will be granted to persons or families that are within 90 days of successful completion of a residential transitional housing program, and to families who have successfully completed a residential transitional housing program within 90 days.

Any residential transitional housing program whose purpose is to address the social needs and causes that contribute to homelessness that also have a continuing follow up program intended to aide their graduating clients into making a successful transition to stable housing will be recognized when documentation verifying the qualifying elements of the program is provided

Relocation from a non-federal BMHA partnership or development (1 point)

A one point preference will be granted to any current resident in documentated good standing of any non-federal BMHA partnership or development who wishes to make application to the BMHA Federal LIPH program

Income Targeting Requirement [24 CFR 960.202(b)]

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

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.

PHA Policy1

BMHA 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).

In compliance with our HUD approved Allocation Plan, buildings and sections of buildings have been designated for occupancy by mixed elderly/non-elderly disabled families. In filling vacancies for these apartments, only elderly, near-elderly and non-elderly disabled will be selected from the waiting lists.

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

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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)].

PHA Policy

In compliance with the BMHA HUD approved Allocation Plan, buildings and sections of buildings have been designated for occupancy by elderly and near-elderly families. In filling vacancies for these apartments, only elderlyand near-elderly will be selected from the waiting lists.

Units Designated for Non-elderly Disabled

In compliance with our HUD approved Allocation Plan, buildings and sections of buildings have been designated for occupancy by non-elderly disabled families. In filling vacancies for these apartments, only non-elderly disabled will be selected from the waiting list.

Units Designated for General Occupancy

In compliance with our HUD approved allocation plan, all BMHA units not designated as elderly only, disabled only, or mixed elderly/disabled are considered to be general occupancy apartments. In filling vacancies for these apartments, all applicants will be considered from the waiting lists except persons requesting offers of elderly only apartments

Units Designated as Accessible

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Accessible units will be first offered to current residents who need an accessible unit, then to families from the appropriately designated waitlist who need an accessible unit. If no family in the designated group requires the accessibility features of the unit, then the unit will next be offered to other non-designated families who need an accessible unit. If there are no applicants on the waitlist that require an accessible unit, then the unit will be offered to other applicants in the order that their names come to the top of the waiting list. Such applicants, however, must sign a release form stating they will accept a transfer if, at a future time, a family requiring an accessible unit applies. Any transfer required will be made in compliance with the transfer provisions contained in this policy.

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 in 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.

BMHA 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.

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

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

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

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

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

- Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities

- Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments

- Establishing a preference for admission of working families in developments below the EIR

- Skipping a family on the waiting list to reach another family in an effort to further the goals of deconcentration

- Providing other strategies permitted by statute and determined by the PHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and PHA strategic objectives

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

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

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

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In compliance with the regulations at 24CFR903.2, the BMHA will analyze the income levels of families residing in covered general occupancy developments each year. If the average (or median) income level of any covered development differs by more than 15% from the average income level of all covered developments combined, then the following steps will be taken as needed:

A. A review of the percentage of employed tenants will be made to see if the application of preferences or other admissions plans will foster needed placements.

B. Marketing outreach to underrepresented income sectors will be conducted.

C. BMHA will skip families on the waiting list to reach other families with a lower or higher income

If there are not a sufficient number of available vacancies in a development where it has been determined that further income mix changes are needed the BMHA may offer voluntary transfers to the top 10% of the most income concentrated tenants in the development. New placements into these vacated units will then be made of applicants/transfers whose income levels will aid in fostering the needed change

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.

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

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

Offers to Transfers and Applicants will occur in the following order. The transfer priorities listed in this policy will determine the order of transfers, and preference considerations listed in this policy will determine the order of applications. Date and time will be used to rank files with equal preference or priority, oldest first.

Group 1. Emergency Transfers and Emergency Environmental Transfers.

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Group 2. All Mandatory Transfers

Group 3. ALL Applicants and Non-Mandatory Transfers

EMERGENCY PLACEMENT HOUSING PROGRAM

The BMHA Executive Director or designee may forward for screening and emergency placement families who must vacate their current residences at the recommendation of a law enforcement agency. Crime victims (including domestic violence victims), and witnesses to a crime whose lives and personal safety are in severe and immediate peril may be placed in the BMHA without regard for the existing applicant waitlists.

To initiate processing, a letter of request from a law enforcement agency describing the situation and requesting an emergency placement should be addressed to the BMHA Executive Director or the Director of Management. Applicants will be required to provide police reports and other verification from law enforcement and /or domestic violence agencies that document the nature and severity of the threats they face. Applicants seeking emergency placements due to a domestic violence situation will be required to show that they have an order of protection in place for themselves and their family members that has been violated, and that the aggressor remains at large. The BMHA will not treat as an emergency placement any family subject to an order of protection where the children of the aggressor who currently reside with the victim are not also covered by the protection order and the aggressor will retain visitation rights.

These emergency applicants will be allowed to choose an appropriate unit from the currently available inventory. They will have their applications screened in an accelerated manner. The preparation of their selected apartment and their placement will be expedited. These applicants will not be allowed to wait for any unit that is not currently available at the time that their emergency application is processed for interview. All current BMHA screening and eligibility standards will apply. If a denial of the application is necessitated based on screening results, the applicants only BMHA appeal will be an informal hearing conducted through the office of the BMHA legal counsel.

4-III.C. NOTIFICATION OF SELECTION

BMHA will notify the family by first class mail when they are selected from the waiting list. The family will be given ten (10) calendar days from the date the letter is dated to contact the BMHA regarding the offer for 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

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

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

Other documents and information that should be brought to the interview

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

If the applicant is willing to accept an offered unit but is unable to move or interview at the time of first availability, and they can show clear evidence of their inability to move, they will be allowed to request a good cause delay that will allow them to maintain their place on the waiting list for up to 90 days. Such situations include persons who are currently undergoing medical care who are unable to participate in or facilitate a move; persons who are bound by a written dwelling lease or currently in process of selling their home; persons who choose to decline an offer that is made to achieve deconcentration of poverty in compliance with 24 CFR 903.2 and the family does not want to accept the deconcentration offer; and persons who receive offers of an apartment that has accessible features that the family does not need and they don't want to be subject to a 30 day notice to move should the unit later be needed by a family needing the accessible features of the unit.

The BMHA will attempt to certify all applicants in advance of expected available units. When an applicant family appears to be within (3) months of being offered a unit, the family may be invited to a certification interview and final verification of eligibility will be undertaken.

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 2012-10].

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)].

PHA Policy

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

The head of household and the spouse/cohead and all adult family members are required to attend the interview together except active military personnel. 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 BMHA.

The interview will be conducted only if the head of household or spouse/cohead provides appropriate 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, BMHA will allow the family to retain its place on the waiting list for ***up to 30 days***. If all household members have not disclosed their SSNs the next time a unit becomes available, BMHA 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. If the family is verified as eligible for the preference, BMHA will proceed with the interview. If BMHA 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, BMHA 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 up to10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial ,

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, BMHA will provide translation services in accordance with BMHA's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact BMHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, BMHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without BMHA approval will have their applications made inactive based on the family's failure to supply information needed to determine eligibility. The second

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appointment letter will state that failure to appear for the appointment without a request to reschedule will be interpreted to mean that the family is no longer interested and their application will be made inactive. Such failure to act on the part of the applicant prevents BMHA from making an eligibility determination, therefore BMHA will not offer an informal hearing.

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

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

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

Buffalo Municipal Housing Authority 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)].

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

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

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CHAPTER 5 - OCCUPANCY STANDARDS AND UNIT OFFERS

INTRODUCTION

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

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

Policies in this chapter are organized in two parts.

> Part I: Occupancy Standards. This part contains the PHA's standards for determining the appropriate unit size for families of different sizes, compositions, and types.
>
> Part II: Unit Offers. This part contains the PHA's policies for making unit offers, and describes actions to be taken when unit offers are refused.

PART I: OCCUPANCY STANDARDS

5-I.A. OVERVIEW

Occupancy standards are established by Buffalo Municipal Housing Authority 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 underutilization or from excessive wear and tear due to overcrowding. Part I of this chapter explains the occupancy standards. These standards describe the methodology and factors BMHA 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, BMHA 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. BMHA is 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 BMHA does determine the size of unit the family qualifies for under the occupancy standards, BMHA does not determine who shares a bedroom/sleeping room.

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

> BMHA will use the same occupancy standards for each of its developments.
>
> BMHA's occupancy standards are as follows:

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

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

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

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

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

Foster children will be included in determining unit size.

If there is 7 years or more difference between the ages of children who now share a bedroom, they may be assigned separate bedrooms

Anyone 18 years of age or older may be assigned a separate bedroom, however it is assumed that spouses will share a bedroom unless a request for a separate room is made.

Children of opposite sex both under age of 5 may share a bedroom until one reaches age of 5.

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

BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS
0	1	1
1	1	2
2	2	4
3	3	6
4	5	8
5	7	10
6	8	12

5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS

Types of Exceptions

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

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

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

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

Processing of Exceptions

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

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

PART II: UNIT OFFERS

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

5-II.A. OVERVIEW

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

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

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PHA Policy

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

5-II.B. NUMBER OF OFFERS

Certified applications and transfers that have been forwarded for placement to the development sites they have chosen will be offered the next available ready unit. If they refuse the first unit offered, they will be offered the next suitable unit that becomes available at the site. The second unit offer will be the final offer, unless there is good cause for refusing the offer.

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

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

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

Offers made by telephone will be confirmed by letter.

5-II.D. REFUSALS OF UNIT OFFERS

Good Cause for Unit Refusal

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

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

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

The family demonstrates to BMHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, or stalking in accordance with section 16-VII.D of this ACOP. Reasons offered must

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be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

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

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

The unit has lead-based paint and the family includes children under the age of six.

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

BMHA will require documentation of good cause for unit refusals.

Unit Refusal without Good Cause

When an applicant rejects the final unit offer without good cause, BMHA 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 .

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

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

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

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

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

- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

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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.

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

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

5-II.F. DESIGNATED HOUSING

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

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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 annual income is used to determine their income eligibility for the public housing program and is also used to calculate the amount of the family's rent payment. Buffalo Municipal Housing Authority will use the policies and methods described in this chapter to ensure that only income-eligible families receive assistance and that no family pays more or less rent than is required under the regulations. This chapter describes HUD regulations and PHA policies related to these topics in three parts as follows:

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

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

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

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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

5.609 Annual income.

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

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

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

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

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

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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.

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Temporarily Absent Family Members

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

PHA Policy

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

Absent Students

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

Absences Due to Placement in Foster Care

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

PHA Policy

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

Absent Head, Spouse, or Cohead

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

Individuals Confined for Medical Reasons

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

Joint Custody of Children

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

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

Caretakers for a Child

The approval of a caretaker is at BMHA's discretion and subject to BMHA's screening criteria. If neither a parent nor a designated guardian remains in a household, BMHA will take the following actions.

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

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

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

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

6-I.C. ANTICIPATING ANNUAL INCOME

Buffalo Municipal Housing Authority 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

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

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- 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)]
- BMHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

BMHA is 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 tenant-provided documents 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.

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

BMHA 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 BMHA determines additional information is needed.

In such cases, BMHA 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 BMHA annualized projected income.

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

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

Known Changes in Income

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If BMHA 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 BMHA 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 BMHA 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 BMHA'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.

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.

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6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

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

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

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

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

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

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

Certain Earned Income of Full-Time Students

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

Income of a Live-in Aide

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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)
- 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 BMHA, 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 BMHA'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)].

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

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

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

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

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

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

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

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

Eligibility

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

- Employment of a family member who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.

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- 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."

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

The family member's prior, or prequalifying, income remains constant (as a baseline) throughout the period that he or she is participating in the EID.

Initial 12-Month Exclusion

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

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

Second 12-Month Exclusion and 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. The 12 months are cumulative and need not be consecutive.

Lifetime Limitation

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

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During the 48-month eligibility period, BMHA 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)]

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

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

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

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

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

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

BMHA does not currently have an established 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].

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To determine business expenses that may be deducted from gross income, BMHA 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 BMHA to deduct from gross income expenses for business expansion.

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 BMHA to deduct from gross income the amortization of capital indebtedness.

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means BMHA 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 BMHA 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.

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, BMHA 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

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.

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

Overview

There is no asset limitation for participation in the public housing program. However, HUD requires that BMHA include in annual income the anticipated "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, BMHA 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

Income from Assets

BMHA 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 BMHA 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) BMHA 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, BMHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

> 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 BMHA to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

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

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of 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.

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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), Notice PIH 2012-29]

When net family assets are $5,000 or less, BMHA 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, BMHA 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 an average passbook savings rate as determined by BMHA.

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for BMHA to establish a passbook rate within 0.75 percent of a national average.

- BMHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

  BMHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

  BMHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.

  Changes to the passbook rate will take effect on February 1 following the December review.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for BMHA 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.

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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 investment plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement investment plan.

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."

> If an asset is owned by more than one person and any family member has unrestricted access to the asset, BMHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.
>
> If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, BMHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, BMHA 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 BMHA 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

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

> BMHA 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

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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.

> 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

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

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

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

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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), BMHA 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].

In determining the equity, BMHA will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

BMHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, BMHA will use the basic loan balance information to deduct from the market value in the equity calculation.

Equity in real property and other capital investments is considered in the calculation of asset income **<u>except</u>** 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]

BMHA 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].

For the purposes of calculating expenses to convert to cash for real property, BMHA 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.

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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.

> 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 BMHA 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, BMHA 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].

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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].

> In determining the value of personal property held as an investment, BMHA will use the family's estimate of the value. BMHA 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)].

> 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 <u>social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions</u>. 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)].

- <u>Disability or death benefits and lottery receipts</u> 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

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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].

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

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

BMHA 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, BMHA 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)]. Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income [Notice PIH 2012-1].

  BMHA 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)].

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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]

BMHA 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, BMHA must include in annual income "imputed" welfare income. BMHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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)].

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For special procedures related to grievance hearings based upon BMHA'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 welfare 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

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

> BMHA will count court-awarded amounts for alimony and child support unless BMHA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].
>
> Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

Regular Contributions or Gifts

BMHA 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)].

> Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.
>
> Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by BMHA. For contributions that may vary from month to month (e.g., utility payments), BMHA 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 12/14/12 that have not been discussed earlier in this chapter include the following:

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- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]

- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)].

  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 12/14/12]. 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)

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(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) (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*

(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) (-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-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

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

(q) 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)

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

(s) 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)

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(t) 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 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)

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

(v) 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)

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

HUD regulations require BMHA 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 (BMHA) must deduct the following amounts from annual income:

(1) $480 for each dependent;

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

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

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

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

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

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

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Anticipating Expenses

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

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

6-II.B. DEPENDENT DEDUCTION

An allowance of $480 is deducted from annual income 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."

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

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are	Psychiatric treatment

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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)	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

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, BMHA 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.

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family's request, BMHA will consider factors such

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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 BMHA 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]. BMHA further defines and describes auxiliary apparatus as an expense

Eligible Auxiliary Apparatus

PHA Policy

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

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

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, BMHA 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

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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.

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

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, BMHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-II.F. CHILD CARE EXPENSE DEDUCTION

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

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

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

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

In evaluating the family's request, BMHA 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

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

Furthering Education

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

Being Gainfully Employed

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

Earned Income Limit on Child Care Expense Deduction

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

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

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

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

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

Eligible Child Care Expenses

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

Allowable Child Care Activities

> For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.
>
> The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.
>
> If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, BMHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs

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

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

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

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 BMHA 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.

PHA Policy

BMHA uses a permissive deduction for working families

Employment related expenses; deduct $1,000.00 per family one deduction per household

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 BMHA.

TTP Formula [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between $0 and $50 that is established by BMHA

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

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Welfare Rent [24 CFR 5.628]

Minimum Rent [24 CFR 5.630]

The minimum rent for this locality is $50.

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.

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].

<u>BMHA uses the flat rent method to determine resident payments.</u>

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.

BMHA will make utility reimbursements to the family when the cost of the utilities exceeds their TTP.

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

Overview

If BMHA establishes a minimum rent greater than zero, BMHA 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 BMHA determines that a hardship exists, the TTP is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

(1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

(2) The family would be evicted because it is unable to pay the minimum rent.

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

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

(4) A death has occurred in the family.

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).

Implementation of Hardship Exemption

Determination of Hardship

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

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

BMHA 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.

BMHA 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 BMHA has established a minimum rent of $35.	
TTP – No Hardship	**TTP – With Hardship**
$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $35 Minimum rent	$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $35 Minimum rent
Minimum rent applies. TTP = $35	Hardship exemption granted. TTP = $15

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.

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

No Financial Hardship

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

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

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

Temporary Hardship

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

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

Long-Term Hardship

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

The hardship period ends when any of the following circumstances apply:

(1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.

(2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a $60/month child support payment, the hardship will continue to exist until the family receives at least $60/month in income from another source or once again begins to receive the child support.

(3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

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

Overview

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, the PHAmust 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]

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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].

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)].

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

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 a maximum rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.

(2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).

(3) Multiply the member maximum subsidy by the number of eligible family members.

(4) Subtract the subsidy calculated in the last step from the maximum rent. This is the prorated TTP.

(5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.

> Revised public housing maximum rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted.

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For policies related to the establishment of the public housing maximum rent see Chapter 16.

6-III.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]

Flat Rents [24 CFR 960.253(b)]

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

There is no utility allowance or reimbursement with flat rents. When the family elects to pay the flat rent, the flat rent amount quoted to the family by the PHA is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents are contained in Chapter 16.

Family Choice in Rents [24 CFR 960.253(a) and (e)]

Once each year, the 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.

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

> Upon determination by the PHA that a financial hardship exists, the PHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

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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

> PHA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

Change in Flat Rents

> Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit [PH Occ GB, pp. 137-138].

Flat Rents and Earned Income Disallowance

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

A family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their 48 month period would have the 12 cumulative months of full (100 percent) and 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 48-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 48-month lifetime limit expire while the family is paying flat rent.

Flat Rents and Mixed Families

Mixed families electing to pay flat rent must first have a flat rent worksheet completed to see if the flat rent must be prorated. The worksheet is located in Appendix III of the *Form HUD-50058 Instruction Booklet*.

If the flat rent is greater than or equal to the public housing maximum rent, there is no proration of flat rent and the family pays the flat rent for the unit.

If the flat rent is less than the maximum rent, the worksheet will calculate a prorated flat rent. The mixed family will pay the prorated flat rent.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

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(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:

(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)

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

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

HHS DEFINITION OF "ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

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

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

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

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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;

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(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.]

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EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, 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 therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

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EXHIBIT 6-4: EARNED INCOME DISALLOWANCE

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 twelve month exclusion*. During the cumulative twelve month period beginning on the date 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 annual income (as defined in 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in*. During the second cumulative twelve month period after the date 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 annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance*. The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(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;

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(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

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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

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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

PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. PHA must not pass on the cost of verification to the family.

PHA will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD.

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 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 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 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.

All applicant information given to and used by the Authority is of a confidential nature. A notarized formal release of information form is required for the disclosure of any individual applicant's information to any party who is not directly involved in the administration or monitoring of the Authority's programs.

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The PHA will maintain records indicating the final dispositions of all application files, offers/responses to offers, for three years or until audited by HUD, whichever occurs later. Any information used in the determination of eligibility will be documented and remain a part of this record. The head of household may request to see and copy any non-privileged information contained in his/her open file at anytime. The cost of copying may be charged to the applicant. Other adult members may see and copy only the information directly pertinent to them. The review and copying of closed files is allowed only with permission of the PHA legal department. A file is considered closed when it is withdrawn and cannot be reopened following normal procedures, or when a file is denied and all allowable PHA appeals have been exhausted or expired.

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, PHA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with PHA's grievance procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

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

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general, HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

PHA Policy

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

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

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

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

Written Third-party Verification Form

Oral Third-party Verification

Self-Certification

Requirements for Acceptable Documents

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

Print-outs from web pages are considered original documents.

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

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

File Documentation

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 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. PHA will maintain records indicating the final dispositions of all application files, offers/responses to offers, for three years or until audited by HUD, whichever occurs later.

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

Reported family annual income

Value of assets

Expenses related to deductions from annual income

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

When PHA is unable to obtain third-party verification, 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].

The head of household may request to see and copy any non-privileged information contained in his/her open file at anytime. The cost of copying may be charged to the applicant. Other adult members may see and copy only the information directly pertinent to them. The review and copying of closed files is allowed only with permission of the PHA legal department. A file is considered closed when it is withdrawn and cannot be reopened following normal procedures, or when a file is denied and all allowable PHA appeals have been exhausted or expired.

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

Up-front income verification (UIV) refers to 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 PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until PHA has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through PHA's informal review/hearing processes.

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

PHA must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexamination or recertification of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families.

EIV Income Reports

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

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

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

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

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

EIV 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.

PHA is 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.

PHA Policy

The PHA will identify residents whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis. The PHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the tenant. When PHA determines that discrepancies exist as a result of PHA errors, such as spelling errors or incorrect birth dates, it will correct the errors promptly.

Upfront Income Verification Using Non-HUD Systems (Optional)

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

PHA Policy

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

HUD's EIV system

Use of Third-Party Employment Verification Database Services

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 PHA by the family. If written third-party verification is not available, 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]

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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.

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

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.

> Third-party documents provided by the family must be dated within 60 days of PHA request date.
>
> If PHA determines that third-party documents provided by the family are not acceptable, PHA will explain the reason to the family and request additional documentation.
>
> As verification of earned income, the PHA will require the family to provide at least the two most current, consecutive pay stubs.

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, 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.

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

> PHA Policy
>
> The PHA will send third-party verification forms directly to the third party.
>
> Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the PHA.

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

For third-party oral verification, PHA contacts 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.

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

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

PHA Policy

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

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

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

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

PHA Policy

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

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

Primary Documents

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

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].

PHA Policy

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

7-I.E. SELF-CERTIFICATION

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

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

PHA Policy

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

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

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

Part II: Verifying FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

PHA 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) Current U.S. passport Current employer identification card	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records

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

If none of these documents can be provided and at PHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided

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in a format acceptable to PHA and be signed in the presence of a PHA representative or PHA notary public.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where PHA has reason to doubt the identity of a person representing him or herself to be a tenant or a member of a tenant family.

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

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.

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

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, is illegible, or if the document appears to be forged.

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

When a 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. 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 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 PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

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

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

PHA Policy

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PHA will verify each disclosed SSN by:

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

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

7-II.C. DOCUMENTATION OF AGE

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

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

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

7-II.D. FAMILY RELATIONSHIPS

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

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

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

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

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

Separation or Divorce

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

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

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

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

Absence of Adult Member

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

Foster Children and Foster Adults

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

7-II.E. VERIFICATION OF STUDENT STATUS

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

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

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

7-II.F. DOCUMENTATION OF DISABILITY

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

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

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy

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- 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

- Inquiry about whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance

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

Family Members Receiving SSA Disability Benefits

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

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

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

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

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

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and

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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.

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

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

Eligible Immigrants

Documents Required

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

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

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

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

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

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

7-II.H. VERIFICATION OF PREFERENCE STATUS

PHA must verify any preferences claimed by an applicant that determined his or her placement on the waiting list.

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PHA Policy

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

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

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

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

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.

Wages

PHA Policy

For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

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.

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

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

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

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

Social Security/SSI Benefits

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

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

7-III.D. ALIMONY OR CHILD SUPPORT

The methods PHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it ***receives regular payments***, verification will be obtained in the following order of priority:

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

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

Third-party verification form from the person paying the support

Family's self-certification of amount received

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

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

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

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

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

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

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

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

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

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

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

7-III.F. NET INCOME FROM RENTAL PROPERTY

The family must provide:

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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, PHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

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

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

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

7-III.H. INCOME FROM EXCLUDED SOURCES

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

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, PHA is **not** required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. Fully excluded income is defined as income that is entirely excluded from the annual income determination (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

PHA may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there

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is any doubt that a source of income qualifies for full exclusion; PHA has the option of requiring additional verification.

For partially excluded income, PHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance).

PHA Policy

The PHA will accept the family's self-certification as verification of fully excluded income. The PHA may request additional documentation if necessary to document the income source.

The PHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.I. ZERO ANNUAL INCOME STATUS

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

PART IV: VERIFYING MANDATORY DEDUCTIONS

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

The dependent and elderly/disabled family deductions require only that 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. 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.

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7-IV.B. MEDICAL EXPENSE DEDUCTION

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

Amount of Expense

PHA Policy

Medical expenses will be verified through:

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

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

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

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

In addition, 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. 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 PHA's policy on what counts as a medical expense.

Unreimbursed Expenses

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

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

Expenses Incurred in Past Years

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

The anticipated repayment schedule

The amounts paid in the past, and

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

7-IV.C. DISABILITY ASSISTANCE EXPENSES

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

Amount of Expense

Attendant Care

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

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

Expenses for attendant care will be verified through:

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

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

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

Auxiliary Apparatus

Expenses for auxiliary apparatus will be verified through:

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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, 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. PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

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

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

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

Unreimbursed Expenses

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

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

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7-IV.D. CHILD CARE EXPENSES

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

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of child care.
- The costs are reasonable.

Eligible Child

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

Unreimbursed Expense

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

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

Pursuing an Eligible Activity

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.

> *Information to be Gathered*
>
> PHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.
>
> *Seeking Work*
>
> Whenever possible PHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases PHA will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to PHA any reports provided to the other agency.

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

Furthering Education

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

Gainful Employment

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

Allowable Type of Child Care

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

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

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

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

Reasonableness of Expenses

Only reasonable child care costs can be deducted.

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

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

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

- **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.

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.

All other Noncitizens

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

• 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"	• 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).
• Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".	• Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

- 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 contractual basis of the legal relationship between PHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD regulations.

HUD regulations require PHA to inspect each dwelling unit prior to move-in, at move-out, and annually during the period of occupancy. In addition, PHA may conduct 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 PHA's policies pertaining to lease execution, lease modification, and payments under the lease.
>
> Part II: Inspections. This part describes PHA's policies for inspecting dwelling units.

PART I: LEASING

8-I.A. OVERVIEW

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

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that 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 on leasing, where applicable, as well as the PHA's leasing policies.

8-I.B. LEASE ORIENTATION

After unit acceptance but prior to occupancy, a representative Housing Manager, or designee will conduct a lease orientation with the family. The head of household or spouse is required to attend.

Orientation Agenda

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

A copy of the lease

A copy of BMHA's grievance procedure

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A copy of the house rules

A copy of BMHA's schedule of maintenance charges

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

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

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

Information about the protections afforded by the Violence against Women Act of 2005 (VAWA) to victims of domestic violence, dating violence, and stalking (see section 16-VII.C)

Topics to be discussed and explained to all families include:

Applicable deposits and all other charges

Review and explanation of lease provisions

Unit maintenance requests and work orders

PHA's interim reporting requirements

Review and explanation of occupancy forms

Community service requirements

Family choice of rent

VAWA protections

Application or transfer information which does not affect Eligibility for Admission may be corrected by the Housing Manager. Any changes or corrections made shall become part of the application or transfer file. All changes shall be dated and initialed by the prospective tenant and Housing Manager, or his/her representative.

If through review, it is ascertained that the application or transfer has not been certified and/or re-certified according to the Tenant Selection and Assignment Plan, or there has been a change in factors affecting Eligibility for Admission for which corrections cannot be made by the Housing Manager, or his/her representative, including suitability for placement, or errors in fact, the application is immediately to be returned to the Housing Assistance Office with a memo from the Housing Manager explaining the reason for return.

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When an application is returned to Housing Assistance Office, a review of the application or transfer file must be conducted and the results of the review, findings and the basis for the current eligibility determination must be included in the applicant or transfer file.

8-I.C. EXECUTION OF LEASE

The Housing Manager or designee will contact the prospective tenant to set up an appointment for leasing. In transfer cases, the Housing Manager shall contact the Manager of the development at which the tenant resides to insure that the tenant is still in residence, that his/her account is paid in full and that the tenant is in compliance with all the provisions of the Dwelling Lease. Telephone contact will be made in all possible instances to expedite housing the family or person. Letters will be sent to all prospective tenants advising them of the location and size of the unit for which their move in is anticipated, amount of rent and security deposit to be charged based on last verified income, that payments are required by check or money order, date of appointment for inspection and leasing of the unit, location of the designated place where the prospective tenant is to meet the Authority staff member.

The lease must be executed by the tenant and 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 unit to another.

The lease must state the composition of the household as approved by 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.

> The head of household, spouse or cohead, and all other adult members of the household will be required to sign the public housing lease prior to admission. The head of household will be provided a copy of the executed lease and PHA will retain a copy in the resident's file.
>
> Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to PHA assistance. The live-in aide is only approved to live in the unit while serving as the care attendant for the family member who requires the care.

8-I.D. MODIFICATIONS TO THE LEASE

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

Modifications to the Lease Form

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

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

PHA Policy

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

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

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

BMHA Policy

When the PHA proposes to modify or revise schedules of special charges or rules and regulations, the PHA will mail to each household and post a copy of the notice in the central office, Management Offices, Community Spaces and other BMHA locations visible to resident. Documentation of proper notice will be included in each resident file.

Other Modifications

PHA Policy

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

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

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

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

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

At the option of the 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.

BMHA Policy

Residents must pay a security deposit to the BMHA at the time of admission. The amount of the security deposit will be equal to the family's total tenant payment at the time of move-in, and must be paid in full prior to occupancy.

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

Within 30 days of move-out, the BMHA will refund to the resident the amount of the security deposit (including interest earned on 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.

The BMHA will provide the resident with a written list of any charges against the security deposit within 10 business days of the move-out inspection to last known address. If the resident disagrees with the amount charged, the BMHA will provide a meeting to discuss the charges.

If the resident transfers to another unit, BMHA will transfer the security deposit to the new unit. The tenant will be billed for any maintenance or other charges due for the "old" unit, requiring payment separate from Security Deposit.

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.

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

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

Late Fees and Nonpayment

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

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

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

PHA Policy

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

In addition, if the resident fails to make payment by the end of office hours on the seventh day of the month, a late fee of $25.00 will be charged. Notices of late fees will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the PHA may not take action for nonpayment of the fee until the conclusion of the grievance process. If the resident can document financial hardship, the late fee may be waived on a case-by-case basis.

When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of $10 .00 will be charged to the family. The fee will be due and payable 14 days after billing.

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)].

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

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

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

PHA Policy

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

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

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

PART II: INSPECTIONS

8-II.A. OVERVIEW

HUD regulations 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 the 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 tenant, must be provided to the tenant and retained in the resident file.

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PHA Policy

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

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

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 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 within 10 business days of conducting the move-out inspection.

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

PHA Policy

When applicable, the PHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 10 business days of conducting the move-out inspection.

Annual Inspections [24 CFR 5.705]

The PHA is required to inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS). Under the Public Housing Assessment System (PHAS), HUD's physical condition inspections do not relieve 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

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

Special Inspections

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

Housekeeping

Unit condition

Suspected lease violation

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Preventive maintenance

Routine maintenance

There is reasonable cause to believe an emergency exists

Other Inspections

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

8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS

Notice of Entry

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

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

PHA Policy

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

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

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

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

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, PHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

Scheduling of Inspections

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

Attendance at Inspections

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

PHA Policy

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

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

8-II.D. INSPECTION RESULTS

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

Emergency Repairs [24 CFR 966.4(h)]

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

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

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

PHA Policy

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

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

Any condition that jeopardizes the security of the unit

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

Natural or LP gas or fuel oil leaks

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

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

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors

Non-emergency Repairs

PHA Policy

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

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

Resident-Caused Damages

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

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

Housekeeping

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

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

Notices of lease violation will also be issued to residents who purposely disengage the unit's smoke detector. Only one warning will be given. A second incidence will result in lease termination.

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CHAPTER 9 – RE-EXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

INTRODUCTION

PHA is required to reexamine each family's income and composition periodically, and to adjust the family's rent accordingly. PHAs must adopt policies for conducting 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 PHA must reexamine the income and composition of a family depends on whether the family pays income-based rent or flat rent. HUD requires PHA to offer all families the choice of paying income-based rent or flat rent at least annually. PHA's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

> Part I: Annual Reexaminations for Families Paying Income Based Rents. This part discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.
>
> Part II: Reexaminations for Families Paying Flat Rents. This part contains the PHA's policies for conducting full reexaminations of family income and composition for families paying flat rents. These full reexaminations are conducted at least once every 3 years. This part also contains the PHA's policies for conducting annual updates of family composition for flat rent families.
>
> Part III: Interim Reexaminations. This part includes HUD requirements and PHA policies related to when a family may and must report changes that occur between annual reexaminations.
>
> Part IV: Recalculating Tenant Rent. After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6, this part describes the 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

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For those families who choose to pay income-based rent, 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, 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, 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 for the purposes of lease enforcement or eviction

PHA is required to obtain all of the information necessary to conduct reexaminations. How that information will be collected is left to the discretion of 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].

9-I.B. SCHEDULING ANNUAL REEXAMINATIONS

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

PHA Policy

Generally, PHA will schedule annual reexaminations to coincide with the one of two annual cycles, April or July. PHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.

Annual cycle selected by PHA will establish the family's 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, PHA will perform a new annual reexamination PHA 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

PHA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of PHA. However, PHAs should give tenants who were not provided the opportunity to provide contact information at the time of admission the option to complete Form HUD-92006 at this time. PHA should provide the family with the opportunity to update, change, or remove information from the HUD-92006 at the time of the annual reexamination [Notice PIH 2009-36].

PHA Policy

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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 PHA to request a reasonable accommodation.

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

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

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

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

9-I.C. CONDUCTING ANNUAL REEXAMINATIONS

The terms of the public housing lease require the family to furnish information regarding income and family composition as may be necessary for the redetermination of rent, eligibility, and the appropriateness of the housing unit [24 CFR 966.4(c)(2)].

PHA Policy

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

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

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

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

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

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

Change in Unit Size
Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. 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.

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

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

9-I.D. EFFECTIVE DATES

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

PHA Policy

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

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

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

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled

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effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the month following the change.

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

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by PHA by the date specified, and this delay prevents PHA 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 PHA offer all families the choice of paying income-based rent or flat rent at least annually

For families who choose flat rents, 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)]. PHA is only required to provide the amount of income-based rent the family might pay in those years that 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, PHA must also review compliance with the community service requirement for families with nonexempt individuals.

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

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

Reexamination Policies

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

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

As noted above, full reexaminations are conducted every 3 years for families paying flat rents. In the years between full reexaminations, regulations require 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 PHA does not collect information about the family's income and expenses, and the family's rent is not recalculated following an annual update.

Scheduling

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)].

PHA Policy

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

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

Conducting Annual Updates

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

PHA Policy

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

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

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

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

Change in Unit Size
Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. PHA may use the results of the annual update to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)].

Compliance with Community Service
For families who include nonexempt individuals, 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.

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

9-III.A. OVERVIEW

Family circumstances may change during the period between annual reexaminations. HUD and PHA policies define the types of information about changes in family circumstances that must be reported, and under what circumstances PHA must process interim reexaminations to reflect those changes. HUD regulations also permit 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. PHA must complete the interim reexamination within a reasonable time after the family's request.

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

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

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

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

PHA Policy

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

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

New Family Members Not Requiring Approval

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

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

New Family and Household Members Requiring Approval

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

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.

<u>PHA Policy</u>

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. Requests must be made in writing and approved by PHA prior to the individual moving into the unit.

PHA will not approve the addition of a new family or household member unless the individual meets PHA's eligibility criteria and documentation requirements

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

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

Departure of a Family or Household Member

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

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

9-III.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations applying to families paying income-based rent can be scheduled either because 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, PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

PHA Policy

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

PHA-initiated Interim Reexaminations

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

PHA Policy

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

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

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

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

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

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

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Entry or discharge from the military service.

Retirement or reemployment of a retired person returning to gainful employment (Board Approval 03/26/85)

Family-Initiated Interim Reexaminations

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

Required Reporting

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

PHA Policy

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

PHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's rent will change as a result of the increase. In all other cases, PHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)]. The 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.If a family reports a change that it was not required to report and that would not result in an increase in the tenant rent, PHA will note the information in the tenant file, but will conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, PHA will conduct an interim reexamination. See Section 9-III.D. for effective dates.

Families may report changes in income or expenses at any time.

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9-III.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

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

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

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

Effective Dates

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

PHA Policy

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

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

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

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

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

PART IV: RECALCULATING TENANT RENT

9-IV.A. OVERVIEW

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For those families paying income-based rent, 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 PHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

PHA Policy

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

9-IV.C. NOTIFICATION OF NEW TENANT RENT

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

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, PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, PHA may discover errors made by 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 BMHA's policies on the keeping of pets and describes any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of BMHA 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 BMHA.

PART I: ASSISTANCE ANIMALS

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

10-I.A. OVERVIEW

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

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

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

10-I.B. APPROVAL OF ASSISTANCE ANIMALS

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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 BMHA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.

10-I.C. CARE AND HANDLING

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

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

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

PART II: PET POLICIES FOR ALL DEVELOPMENTS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

Pet Policy

BMHA PET RULES AND AGREEMENT

IN ORDER to protect Buffalo Municipal Housing Authority tenants, staff, and property, and to ensure that tenants' pets will not violate the rights of all tenants to clean, quiet and safe surroundings, the Buffalo Municipal Housing Authority requires that all tenants abide by the following per rules:

A. SECURITY DEPOSIT

All tenants residing in our Family Developments are required to pay a security deposit to the BMHA to pay for reasonable expenses directly attributable to the presence of the pet in the development. Seniors and disabled are exempt from paying the deposit.

A $100.00 per pet security deposit is required; payments may be made in two equal installments.

B. GENERAL RULES

1. The Tenant Council of each development shall determine whether tenants of that development will be allowed to have pets, subject to the requirements of 24 CFR 942. Tenant Councils in Federal Developments cannot prohibit pets in elderly family households.

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2. In developments where pets are allowed, each tenant household shall be limited to one dog that shall not weigh more than fifty (50) pounds. Housebound domesticated animals defined in the Pet Policy may be allowed with written permission from Management.

3. Only domesticated dogs as outlined in items 1 and 2 above, cats, birds, fish, rabbits, hamsters, and guinea pigs are allowed. Hoofed animals, chickens, roosters, snakes, lizards, alligators, and any other animal described as exotic are not allowed. Any animal deemed to be potentially harmful to the health and safety of others are not allowed. Animals trained for attack or with vicious tendencies including, but not limited to pit bulls, dobermans, rottweilers and wolf-dogs are strictly forbidden.

4. New tenants or current tenants who do not have but wish to acquire a pet, must obtain written approval of the Housing Manager before moving a pet into their apartment. In developments where pets are allowed, these tenants may be given permission to have one dog not to exceed fifty (50) pounds or up to two cats. In addition to a dog or up to two cats, one twenty (20) gallon fish tank and up to four (4) finch size or two (2) cockatiel size birds may be permitted.

5. Pets of current residents may be allowed to remain as long as they are common domesticated animals and are not animals trained for attack or with vicious tendencies as indicated in item 3 above. These pets must be registered with the Housing Manager by a time specified by the Authority. Through attrition, current residents must adhere to the criteria detailed in item 4 above; one dog (except as prohibited in items 1 and 2) whose weight does not exceed fifty (50) pounds or up to two cats, one twenty (20) gallon fish tank and up to four (4) finch size or two (2) cockatiel size birds.

6. Tenants must request approval to keep or acquire new pets on an application form which can be obtained from their Housing Manager. This form must be fully completed before the Housing Authority will approve the request.

7. Pets must be kept in the owner's apartment or, when walked, on a leash at all times; no outdoor cages or doghouses may be constructed. Pets will not be allowed in common areas.

8. All animals waste is to be picked up and disposed of in sealed plastic bags placed in the trash bins and cans. Litter from boxes or cages must be disposed in the same manner as animal waste.

9. Any pet disturbing the peace of neighbors through noise, smell, animal waste, or other nuisance must be removed from the premises. Substantial complaints by neighbors or Housing Authority personnel will result in the owner being required to remove the pet or move themselves.

10. Any insect infestation extermination due to a pet in the pet owner's unit and or other adjacent units will be the financial responsibility of the pet owner and charged to their account.

11. Animal Control Officers may enter a unit to transfer any animal that is left unattended for 24 hours. The Housing Authority accepts no responsibility for pets so removed.

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12. Management and tenant agree to utilize the Grievance Procedure described in the Lease Agreement to resolve any dispute between tenant and management regarding a pet, unless the dispute involves a threat to the health, safety, or welfare of the tenants or BMHA staff.

C. HEALTH AND OTHER REQUIREMENTS

At the time of initially completing the pet application form and the annual tenant survey, pet owners will be required to provide:

1. Current license from city or county.

2. Proof of inoculation against rabies.

3. Proof of inoculation against distemper.

4. Proof of inoculation against parvo virus.

5. Proof that the animal has been neutered/spayed.

6. The pet, its living quarters, and owner's unit and surrounding area must be cleaned on a daily basis in a manner to prevent smells and any other unsanitary conditions.

7. The Housing Authority has the right to conduct a pet inspection once every three months and as necessary due to complaints.

D. ADDITIONAL RULES

1. All tenants who wish to have a pet must fill out a pet application form, an alternate caretaker agreement, and an agreement to abide by BMHA pet rules and to hold the BMHA harmless as set out below, once their pet(s) have been approved.

2. More than two written complaints may result in the removal of the tenant's pet.

3. Pet shall not interfere with the peaceful enjoyment of other residents or neighbors by barking, howling, biting, scratching or other such activities. Any pet that physically hurts another person shall be removed from the tenant's premises or the tenant shall face eviction and grievance procedure shall be waived.

4. Residents shall comply with all municipal, city or county pet codes.

5. BMHA residents are not to feed stray animals or birds or pigeons on BMHA property. Feeding of stray animals will be considered keeping a pet without permission.

E. TENANT AGREEMENT

I have read the above rules regarding the conditions under which I am allowed to keep a pet(s)

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on BMHA premises. I understand my responsibilities regarding the care of my pet, and I agree to observe all BMHA rules in connection with my pet(s). I understand that I can be evicted if I fail to follow the pet rules.

I further agree to identify, defend, and hold the BMHA harmless from any and all claims, actions, suits, judgments, and demands brought by any party on account of or in connection with my pet. I accept financial responsibility for the entire amount of my damages or injury to persons or property or any insect (fleas or other) infestations which may occur because of my pet.

Date_____ Tenant's Signature_____

Date_____ Tenant's Signature_____

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CHAPTER 11 - COMMUNITY SERVICE

INTRODUCTION

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

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

> Part I: Community Service Requirements. This part describes who is subject to the community service requirement, who is exempt, and HUD's definition of economic self-sufficiency.
>
> Part II: PHA Implementation of Community Service. This part provides PHA policy regarding PHA implementation and program design.

PART I: COMMUNITY SERVICE REQUIREMENT

11-I.A. OVERVIEW

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

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

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

11-I.B. REQUIREMENTS

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

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

PHA Policy

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

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

Definitions

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

An *exempt individual* is an adult who:

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

PHA Policy

The PHA will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

- Is able to meet requirements of being exempted under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program

– This exemption applies to anyone whose characteristics or family situation meet the welfare agency exemption criteria and can be verified.

- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

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

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident

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self responsibility in the community. Community service is not employment and may not include political activities.

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

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

- Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs

- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels

- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts

- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board

- Care for the children of other residents so parent may volunteer

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

PHA Policy

Community services at profit-motivated entities, volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work will not be considered eligible community service activities.

Economic Self-Sufficiency Program [24 CFR 5.603(b), Notice PIH 2009-48]

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

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

- Job readiness or job training

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

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

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

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency

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- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate

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

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

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

PHA Policy

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

On an annual basis, at the time of lease renewal, the PHA will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes nonexempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

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

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

PHA Policy

Where the lease term does not coincide with the effective date of the annual reexamination, the PHA will change the effective date of the annual reexamination to coincide with the lease term. In making this change, the PHA will ensure that the annual reexamination is conducted within 12 months of the last annual reexamination.

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Annual Determination

Determination of Exemption Status

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

PHA Policy

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

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

Determination of Compliance

The PHA must review resident family compliance with service requirements annually at least 30 days before the end of the twelve month lease term [24 CFR 960.605(c)(3)]. As part of this review, the PHA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

PHA Policy

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

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

Change in Status between Annual Determinations

PHA Policy

Exempt to Nonexempt Status

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

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

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

Nonexempt to Exempt Status

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

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

The exemption will be effective immediately.

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

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

Documentation and Verification of Exemption Status

PHA Policy

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

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

The PHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the PHA's determination, s/he can dispute the decision through the PHA's grievance procedures (see Chapter 14).

Documentation and Verification of Compliance

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

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

PHA Policy

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

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

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

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

11-I.E. NONCOMPLIANCE

Initial Noncompliance

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

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

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

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

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

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

PHA Policy

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

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

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

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

Continued Noncompliance [24 CFR 960.607(b)]

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

PHA Policy

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

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

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

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

Enforcement Documentation [Notice PIH 2009-48]

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

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

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

PART II: IMPLEMENTATION OF COMMUNITY SERVICE

11-II.A. OVERVIEW

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

PHA Implementation of Community Service

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

PHA Policy

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

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

PHA Program Design

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

PHA Policy

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

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

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

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

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

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

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

A. Background

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

B. Definitions

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

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

- Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs

- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels

- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts

- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board

- Care for the children of other residents so parent may volunteer

Note: Political activity is excluded.

Self-Sufficiency Activities – self-sufficiency activities include, but are not limited to:

- Job readiness or job training

- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers

- Employment counseling, work placement, or basic skills training

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- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF)
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

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

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

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

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available

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- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

C. Requirements of the Program

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.

2. At least eight (8) hours of activity must be performed each month. An individual may not skip a month and then double up the following month, unless special circumstances warrant special consideration. The housing authority will make the determination of whether to allow or disallow a deviation from the schedule based on a family's written request.

3. Family obligation:

- At lease execution, all adult members (18 or older) of a public housing resident family must:

– Sign a certification (Attachment A) that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and

– Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.

- Upon written notice from the PHA, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying to the number of hours contributed.

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- If a family member is found to be noncompliant at the end of the 12-month lease term, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be terminated.

4. Change in exempt status:

- If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is his or her responsibility to report this to the PHA and provide documentation of exempt status.

- If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is his or her responsibility to report this to the PHA. Upon receipt of this information the PHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

D. Authority Obligation

1. To the greatest extent possible and practicable, the PHA will:

- Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.

- Provide in-house opportunities for volunteer work or self-sufficiency activities.

2. The PHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.

3. Although exempt family members will be required to submit documentation to support their exemption, the PHA will verify the exemption status in accordance with its verification policies. The PHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the PHA's grievance procedure if they disagree with the PHA's determination.

4. Noncompliance of family member:

- At least thirty (30) days prior to the end of the 12-month lease term, the PHA will begin reviewing the exempt or nonexempt status and compliance of family members;

  - The PHA will secure a certification of compliance from nonexempt family members (Attachment B).

- If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, the PHA finds the family member to be noncompliant, the PHA will not renew the lease unless:

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- The head of household and any other noncompliant resident enter into a written agreement with the PHA, to make up the deficient hours over the next twelve (12) month period; or

- The family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit.

- If, at the end of the next 12-month lease term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit;

- The family may use the PHA's grievance procedure to dispute the lease termination.

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

Resident	Date
Resident	Date
Resident	Date
Resident	Date

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

Social Security Act:

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

Section 1416 (excerpt):

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

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

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

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

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

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

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EXHIBIT 11-3: PHA Determination of exemption for COMMUNITY SERVICE

Family:_____

Adult family member:_____

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

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

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

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

_____ _____
Signature of Family Member Date

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

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

❒ Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program (*Documentation in file*)

❒ Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program *(Documentation in file)*

_____ _____
Signature of Family Member Date

_____ _____
Signature of PHA Official Date

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CHAPTER 12 - TRANSFER POLICY

INTRODUCTION

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

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

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

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

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

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

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 PHA.

In the case of a genuine emergency, it may be unlikely that 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, 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, PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

PHA Policy

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

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

Emergency Maintenance Transfers:

Conditions presenting a serious and imminent danger to the health or safety of a tenant that cannot be corrected in a reasonable amount of time are grounds for an urgent/emergency transfer. Examples include apartments that have fires or natural disasters or have severe structural deficiencies that make them uninhabitable; or to tenants where it is considered a serious threat to their health and safety because of criminal activity or witness protection status. These transfers are considered mandatory; they will be given 3 priority points.

This transfer category is intended to be limited to cases with the most serious need. The manager must include documentation of the basis for approving an urgent/emergency transfer when the transfer is submitted to Occupancy for placement.

In circumstances where an apartment is destroyed by fire or natural disaster, a statement by the Manager is sufficient. Whenever possible, these transfers should be supported by statements from appropriate technical staff, police, fire, health department or other appropriate officials.

For maintenance and structural emergencies, a statement from the Director of Capital Improvements (structural), his designee or the Director of Management (maintenance), or designee who states that the maintenance or structural condition cannot be corrected within a reasonable time is required.

Emergency Environmental Transfers:

These transfers are limited to tenants whose apartments have been determined to have unacceptable levels of lead paint, asbestos, mold, or radon. These transfers are considered mandatory; they will be given 3 priority points.

Unless standards are changed by new regulations, the criteria for Urgent/Emergency

Environmental transfers will be:

- Lead paint: lead blood level of 7 or higher in a child 7 years of age or younger. Medical documentation is required.

- Asbestos; .25 fiber per cubic centimeter of air (unless background levels, i.e., outside of the building, are higher). Documentation from the Modernization Department or an independent laboratory is required.

- Radon: 4 Pico Curies per liter. Documentation from the Modernization Department or an independent laboratory is required.

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- Mold: As per PHA inspection and evaluation.

12-I.C. EMERGENCY TRANSFER PROCEDURES

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

Emergency transfers are mandatory for the tenant.

12-I.D. COSTS OF TRANSFER

PHA Policy

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

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

PHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, PHA will collect information from companies in the community that provide these services.

PHA will reimburse the family for eligible out-of-pocket moving expenses up to PHA's established moving allowance.

PART II: PHA REQUIRED TRANSFERS

12-II.A. OVERVIEW

PHA may require that a resident transfer to another unit under some circumstances. For example, PHA may require a resident to transfer to make an accessible unit available to a disabled family. 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 PHA is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

12-II.B. TYPES OF PHA REQUIRED TRANSFERS

PHA Policy

The types of transfers that may be required by the PHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply

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with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the PHA are mandatory for the tenant.

Transfers to Make an Accessible Unit Available

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

PHA Policy

When there is demonstrated need for an accessible unit that is currently occupied by a family that no longer needs the accessibility features of the unit, and a non-accessible unit becomes available, PHA will transfer the family living in the accessible unit that does not require the accessible features, to an available unit that is not accessible.

Occupancy Standards Transfers

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

PHA Policy

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

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

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

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

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

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

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

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

Under-Housed/Overcrowded Transfers

These transfers are considered mandatory for underhoused families when the number of family members exceeds the maximum number as shown on the occupancy standards chart below; and for overhoused families who are overhoused by 2 or more bedrooms as determined by the standards included in the chart below . However, under -housed tenants may choose to wait for a unit of the proper size to become available in the development where they are already living if such units are available. The family composition that is listed on the transfer form will usually provide all of the justification needed for the transfer. These transfers are considered mandatory; they will be given 2 priority points.

The standards used for determining proper unit size for initial placements and transfers are included below:

Assignment of Bedroom Sizes

The following guidelines will be applied to all households (applicant and transfer) to determine each family's unit size:

No. Bedrooms	Min. No. Persons	Max. No. Persons
0	**1**	**1**
1	**1**	**2**
2	**2**	**4**
3	**3**	**6**
4	**5**	**8**
5	**7**	**10**
6	**8**	**12**

These standards are based on the assumption that each bedroom will accommodate no more than two (2) persons. Zero bedroom units will only be assigned to one-person families.

In determining bedroom size, the PHA will include the presence of children to be born to a pregnant woman, children who are in the process of being adopted, children whose custody is being obtained, children who are temporarily away at school, or children who are temporarily in foster-care.

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The following additional considerations must also be taken into account:

A. Anyone, 18 years of age or older, may be assigned a separate bedroom; however it is assumed that spouses will share a bedroom unless a request for a separate room is made.
B. If there is 7 years or more difference between the ages of children who now share a bedroom, they may be assigned separate bedrooms.
C. Children of the opposite sex, both under the age of five (5), may share a bedroom until the oldest child reaches the age of (5).
D. A bedroom may be allowed for overnight visitation of children to a non-custodial parent
E. Live-in aides will get a separate bedroom

Exceptions to normal bedroom size standards include the following:

A. Units smaller than assigned through the above guidelines – A family may request a smaller unit size than the guidelines allow. The PHA will allow the smaller size unit so long as generally no more than two (2) people per bedroom are assigned. In such situations, the family will sign a certification stating they understand they will be ineligible for a larger size unit unless the families size and/or composition changes.
B. Units larger than assigned through the above guidelines – A family may request a larger unit size than the guidelines allow. The PHA will allow the larger size unit if the family provides documentation of a verified medical or social need for the family to be housed in a larger unit.
C. If there are no families on the waiting list for a larger size, smaller families may be housed. Any such family over housed will be informed that in the future they may be required to move in compliance with the PHA transfer policy if their unit is needed for emergency applicants or transfers.
D. Larger units may be offered in order to improve the marketing of a development suffering a high vacancy rate.

Over Housed Transfers

These tenants will be allowed to remain in their apartments until those units are needed for new tenants or for urgent, emergency or under-housed transfers. The existence of such a need will be determined by the Housing Assistance Department based on community-wide demands for units. The transfers processed in response to such a determination will become mandatory as appropriate units for them become available they will be given 1 priority point.

Over Housed Transfers Paying Flat Rents

Over housed families who have selected the flat-rent payment option are paying rent based on the number of bedrooms in their unit. These families would have their rent reduced if placed in an appropriate sized unit. They would receive 3 placement priority points and receive the current available offers.

Families subject to over-housed transfers will be allowed to choose to remain in the development in which they reside if an appropriate unit exists. Over housed families may then continue to live in their apartments until the first unit of appropriate size becomes available in their development.

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Managers must provide a list of all tenants who are over-housed to the Occupancy department on an annual basis following completion of the annual survey. Transfers must be submitted for all tenants who are over-housed by more than one bedroom. The Occupancy Coordinator may request that Transfer forms are submitted for those tenants who are only one (1) bedroom over-housed if the unit is needed by another approved Transfer or an applicant.

Demolition, Disposition, Revitalizations, or Rehabilitation Transfers

Modernization Transfers

PHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished.

PHA's relocation plan may or may not require transferring affected families to other available public housing units.

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

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

Transfers to accommodate modernization work must include a statement or form from the Capital Improvements Department which states that the tenant's unit must be vacated and remain vacant for an extended period for the purpose of completing extensive construction work.

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, PHA may not take action on the transfer until the conclusion of the grievance process.

12-II.D. COST OF TRANSFER

PHA will bear the reasonable costs of transfers that PHA 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.

PHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, PHA will collect information from companies in the community that provide these services.

PHA will reimburse the family for eligible out-of-pocket moving expenses up to PHA's established moving allowance.

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PART III: TRANSFERS REQUESTED BY TENANTS

12-III.A. OVERVIEW

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

The types of requests for transfers that PHA will consider are limited to requests for transfers to alleviate a serious or life threatening medical condition, transfers due to a threat of physical harm or criminal activity, reasonable accommodation and transfers to a different unit size as long as the family qualifies for the unit according to PHA's occupancy standards. Transfers requested by the tenant are considered optional for the tenant.

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

> When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature
>
> When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the PHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime, or domestic violence, dating violence, sexual assault, or stalking.
>
> When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features

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

> When a family requests a larger bedroom size unit even though the family does not meet the PHA's definition of overcrowded, as long as the family meets the PHA's occupancy standards for the requested size unit
>
> When the head of household or spouse is employed 25 miles or more from the public housing unit, has no reliable transportation and public transportation is not adequate

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Fair Housing/Section 504 Transfers

These transfers can be made at any time to accommodate individuals with disabilities. These are individuals who have a physical, mental, or emotional impairment that substantially limits one or more major life activity, have a record of such impairment or are regarded as having such impairment. Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Current use of alcohol or drugs is not included in the definition of Individual with disability (24 CFR 8.2, and 100.201).

In certain cases, the tenant's disability and need for special accommodations may be obvious to the manager (e.g., amputated limbs); in these cases, it is not necessary to add to the tenant's inconvenience by requiring medical documentation. Instead, the manager may include an explanatory statement with the transfer form. If the tenant's impairment is not obvious, suitable documentation from an appropriate health professional must accompany the transfer. The documentation should answer two questions: Does this individual qualify under the 504/ADA definition of an individual with disability, and is the accommodation requested needed because of the individual's disability.

Each transfer should contain documentation that demonstrates the deficiency of the apartment which is serious and presents an imminent threat to the health and safety of the tenant(s). These transfers will be given 4 priority points.

Safety Transfers

Transfers requested to protect witnesses of crime and to increase the safety of victims of crime (including residents claiming VAWA situations) can be requested at any time. Appropriate documentation from law enforcement officials is required to validate the need for a safety or witness protection transfer. Documentation needed to validate a VAWA request is described in section 16 of this policy

Non-Mandatory Underhoused Transfers

The determination of when an underhoused transfer request is mandatory will be based on families current family composition as compared to the maximum number of persons guideline that is included on the Assigment of Bedroom Sizes chart included in this policy. Transfers for under housed families whose family composition exceeds the maximum number of persons guideline are considered mandatory. Transfers for under housed families that do not have family compositions that exceed the maximum number of persons guideline, but instead qualify for transfer based on other considerations will be considered non-mandatory. Non mandatory under-housed transfers , and non-mandatory over-housed transfers will be given lower priority than mandatory under-housed and over-housed transfers.

Split Family Transfers

Family members of legal age and otherwise eligible for placement may be granted A Split Family Transfer to establish their own apartment as the head of household. New families may not process a split family transfer for a period of one year unless there are family additions that create an under housed condition. Family members may not by-pass the application process by

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their inclusion in the original application and subsequent request for a residential transfer. Transfers in this category will be placed onto the waitlist without any priority points.

Where a family is overcrowded (under housed), a split family/under housed transfer will be applied.

In situations where a marriage or family is breaking up due to a pending divorce, legal separation, or other documented irreconcilable differences that present an unhealthy and potentially dangerous situation, a Family Split/Separation transfer will be applied. Transfers in this classification will carry 2 Points.

Tenant Retention Transfers

This category is intended to address tenant needs that do not meet the criteria for another type of transfer. Two categories of tenant retention transfers are allowed, Good Cause Tenant Retention Transfers, and Managerial Recommendation Tenant Retention Transfers. These transfers will be given 1 priority point.

Good Cause Tenant Retention Transfers allow for transfers where conditions exist that could reasonably be expected to progress to urgent or emergency status, such as deteriorating conditions in the unit, disputes among tenants, and other situations that affect the continued well being of the tenant. A good cause tenant retention transfer should meet all of the following criteria:

A. The tenant's existing situation must present a significant hardship or potentially serious condition and;

B. The hardship or potential detriment cannot be the fault of the tenant and;

C. There must be a reasonable expectation that the hardship or potential detriment will be remedied by a transfer and;

D. The tenant should have a good record of rent payment, consideration for neighbors, and regard for authority staff and property; or the manager shows that approving the transfer will best serve the interests of the Authority despite a less than good tenancy record.

Documentation that these criteria are met is required and should be submitted to Occupancy along with the request for transfer. The need for a good cause tenant retention transfer should be supported by statements from Medical personnel, Public Safety or police officers, Buffalo Municipal Housing Authority staff, counselors, or other appropriate sources. The housing manager should also attach a narrative report, which notes that the above criteria are met

The Authority has a duty to retain good tenants therefore; **Managerial Recommendation Tenant Retention Transfers** will be allowed for tenants with good residency records who would be likely otherwise to move from the PHA for personal reasons. A managerial recommendation tenant retention transfer should meet the following criteria:

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A. The tenant has requested a transfer to another area of the city, and has stated that a move is likely whether the transfer is approved or not and;

B. The approval of a transfer request makes it likely that the resident will remain with the PHA and;

C. The tenant has a good record of rent payment, consideration for neighbors, and regard for authority staff and property.

A managerial recommendation tenant retention transfer should have attached a narrative report from the Housing Manager (or other appropriate staff) familiar with the situation that recommends the transfer based on the above criteria.

In extraordinary circumstances where the PHA executive office (the Executive Director, the Assistant Executive Director, or the General Counsel) is made aware of a circumstance that could present a danger of harm, an increase in liability, or an opportunity to improve neighborhood stability that falls outside the normal categories included above, the executive office may request that a tenant retention transfer request be placed and processed. A letter of recommendation from an appropriate executive staff member must accompany the request.

12-III.C. ELIGIBILITY FOR TRANSFER

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

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

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

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

Have no housekeeping lease violations or history of damaging property

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

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

Exceptions to the good record requirement may be made when it is to PHA's advantage to make the transfer. Exceptions may also be made when PHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, or stalking and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP.

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

12-III.D. SECURITY DEPOSITS

PHA Policy

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

Non-mandatory transfers who were in residence before PHA required a security deposit will be required to post a security deposit prior to transferring into their new unit.

12-III.E. COST OF TRANSFER

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

PHA Policy

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

12-III.F. HANDLING OF REQUESTS

PHA Policy

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

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

PHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family, such as documentation of domestic violence, dating violence, or stalking in accordance with section 16-VII.D of this ACOP.

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

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PHA will respond within 30 days of the submission of the family's request. If PHA denies the request for transfer, the family will be informed of its grievance rights.

PART IV: TRANSFER PROCESSING

12-IV.A. OVERVIEW

Generally, families who request a transfer should be placed on a transfer list and processed in a consistent and appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience inequitable treatment.

12-IV.B. TRANSFER LIST

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

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

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions)
2. High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standards
6. Other PHA-required transfers
7. Other tenant-requested transfers

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

With the approval of the executive director, PHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow PHA to meet the demolition or renovation schedule.

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Transfers will take precedence over waiting list admissions except for residential transfers. Residential transfer requests will be placed on the appropriate waitlist as of the date and time that the request was received, residential transfers may also claim and qualify for applicant preferences as noted in section 4 of this policy.

PHA shall consider and authorize transfers according to the criteria detailed in this Plan. All non-mandatory transfers are subject to the tenant selection screening criteria. PHA Housing Assistance Office will conduct additional investigations and consider reports from management to determine whether a non-mandatory transfer request should be approved. If a non-mandatory transfer request is denied based on suitability criteria, an appeal using the tenant grievance procedures included in section 10.6 of this policy may be pursued.

PHA reserves the right to restrict, cancel, or suspend any non-mandatory transfer, any classification of non-mandatory transfer, or to suspend the placement for all non-mandatory transfers for a period of time based on the needs of the authority as determined by the PHA Executive Office.

All transfer requests except executive office tenant retention transfers originate from the development management office, either the Housing Manager or the tenant may initiate the transfer request. To substantiate the need for a transfer, the Manager shall review available documentation or conduct investigation as determined necessary. When the Housing Manager verifies the tenant's need to transfer, the transfer request will be processed with the available documentation attached, and the transfer paperwork will be submitted to the Occupancy office for review.

A transfer request may be disapproved due to lack of substantiation that a transfer is warranted or due to a record of poor rental payments, poor housekeeping, neglect or abuse of Authority property, disturbance to other tenants, etc. Disapproval requires that the tenant be notified by the Manager in writing within 30 days of the tenant’s request with a copy of the letter sent to the Occupancy Coordinator.

A previously disapproved transfer request may be reconsidered if the Manager can document improvement in lease compliance. The Manager will notify the tenant of the reasons for the denial of a transfer and inform the tenant of his/her right to appeal the determination .

The Manager may approve transfers that adhere to the conditions defined for the categories requested. All transfers shall be forwarded to the Occupancy Coordinator for final review and placement on the wait list. After review, it may be determined that a transfer has not been approved according to PHA policy/procedures or there has been a change in factors affecting the approved status of the transfer. Such transfers will be returned to the Housing Manager with correspondence from the Occupancy Coordinator explaining the reason for return. The Housing Manager may either re-submit the transfer with more documentation, or deny the request and inform the tenant of the reasons.

12-IV.C. TRANSFER OFFER POLICY

PHA Policy

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Residents will receive one offer of a transfer.

When the transfer is required by the PHA, the refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, the refusal of that offer without good cause will result in the removal of the family from the transfer list. In such cases, the family must wait six months to reapply for another transfer.

Transfer candidates will be made offers for permanent moves in the following manner:

1. Emergency/ Emergency Environmental Transfers

A choice of any development where units of appropriate size and type are available and ready. Families qualifying for transfers in this classification will be made offers, and ranked by the date of the occurrence or identification of the condition which identified the nature or cause of the urgent situation or emergency. If all offers are rejected, tenants will be subject to eviction.

2. Under-housed Transfers

A choice of any development where units of appropriate size and type are available. Transfers in this classification will be ordered by the date they became under-housed or were reported to be under-housed, beginning with the tenant who has been under-housed the longest and is under-housed most extremely.

3. Over-housed Transfers:

A choice of any development where units of appropriate size and type are available. Transfers in this classification will be ordered first, according to those over-housed most extremely, and within those groups, by those over-housed the longest. These tenants will be allowed to remain in an over-housed condition until such time as there are no available units in that size/type, and their unit is needed for new applicants, or urgent-emergency, urgent-emergency environmental and under-housed tenants. When the Authority has appropriate size and type units to transfer these tenants into, the over-housed transfer will become mandatory. If at this point, Units are offered and rejected for any reason, the Authority will take action to terminate tenancy under its normal lease provisions. All families that are in units too large for them will not be required to transfer to another unit outside of their current development unless an appropriate unit does not exist in the development, in which case they will be required to move to another development that has units of the appropriate size. These families will be allowed to remain in their units, if they choose, until the first unit of appropriate size is available in the development in which they currently reside.

4. Tenant Retention Transfers:

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A choice of any development where units of appropriate size and type are available. Tenant retention Transfers will be ordered after over housed transfers according to the date and time that the transfer request is received.

12-IV.D. GOOD CAUSE FOR UNIT REFUSAL

PHA Policy

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

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

The family demonstrates to PHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, or stalking in accordance with 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, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.

The unit has lead-based paint and the family includes children under the age of six.

PHA will require documentation of good cause for unit refusals.

12-IV.E. DECONCENTRATION

If subject to deconcentration requirements, PHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve PHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

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12-IV.F. REEXAMINATION POLICIES FOR TRANSFERS

The reexamination date will be changed to the first of the month in which the transfer took placeiin accordance with existing PHA's reexamination schedule.

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CHAPTER 13 - LEASE TERMINATIONS

INTRODUCTION

Either party to the dwelling lease agreement may terminate the lease in accordance with the terms of the lease. 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. PHA has the authority to 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 also specify when termination of the lease is mandatory by PHA.

When determining PHA policy on terminations of the lease, PHA must consider state and local landlord-tenant laws in the area where PHA is located. Such laws vary from one location to another, and these variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by the PHA. It is presented in four parts:

> Part I: Termination by Tenant. This part discusses the PHA requirements for voluntary termination of the lease by the family.
>
> Part II: Termination by PHA - Mandatory. This part describes circumstances when termination of the lease by the PHA is mandatory. This part also explains nonrenewal of the lease for noncompliance with community service requirements.
>
> Part III: Termination by PHA – Other Authorized Reasons. This part describes the PHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires the PHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PHA has full discretion whether to consider the options as just cause to terminate as long as the PHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PHA may consider in lieu of termination, and the criteria the PHA will use when deciding what actions to take.
>
> Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and PHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

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PART I: TERMINATION BY TENANT

13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the property site office or sent by pre-paid first-class mail, properly addressed.

If a family desires to move and terminate their tenancy with PHA, they must give at least 30 calendar days advance written notice to PHA of their intent to vacate. When a family must give less than 30 days notice due to circumstances beyond their control PHA will waive the 30 day requirement.

The notice of lease termination must be signed by the head of household, spouse, and co-head of household.

Keys:

All keys must be returned to the Management on the next business day of the termination of their lease or the costs of changing the locks will be assessed to the tenant.

Move-out Inspection:

In as many instances as possible, this final inspection will be scheduled at the end of the tenancy. Notice will be given by the PHA to the tenant of the date and time of the inspection, and the tenant or tenant's representative is encouraged to be present.

The inspection will list any damages beyond ordinary wear and tear that were not previously noted at the move-in inspection. The cost of these repairs may be assessed to the tenant**.**

PART II: TERMINATION BY PHA – MANDATORY

13-II.A. OVERVIEW

HUD requires mandatory termination of the lease for certain actions or inactions of the family. There are other actions or inactions of the family that constitute *grounds* for lease termination, but the lease termination is not mandatory. PHA must establish policies for termination of the lease in these cases where termination is optional for PHA.

For those tenant actions or failures to act where HUD requires termination, PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires PHA to terminate the lease.

13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

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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.

13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

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 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.

13-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]

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 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, 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 PHA determined the family to be noncompliant.

> PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter 7 for a complete discussion of documentation and certification requirements.

13-II.E. FAILURE TO ACCEPT PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

PHA must terminate the lease if the family fails to accept PHA's offer of a lease revision to an existing lease, provided PHA has done the following:

- The revision is on a form adopted by PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.

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- 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.

- PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]

PHA must immediately terminate the lease if PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

13-II.G. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]

Should 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, PHA must immediately terminate assistance for the household member.

In this situation, 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, PHA must terminate assistance for the household.

13-II.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)]

PHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

13-II.I. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2012-10]

PHA must immediately terminate program assistance for deceased single member households.

PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS

13-III.A. OVERVIEW

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. HUD does not require PHAs to terminate for lease violations in all cases. 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 PHA may, as an alternative to termination, require the exclusion of the culpable household member. PHA must adopt policies concerning the use of these options.

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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 for other good cause. PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of PHA lease. In the development of the terms of the lease, 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.

PHA, with some restrictions, also has the option to terminate the tenancies of families who are over-income.

PHA may consider alternatives to termination and must establish policies describing the criteria PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps PHA must take when terminating a family's lease.

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHA to terminate for such violations in all cases, therefore PHA policies are needed.

Definitions [24 CFR 5.100]

The following definitions will be used for this and other parts of this chapter:

Covered person means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

Dating violence is defined in section 16-VII.B.

Domestic violence is defined in section 16-VII.B.

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].

Immediate family member is defined in section 16-VII.B.

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Other person under the tenant's control means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

Premises means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

Stalking is defined in section 16-VII.B.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

PHA Policy

The PHAPHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHAPHA will terminate the lease when PHA determines that a household member is illegally using a drug or PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

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A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

PHA Policy

The PHAPHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

Immediate vicinity means within a three-block radius of the premises.

PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHAPHA will terminate the lease if PHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

PHA Policy

The PHAPHA will terminate the lease if PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking [24 CFR 5.2005(c)(1)].

PHA Policy

PHA will terminate the lease for the following violations of tenant obligations under the lease:

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Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.

Failure to fulfill the following household obligations:

Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member;

Not to provide accommodations for boarders or lodgers;

To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose;

To abide by necessary and reasonable regulations promulgated by PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;

To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;

To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;

To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;

To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;

To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest;

To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition.

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In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes PHA 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 PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit PHA to only those examples. The Violence against Women Reauthorization Act of 2013 explicitly prohibits PHA 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)].

PHA will terminate the lease for the following reasons:

Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery 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 a reexamination of income.

Failure to furnish such information and certifications regarding family composition and income as may be necessary for PHA to make determinations with respect to rent, eligibility, and the appropriateness of the dwelling unit size

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by PHA that such a dwelling unit is available

Failure to permit access to the unit by PHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or

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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 PHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.

Failure to abide by the provisions of PHA pet policy.

If the family has breached the terms of a repayment agreement entered into with PHA.

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

If a household member has engaged in or threatened violent or abusive behavior toward PHA personnel.

> *Abusive or violent behavior towards PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
>
> *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

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, PHA requires notice of any extended leave of absence from the unit. Absence in this context means that no member of the family is residing in the unit.

The family must supply any information or certification requested by PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with PHA for this purpose.

The family must promptly notify PHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, PHA will terminate the lease for other good cause.

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Abandonment of the unit. If the family appears to have vacated the unit without giving proper notice, PHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, PHA will secure the unit immediately to prevent vandalism and other criminal activity.

Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]

Subject to certain restrictions, HUD authorizes PHA to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, 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 PHA to evict over-income residents, but rather gives PHA the discretion to do so thereby making units available for applicants who are income-eligible.

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that PHA may consider exclusion of the culpable household member. Such an alternative can be used for any other reason where such a solution appears viable in accordance with PHA policy.

PHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon PHA request.

Repayment of Family Debts

If a family owes amounts to PHA, as a condition of continued occupancy, PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from PHA of the amount owed.

13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

In cases in which termination of tenancy is not mandatory, the PHA 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 PHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether

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the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

PHA will use the preponderance of the evidence as the standard for making all termination decisions.

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

Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

PHA Policy

The PHAPHA 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 effects that the eviction will have on other family members who were not involved in the action or failure to act;

The effect on the community of the termination, or of PHA's failure to terminate the tenancy;

The effect of PHA's decision on the integrity of the public housing program;

The demand for housing by eligible families who will adhere to lease responsibilities;

The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action;

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

In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family.

Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

PHA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, PHA will consider whether such household member has successfully completed a supervised drug or alcohol rehabilitation program.

For this purpose PHA will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, the PHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

PHA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, PHA will determine whether the behavior is related to the disability. If so, upon the family's request, PHA will determine whether alternative measures are appropriate as a reasonable accommodation. PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination and are not considered an undue hardship.

Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]

PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING

This section addresses the protections against termination of tenancy that the Violence against Women Reauthorization Act of 2013 (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, 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.

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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 an 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 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 or an affiliated individual of the tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit 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 PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.

- VAWA does not limit PHA's authority to terminate the tenancy of any public housing tenant if PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

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; and

- 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 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)].

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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, PHA will consider the following, and any other relevant factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, or stalking;

Whether the threat is a physical danger beyond a speculative threat;

Whether the threat is likely to happen within a short period of time;

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat.

If the tenant wishes to contest PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

Documentation of Abuse [24 CFR 5.2007]

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault or stalking claims protection under VAWA, PHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases PHA 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

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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].

PHA Policy

The PHAPHA will bifurcate a family's lease and terminate the tenancy of a family member if PHA determines that the family member has committed criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking against an affiliated individual or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

If bifurcation occurs and the removed tenant was the sole tenant eligible to receive assistance, the PHA shall provide any remaining tenant the opportunity establish eligibility for the covered housing program. If the remaining tenant cannot establish eligibility, the PHA will provide the tenant with reasonable time to find new housing or to establish eligibility under another covered housing program.

In making its decision, PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066 or 91066) or other documentation of abuse submitted to PHA by the victim in accordance with this section and section 16-VII.D. PHA will also consider the factors in section 13.III.E. Upon such consideration, PHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If PHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If necessary, PHA will also take steps to ensure that the remaining family members have a safe place to live during the termination process. For example, PHA may offer the remaining family members another public housing unit, if available; it may help them relocate to a confidential location; or it may refer them to a victim service provider or other agency with shelter facilities.

PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

13-IV.A. OVERVIEW

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

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HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA policy determines when the PHAPHA will conduct such checks.

> PHA may conduct criminal records checks when it has come to the attention of PHA, either from local law enforcement or by other means, that a resident has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

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

13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if the PHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the PHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

> In all cases where criminal record or sex offender registration information would result in denial of application for housing, lease enforcement or eviction, PHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.
>
> The family will be given 10 business days from the date of PHA notice, to dispute the accuracy and relevance of the information. If the family does not contact PHA to dispute the information within that 10 business day period, PHA will proceed with the termination action.
>
> Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the

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termination or eviction. If PHA does not make the documents available for examination upon request by the tenant, PHA may not proceed with the eviction [24 CFR 996.4(m)].

When 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 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 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 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 PHA, or for a drug-related criminal activity on or off the premises.

PHA Policy

The PHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.

All notices of lease termination will include information about the protection against termination provided by the Violence against Women Act of 2005 (VAWA) for victims of domestic violence, dating violence, or stalking (see section 16-VII.C). Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in 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

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If any member of the household has engaged in any drug-related criminal activity or violent criminal activity

If any member of the household has been convicted of a felony

- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

PHA Policy

The PHAPHA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations PHA will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When 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.

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for PHA's informal hearing procedures.

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13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The PHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

PHA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, PHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, PHA will seek the assistance of the court to remove the family from the premises as per state and local law.

PHA may not proceed with an eviction action if PHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]

When PHA evicts an individual or family for criminal activity, including drug-related criminal activity, PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

13-IV.G. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

PHA Policy

A written record of every termination and/or eviction will be maintained by PHA at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (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

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Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

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CHAPTER 14 - GRIEVANCES AND APPEALS

INTRODUCTION

This chapter discusses grievances and appeals pertaining to PHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not the PHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14-I.A. OVERVIEW

When 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 PHA policies necessary to respond to applicant appeals through the informal hearing process.

14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants under PHA grievance procedures [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide applicants the opportunity to review the reasons for denial of admission and to present evidence to refute the grounds for denial.

Use of Informal Hearing Process

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While PHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, PHA could make the informal hearing process available to applicants who wish to dispute other PHA actions that adversely affect them.

PHA Policy

The PHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

Notice of Denial [24 CFR 960.208(a)]

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 PHA decision, and must also state that the applicant may request an informal hearing to dispute the decision and that they can appear alone or with representation. They may present witnesses and/or written documentation to refute the denial. 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

A request for an informal hearing must be made in writing and delivered to PHA either in person or by first class mail, by the close of the business day, no later than 30 calendar days from the date of PHA's notification of denial of admission.

PHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

Conducting an Informal Hearing [PH Occ GB, p. 58]

PHA Policy

The informal hearing will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether admission should be granted or denied.

Informal hearings may be conducted in any one of the following formats:

1. The Central Tenant Review Board;

2. A Development Tenant Review Board;

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3. A PHA Staff Informal Hearing.

All informal hearings will be referred to a Tenant Review Board unless:

a) It is determined by the Occupancy Coordinator or designee, that a Tenant Review Board will not be available to conduct a hearing within a reasonable time (within 30 days).

b) The applicant requests a staff hearing.

c) In the opinion of the Occupancy Coordinator or designee, the elements of any denial are extreme and incontrovertible and an acceptance of such an application would contradict the tenets of this policy (e.g. Section5.3 P and Q et.al.)

d) The informal Hearing is requested pursuant to an applicant notice of ineligibility with respect of citizenship or non-citizen immigration status in compliance with Section 214 of the Housing and Community Development of 1980.

Upon completion of an informal hearing, a re-determination of eligibility is made based upon all the information then available. The informal hearing board or officer may continue the denial, overturn the denial based on new information, or defer decision for up to 30 days to allow the applicant to present further documents. Applicants who have their re-determinations deferred must return for completion of their Informal Hearing when all requested documentation is gathered.

Written notice of the determination of the informal hearing will be mailed to the applicant. The written notice will advise the approved applicant of their change in status, and advise them to contact the Occupancy office for placement information. Notice to an applicant that remains denied will note the basis for their rejection, and inform them of their right to request in writing a formal hearing within 30 days to contest their continued denial. Notice to applicants who have been granted deferral will list the items requested at the informal hearing, and will inform the applicant that failure to present the requested information within 30 days will cause their application to default to a denied status with no further right to PHA appeal.

14-I.C. Tenant Review Boards

In cooperation with representative tenant organizations, the PHA has established the Tenant Review Board for the purpose of conducting informal hearings for applicants denied eligibility on suitability grounds. Before any tenant is allowed to participate as a voting member of any Tenant Review Board (TRB), they must attend a four-hour training session presented by the PHA. This training session will review the rules and regulations related to tenant screening, and will emphasize that all decisions must be made based on the objective criteria contained in this policy.

<u>The Development Tenant Review Board</u>

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In developments where participation is established, Development Tenant Review Boards will hear cases. Nothing in this policy authorizes the Tenant Review Board to make decisions that violate Federal Law, Federal Regulations, or this policy. The Development Tenant Review Board shall be organized as follows:

A PHA management representative and three tenants who have completed the required training session and agreed to abide by the rules and accept the responsibility for making fair and objective determinations. Each tenant member shall have one vote. The Management designee shall facilitate the meeting, and forward records and reports to the Occupancy Coordinator.

The Development Tenant Review Boards shall meet at a place and time determined by the Director of Management. Permanent records of voting by the Review Boards in summary form are to be maintained.

The Central Tenant Review Board

A Central Tenant Review Board will hear cases from any development that does not have an active Development Review Board. The Central Tenant Review Board shall be organized as follows:

An Occupancy department representative and three tenants who have completed the required training session and agreed to abide by the rules and accept the responsibility for making fair and objective determinations. Each tenant member shall have one vote. The Occupancy Dept. designee shall facilitate the meeting, and forward records and reports to the Occupancy Coordinator.

The Central Tenant Review Board shall meet at a place and time determined by the Occupancy Coordinator. Permanent records of voting by the Review Boards in summary form are to be maintained.

The Authority takes full responsibility for the decisions of the Board and will insure that decisions are made in accordance with Civil Rights Laws and other applicable statutes. All communications to applicants on eligibility will come from the PHA.

14-I.D. PHA Staff Informal Hearings

The PHA staff hearing will be conducted by a designee of the Occupancy Coordinator who has had no participation in the initial determination of ineligibility. Any Occupancy staff person working as an Occupancy Specialist or in higher title may be assigned to conduct an informal hearing.

An Informal Hearing requested pursuant to an applicant notice of ineligibility with respect of citizenship or noncitizen immigration status in compliance with the of provisions of Section 214 of the Housing and Community Development of 1980 may be granted after the family has received notification of an INS decision on their citizenship status appeal, or in lieu of request of

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appeal to the INS. This request may be made within 30 days of receipt of the Notice of Denial, or within 30 days of receipt of the INS appeal decision.

Informal Hearing Decision [PH Occ GB, p. 58]

PHA Policy

PHA will notify the applicant of PHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, PHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume. Notice to an applicant that remains denied will note the basis for their rejection, and inform them of their right to request in writing a formal hearing within 30 days to contest their continued denial.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and PHA must consider such accommodations. 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

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14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while 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 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 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 PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, 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 PHA with a copy of the written request for appeal and proof of mailing.

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PHA Policy

PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to PHA, of its decision. When the USCIS notifies PHA of the decision, PHA must notify the family of its right to request an informal hearing.

PHA Policy

PHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of 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

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 PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

PHA Policy

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The family will be allowed to copy any documents related to the hearing at a cost of $.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by PHA, and to confront and cross-examine all witnesses on whose testimony or information 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 PHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, 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. PHA may, but is not required to provide a transcript of the hearing.

PHA Policy

PHA will not provide a transcript of an audio taped informal hearing.

Hearing Decision

PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

PHA must retain for a minimum of 5 years the following documents that may have been submitted to PHA by the family, or provided to PHA as part of the USCIS appeal or 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

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- 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 PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of 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

14-III.A. REQUIREMENTS [24 CFR 966.52]

PHA must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status.

The PHA grievance procedure must be included in the lease.

PHA Policy

The PHAPHA grievance procedure will be incorporated by reference in the tenant lease.

PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in PHA grievance procedure, and provide an opportunity to present written comments. Comments submitted must be considered by PHA before adoption of any changes to the grievance procedure by PHA.

Residents and resident organizations will have 30 calendar days from the date they are notified by PHA of any proposed changes in PHA grievance procedure, to submit written comments to PHA.

PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

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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 toPHA 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 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 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 PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,

  – Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit

- **Resident Organization** – includes a resident management corporation

14-III.C. APPLICABILITY [24 CFR 966.51]

Grievances could potentially address most aspects of a PHA 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 PHA. It is not applicable to disputes between tenants not involving PHA. Class grievances are not subject to the

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grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of PHA.

If HUD has issued a due process determination, PHA may exclude from 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 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

If HUD has issued a due process determination, PHA may evict through the state/local judicial eviction procedures. In this case, PHA is not required to provide the opportunity for a hearing under PHA's grievance procedure as described above.

14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

HUD regulations state that any grievance must be personally presented, either orally or in writing, to PHA office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

PHA Policy

PHA will accept requests for an informal settlement of a grievance either orally or in writing, to PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in PHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

PHA Policy

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PHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in PHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]

Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision [24 CFR 966.55(d)].

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion [24 CFR 966.55(a)]. The request must specify the reasons for the grievance and the action or relief sought.

PHA Policy

The resident must submit a written request for a grievance hearing to PHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, 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 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 PHA claims is due, the family must pay an escrow deposit to PHA. When a family is required to make an escrow deposit, the amount is the amount of rent 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.

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 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 PHA's disposition of the grievance in any appropriate judicial proceeding.

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PHA Policy

PHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

Scheduling of Hearings [24 CFR 966.55(f)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

PHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and PHA.

PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

PHA Policy

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, PHA may request documentation of the "good cause" prior to rescheduling the hearing.

Expedited Grievance Procedure [24 CFR 966.55(g)]

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 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.

PHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

PHA Policy

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PHA will follow expedited grievance procedures for any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of PHA, or any drug-related criminal activity on or near such premises.

Such procedures will provide for an expedited notice of hearing request, an expedited scheduling of the hearing, and for an expedited decision on the grievance. The tenant will have 3 business days to make their hearing request. The hearing officer will have 3 business days to schedule the hearing, and 3 business days to render a decision. All other aspects of the expedited grievance process shall be the same as for other grievances.

14-III.F. SELECTION OF HEARING OFFICER/PANEL [24 CFR 966.55(b)]

The grievance hearing must be conducted by an impartial person or persons appointed by PHA, other than the person who made or approved PHA action under review, or a subordinate of such person.

PHA Policy

PHA grievance hearings will be conducted by a single hearing officer and not a panel. PHA has designated the following to serve as hearing officers:

[List here positions/organizations that have been designated to serve as hearing officers]

PHA must determine the methodology for appointment of the hearing officer and it must be stated in the grievance procedure.

PHA Policy

PHA will appoint a person who has been selected in the manner required under the grievance procedure. Efforts will be made to assure that the person selected is neither a friend nor enemy of the complainant, that they do not have a personal stake in the matter under dispute, and will otherwise not appear to lack impartiality.

PHA must consult with resident organizations before a person is appointed as a hearing officer or hearing panel member. Comments from the resident organizations must be considered before making the appointment.

14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)]

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If PHA does not make the document

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available for examination upon request by the complainant, PHA may not rely on such document at the grievance hearing.

PHA Policy

The tenant will be allowed to copy any documents related to the hearing at a cost of $.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

- The right to be represented by counsel or other person chosen to represent the tenant, and to have such person make statements on the tenant's behalf.

  PHA Policy

  Hearings may be attended by the following applicable persons:

  A PHA representative(s) and any witnesses for PHA

  The tenant and any witnesses for the tenant

  The tenant's counsel or other representative

  Any other person approved by PHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.

- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information 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 PHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and 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

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waiver of any right the complainant may have to contest PHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

PHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

"Good cause" is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

General Procedures [24 CFR 966.56(e), (f), and (g)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter PHA must sustain the burden of justifying 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. 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 to question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].

PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to PHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

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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 PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of PHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require 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 PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(g)].

PHA Policy

If the complainant would like PHA to record the proceedings by audiotape, the request must be made to PHA by 12:00 p.m. on the business day prior to the hearing.

PHA will consider that an audio tape recording of the proceedings is a transcript.

Accommodations of Persons with Disabilities [24 CFR 966.56(h)]

PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of PHA's responsibilities pertaining to reasonable accommodation.

14-III.H. DECISION OF THE HEARING OFFICER/PANEL [24 CFR 966.57]

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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 PHA. PHA must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by PHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

PHA Notice to the Family: The hearing officer will determine if the reasons for PHA's decision are factually stated in the notice.

Discovery: The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PHA policy.

PHA Evidence to Support PHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support PHA's conclusion.

Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of PHA will be overturned.

The hearing officer will issue a written decision to the family and PHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of PHA representative(s)

Name of family representative (if any)

Names of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the

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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 PHA's decision.

Order: The hearing report will include a statement of whether PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct PHA to restore the family's status.

Procedures for Further Hearing

PHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of PHA will take effect and another hearing will not be granted.

Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer/panel is binding on PHA which must take the action, or refrain from taking the action cited in the decision unless 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 PHA

PHA Policy

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When PHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to PHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of 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 15 - PROGRAM INTEGRITY

INTRODUCTION

A PHA is committed to ensuring that funds made available to PHA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures PHA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and residents with form HUD-52675, "Debts Owed to PHAs and Terminations"
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

PHA Policy

PHA anticipates that the vast majority of families and PHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that PHA's program is administered effectively and according to the highest ethical and legal standards, PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

PHA will provide each applicant and resident with a copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

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PHA will provide each applicant and resident with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

PHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. PHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

PHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family member.

PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

At every regular reexamination 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.

15-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, PHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

PHA Policy

PHA will employ a variety of methods to detect errors and program abuse, including:

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PHA routinely will use EIV and other non-HUD sources of up-front income verification. This includes the Work Number and any other private or public databases available to PHA.

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.

PHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies PHA of errors and potential cases of program abuse.

PHA Policy

PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of PHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

PHA Policy

PHA will encourage staff, residents, and the public to report possible program abuse.

15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When PHA Will Investigate

PHA Policy

PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for PHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

PHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

Consent to Release of Information [24 CFR 960.259]

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PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, PHA will require families to sign consent forms for the release of additional information.

Analysis and Findings

PHA Policy

PHA will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed PHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

PHA Policy

In the case of family-caused errors or program abuse, PHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

PHA Policy

PHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

PART II: CORRECTIVE MEASURES AND PENALTIES

15-II.A. UNDER- OR OVERPAYMENT

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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, PHA must promptly correct the tenant rent and any utility reimbursement prospectively.

PHA Policy

Increases in the tenant rent will be implemented on the first of the month following a written 30 day notice.

Any decreases in tenant rent will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family is required to reimburse PHA or PHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

15-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA

PHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, PHA will terminate the family's lease in accordance with the policies in Chapter 13.

PHA Reimbursement to Family

PHA Policy

PHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

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Prohibited Actions

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to PHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to PHA [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l)(2)(iii)(C)].

  PHA Policy

  Any of the following will be considered evidence of family program abuse:

  Offering bribes or illegal gratuities to PHA Board of Commissioners, employees, contractors, or other PHA representatives

  Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to PHA on the family's behalf

  Use of a false name or the use of falsified, forged, or altered documents

  Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)

  Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

  Admission of program abuse by an adult family member

PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family PHA may, at its discretion, impose any of the following remedies.

- PHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to PHA).
- 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).
- PHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.

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- PHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

15-II.C. PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of 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 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 PHA

The family is not required to repay an underpayment of rent if the error or program abuse is caused by PHA staff.

PHA Reimbursement to Family

PHA Policy

PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

Prohibited Activities

PHA Policy

Any of the following will be considered evidence of program abuse by PHA staff:

Failing to comply with any public housing program requirements for personal gain

Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident

Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to PHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of PHA activities, policies, or practices

Misappropriating or misusing public housing funds

Destroying, concealing, removing, or inappropriately using any records related to the public housing program

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Committing any other corrupt or criminal act in connection with any federal housing program

15-II.D. CRIMINAL PROSECUTION

PHA Policy

When PHA determines that program abuse by a family or PHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, PHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

15-II.E. FRAUD AND PROGRAM ABUSE RECOVERIES

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that PHA recovers [Notice PIH 2007-27 (HA)].

If 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 PHA's grievance process.

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CHAPTER 16 - PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in 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 PHA-furnished utilities.

Part II: Establishing Flat Rents and Public Housing Maximum Rents. This part describes the requirements and policies related to establishing and updating flat rent amounts and public housing maximum rents.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which the PHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (PHAS). This part describes the PHAS indicators, how PHAs are scored under PHAS, and how those scores affect a PHA.

Part V: Record Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the PHA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

Part VII: Violence against Women Act (VAWA): Notification, Documentation, and 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, and stalking; and maintaining the confidentiality of information obtained from victims.

PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

16-I.A. OVERVIEW

PHAs must establish allowances for PHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

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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)].

16-I.B UTILITY ALLOWANCES

The PHA must establish separate allowances for each utility and for each category of dwelling units the PHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a PHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if the PHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ GB, p. 138].

Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to the PHA about establishing utility allowances.

Air-Conditioning

"If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible." [24 CFR 965.505(e)]

PHA Policy

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The PHA will install air-conditioner units upon resident request in accordance with the fee schedule. Under no circumstances will installation occur that results in blocked egress where only one window exist within a room.

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.

PHA Policy

Between annual reviews of utility allowances, the PHA will only revise its utility allowances due to a rate change, when required to by the regulation.

16-I.C. SURCHARGES FOR PHA-FURNISHED UTILITIES [24 CFR 965.506]

For dwelling units subject to allowances for PHA-will review the financial impact of installation of check meters to comply with regulation.

PHA Policy

The PHA does have PHA-furnished utilities.

Currently no check meters have been installed in any properties.

16-I.D. NOTICE REQUIREMENTS [965.502]

The PHA will 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.

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- 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.

16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]

On request from a family that includes a disabled or elderly person, the PHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

PART II: ESTABLISHING FLAT RENTS AND PUBLIC HOUSING MAXIMUM RENTS

16-II.A. OVERVIEW

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Public housing maximum rents are needed to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how the PHA establishes and updates flat rents and public housing maximum rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and public housing maximum rents are discussed in Chapter 6.

16-II.B. FLAT RENTS [24 CFR 960.253(b)]

Establishing Flat Rents

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

The PHA must use a reasonable method to determine flat rents. In determining flat rents, PHAs must consider the following:

- Location

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- Quality
- Unit size
- Unit type
- Age of property
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the PHA
- Utilities provided by the PHA

Review of Flat Rents

The PHA must ensure that flat rents continue to mirror market rent values [24 CFR 960.253(b)].

PHA Policy

The PHA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents are based on a percentage of fair market rents as established by HUD Annual Fair Market Rent Documentation System

Posting of Flat Rents

PHA Policy

The PHA will publicly post the schedule of flat rents in a conspicuous manner in the applicable PHA or project office.

Documentation of Flat Rents [24 CFR 960.253(b)(5)]

The PHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the PHA in accordance with this method.

16-II.C. PUBLIC HOUSING MAXIMUM RENTS

Establishing Public Housing Maximum Rents

PHAs are prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status [24 CFR 5.500]. Therefore, in order to assist mixed families, PHAs must prorate assistance. Public housing maximum rents are needed in order to calculate the tenant rent for a mixed family.

The public housing maximum rent is based on value of the 95th percentile of the total tenant payment (TTP) for each tenant within the PHA. PHA may calculate a maximum rent on either a

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PHA- or project wide basis. A separate maximum rent can be provided for each separate project or projects may be combined into logical groups, if appropriate. HUD recommends that a single project basis be avoided for a project unless at least 50 dwelling units are involved.

PHAs may use the "direct comparison" or the "unit distribution" method for establishing the public housing maximum rents for each unit size. Appendix H, of Guidebook 7465.G, Restrictions on Assistance to Noncitizens provides detailed guidance on how to establish public housing maximum rents using the methodologies identified above.

Review of Public Housing Maximum Rents

PHA Policy

The PHA will recalculate the public housing maximum rents on an annual basis.

Posting of Public Housing Maximum Rents

PHA Policy

The PHA will publicly post the schedule of public housing maximum rents in a conspicuous manner in the applicable PHA or project office.

Documentation of Public Housing Maximum Rents

PHA Policy

The PHA will maintain records that document how the PHA determined the 95th percentile of TTP, whether the maximum rent was determined PHA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

PART III: FAMILY DEBTS TO THE PHA

16-III.A. OVERVIEW

This part describes the PHA's policies for recovery of monies owed to the PHA by families.

PHA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the PHA holds the family liable to return any underpayments to the PHA.

The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When a family refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:

Collection agencies

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Small claims court

Civil law suit

State income tax set-off program

16-III.B. REPAYMENT POLICY

Family Debts to the PHA

PHA Policy

Any amount owed to the PHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate the family's tenancy in accordance with the policies in Chapter 13. The PHA will also pursue other modes of collection.

General Repayment Agreement Guidelines

Down Payment Requirement

PHA Policy

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the PHA that a down payment of 10 percent would impose an undue hardship, the PHA may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

Notice PIH 2010-19 recommends that the total amount that a family must pay each month—the family's monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family's monthly adjusted income, which is considered "affordable." Moreover, Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

PHA Policy

If a family is paying less than 40 percent of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two amounts:

The difference between 40 percent of the family's MAI and the total family share at the time the agreement is executed

$25

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If a family can provide evidence satisfactory to the PHA that a monthly payment amount of $25 would impose an undue hardship, the PHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either the PHA or the family may request that the monthly payment amount be adjusted accordingly.

Execution of the Agreement

PHA Policy

Any repayment agreement between the PHA and a family must be signed and dated by the PHA and by the head of household and spouse/cohead (if applicable).

Due Dates

PHA Policy

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

Late or Missed Payments

PHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the PHA, the PHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PHA will terminate tenancy in accordance with the policies in Chapter 13.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the PHA will terminate tenancy in accordance with the policies in Chapter 13.

No Offer of Repayment Agreement

PHA Policy

The PHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family, or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

Repayment Agreements Involving Improper Payments

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

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- 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)

16-IV.A. OVERVIEW

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

16-IV.B. PHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]

The table below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. A PHA's performance is based on a combination of all four indicators.

Indicator 1: Physical condition of the PHA's 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

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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, and 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 rate.

16-IV.C. PHAS SCORING [24 CFR 902 Subpart F]

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.

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A standard performer is a PHA that has an overall PHAS score between 60 and 89, 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 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

16-V.A. OVERVIEW

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

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In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-V.B. RECORD RETENTION

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

PHA Policy

During the term of each public housing tenancy, and for at least four years thereafter, the PHA will keep all documents related to a family's eligibility, tenancy, and termination.

In addition, the PHA will keep the following records for at least four years:

An application from each ineligible family and notice that the applicant is not eligible

Lead-based paint records as required by 24 CFR 35, Subpart B

Documentation supporting the establishment of flat rents and the public housing maximum rent

Documentation supporting the establishment of utility allowances and surcharges

Documentation related to PHAS

Accounts and other records supporting PHA budget and financial statements for the program

Other records as determined by the PHA or as required by HUD

If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

16-V.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

PHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

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PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise* Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data.

PHA Policy

Prior to utilizing HUD's EIV system, the PHA will adopt and implement EIV security procedures required by HUD.

Criminal Records

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of

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screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

Domestic Violence, Dating Violence, or Stalking Records

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, or stalking, see section 16-VII.E.

PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. The PHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

PHA Policy

The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

The PHA will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within 5 business days of receiving the information.

PART VII: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, AND CONFIDENTIALITY

16-VII.A. OVERVIEW

The Violence against Women Act of 2005 (VAWA) provides special protections for victims of domestic violence, dating violence, 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.

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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).

16-VII.B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

- 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 *immediate family member* means, with respect to a person:

  - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or

  - Any other person living in the household of that person and related to that person by blood and marriage.

- The term *stalking* means:

  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or

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- 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.

16-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 of their rights under VAWA.

PHA Policy

The PHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to public housing applicants and residents who are or have been victims of domestic violence, dating violence, or stalking (see sample notice in Exhibit 16-1)

The definitions of *domestic violence*, *dating violence*, and *stalking* provided in VAWA (included in Exhibit 16-1)

An explanation of the documentation that the PHA may require from an individual who claims the protections provided by VAWA (included in Exhibit 16-1)

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking

A statement of the PHA's obligation to keep confidential any information that it receives from a victim unless (a) the PHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibit 16-1)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibit 16-1)

Contact information for local victim advocacy groups or service providers

Notification to Applicants and Tenants [24 CFR 5.2005(a)(1)]

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PHAs are required to inform public housing tenants of their rights under VAWA, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as tenants, PHAs may elect to provide the same information to applicants.

PHA Policy

The PHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The PHA will also include such information in all notices of denial of assistance (see section 3-III.F).

The PHA will provide all tenants with information about VAWA at the time of admission (see section 8-I.B) and at annual reexamination. The PHA 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.

PHA Policy

Whenever the PHA 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.

16-VII.D. 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, 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

(2) A federal, state, tribal, territorial, or local police report or court record

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(3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical 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].

PHA Policy

Any request for documentation of domestic violence, dating violence, 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.

The PHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by the PHA 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.

PHA Policy

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, the PHA 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).

PHA Policy

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If the PHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, or stalking, the PHA 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.

16-VII.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the PHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. 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.

PHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

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EXHIBIT 16-1: 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 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for public housing, the housing authority cannot refuse to admit you to the public housing program solely because you are a victim of domestic violence, dating violence, or stalking.

If you are the victim of domestic violence, dating violence, or stalking, the housing authority cannot evict you based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you if you were the victim of the abuse.

Reasons You Can Be Evicted

The housing authority can still evict you if the housing authority can show there is an *actual and imminent* (immediate) threat to other tenants or housing authority staff if you are not evicted. Also, the housing authority can evict you for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking against you. The housing authority cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

Removing the Abuser from the Household

The housing authority may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the public housing unit. If the housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, the housing authority must follow federal, state, and local eviction procedures.

Proving That You Are a Victim of Domestic Violence, Dating Violence, or Stalking

The housing authority can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, or stalking. 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.

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- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."

- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the housing authority may evict you.

Confidentiality

The housing authority must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority to release the information.

- The housing authority needs to use the information in an eviction proceeding, such as to evict your abuser.

- A law requires the housing authority to release the information.

If release of the information would put your safety at risk, you should inform the housing authority.

VAWA and Other Laws

VAWA does not limit the housing authority's duty to honor court orders about access to or control of a public housing unit. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

For Additional Information

If you have any questions regarding VAWA, please contact _____ 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).

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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 ***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.

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APPENDIX 1 – PET POLICY

BMHA PET RULES AND AGREEMENT

IN ORDER to protect Buffalo Municipal Housing Authority *tenants, staff, and property, and to ensure that tenants' pets will not violate the rights of all tenants to clean, quiet and safe surroundings, the Buffalo Municipal Housing Authority requires that all tenants abide by the following per rules:*

A. Security Deposit

All tenants residing in our Family Developments are required to pay a security deposit to the BMHA to pay for reasonable expenses directly attributable to the presence of the pet in the development. Seniors and disabled are exempt from paying the deposit.

A $100.00 per pet security deposit is required; payments may be made in two equal installments.

B. General Rules

1. The Tenant Council of each development shall determine whether tenants of that development will be allowed to have pets, subject to the requirements of 24 CFR 942. Tenant Councils in Federal Developments cannot prohibit pets in elderly family households.

2. In developments where pets are allowed, each tenant household shall be limited to one dog that shall not weigh more than fifty (50) pounds. Housebound domesticated animals defined in the Pet Policy may be allowed with written permission from Management.

3. Only domesticated dogs as outlined in items 1 and 2 above, cats, birds, fish, rabbits, hamsters, and guinea pigs are allowed. Hoofed animals, chickens, roosters, snakes, lizards, alligators, and any other animal described as exotic are not allowed. Any animal deemed to be potentially harmful to the health and safety of others are not allowed. Animals trained for attack or with vicious tendencies including, but not limited to Pit Bulls, Dobermans, Rottweilers and wolf-dogs are strictly forbidden.

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4. New tenants or current tenants who do not have but wish to acquire a pet, must obtain written approval of the Housing Manager before moving a pet into their apartment. In developments where pets are allowed, these tenants may be given permission to have one dog not to exceed fifty (50) pounds or up to two cats. In addition to a dog or up to two cats, one twenty (20) gallon fish tank and up to four (4) finch size or two (2) cockatiel size birds may be permitted.

5. Pets of current residents may be allowed to remain as long as they are common domesticated animals and are not animals trained for attack or with vicious tendencies as indicated in item 3 above. These pets must be registered with the Housing Manager by a time specified by the Authority. Through attrition, current residents must adhere to the criteria detailed in item 4 above; one dog (except as prohibited in items 1 and 2) whose weight does not exceed fifty (50) pounds or up to two cats, one twenty (20) gallon fish tank and up to four (4) finch size or two (2) cockatiel size birds.

6. Tenants must request approval to keep or acquire new pets on an application form which can be obtained from their Housing Manager. This form must be fully completed before the Housing Authority will approve the request.

7. Pets must be kept in the owner's apartment or, when walked, on a leash at all times; no outdoor cages or doghouses may be constructed. Pets will not be allowed in common areas.

8. All animals waste is to be picked up and disposed of in sealed plastic bags placed in the trash bins and cans. Litter from boxes or cages must be disposed in the same manner as animal waste.

9. Any pet disturbing the peace of neighbors through noise, smell, animal waste, or other nuisance must be removed from the premises. Substantial complaints by neighbors or Housing Authority personnel will result in the owner being required to remove the pet or move themselves.

10. Any insect infestation extermination due to a pet in the pet owner's unit and or other adjacent units will be the financial responsibility of the pet owner and charged to their account.

11. Animal Control Officers may enter a unit to transfer any animal that is left unattended for 24 hours. The Housing Authority accepts no responsibility for pets so removed.

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12. Management and tenant agree to utilize the Grievance Procedure described in the Lease Agreement to resolve any dispute between tenant and management regarding a pet, unless the dispute involves a threat to the health, safety, or welfare of the tenants or BMHA staff.

C. HEALTH AND OTHER REQUIREMENTS

At the time of initially completing the pet application form and the annual tenant survey, pet owners will be required to provide:

1. Current license from city or county.

2. Proof of inoculation against rabies.

3. Proof of inoculation against distemper.

4. Proof of inoculation against parvo virus.

5. Proof that the animal has been neutered/spayed.

6. The pet, its living quarters, and owner's unit and surrounding area must be cleaned on a daily basis in a manner to prevent smells and any other unsanitary conditions.

7. The Housing Authority has the right to conduct a pet inspection once every three months and as necessary due to complaints.

D. ADDITIONAL RULES:

1. All tenants who wish to have a pet must fill out a pet application form, an alternate caretaker agreement, and an agreement to abide by BMHA pet rules and to hold the BMHA harmless as set out below, once their pet(s) have been approved.

2. More than two written complaints may result in the removal of the tenant's pet.

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3. **Pet shall not interfere with the peaceful enjoyment of other residents or neighbors by barking, howling, biting, scratching or other such activities. Any pet that physically hurts another person shall be removed from the tenant's premises or the tenant shall face eviction and grievance procedure shall be waived.**

4. Residents shall comply with all municipal, city or county pet codes.

5. BMHA residents are not to feed stray animals or birds or pigeons on BMHA property. Feeding of stray animals will be considered keeping a pet without permission.

E. TENANT AGREEMENT

I have read the above rules regarding the conditions under which I am allowed to keep a pet(s) on BMHA premises. I understand my responsibilities regarding the care of my pet, and I agree to observe all BMHA rules in connection with my pet(s). I understand that I can be evicted if I fail to follow the pet rules.

I further agree to identify, defend, and hold the BMHA harmless from any and all claims, actions, suits, judgements, and demands brought by any party on account of or in connection with my pet. I accept financial responsibility for the entire amount of my damages or injury to persons or property or any insect (fleas or other) infestations which may occur because of my pet.

Date_____ Tenant's Signature_____

Date_____ Tenant's Signature_____

Revised: 9/23/08

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BMHA PET APPLICATION FORM

COMPLETE THIS SECTION IF YOU ARE A CURRENT RESIDENT AND HAVE ANY PETS

I have the following pets living in my BMHA apartment:

_____ Dog(s) _____ Cat(s)

_____ Bird(s) _____ Fish Tank(s)

_____ Other – Please specify _____

_____

COMPLETE THIS SECTION IF YOU ARE A CURRENT RESIDENT OR A NEW RESIDENT WHO IS ASKING FOR PERMISSION TO HAVE A PET IN YOUR APARTMENT

I am requesting permission to have the following pet(s) in my BMHA apartment:

_____ One dog (up to fifty pounds in weight), **OR**

_____ One or two cats, **AND**

_____ One twenty (20) gallon fish tank, **AND**

_____ Up to four (4) finch size or two (2) cockatiel size birds.

_____ Other – Please specify _____

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_____

I have received a copy of the Authority's Pet Policy and agree to comply with all the requirements of the Pet Policy, my Dwelling Lease and the Ordinances of the City of Buffalo while I have a pet on the Authority's property. I certify that the pets I am asking approval to keep in my apartment are the above listed common domesticated animals and that none of these animals are hoofed animals or of the type that are deemed potentially harmful to the health and safety of others, or are trained for attack or wish vicious tendencies including, but not limited to, pit bulls, dobermans, rotweilers and wolf dogs. If I have any such animals, I agree to remove them from the Authority's property immediately and know that I can be evicted if I fail to do so.

NAME _____

ADDRESS _____

SIGNATURE _____

FOR OFFICE USE ONLY:

Permission granted for above listed pet(s) by:

_____ _____

Housing Manager Date

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APPENDIX 2 - GLOSSARY

50058 Form: The HUD form that housing authorities are required to complete for each assisted household in public housing to record information used in the certification and re-certification process and, at the option of the housing authority, for interim reexaminations.

1937 Housing Act: The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (24 CFR 5.100)

Adjusted Annual Income: The amount of household income, after deductions for specified allowances, on which tenant rent is based. (24 CFR 5.611)

Adult: A household member who is 18 years or older or who is the head of the household, or spouse, or co-head.

Allowances: Amounts deducted from the household's annual income in determining adjusted annual income (the income amount used in the rent calculation). Allowances are given for elderly families, dependents, medical expenses for elderly families, disability expenses, and child care expenses for children under 13 years of age.

Annual Contributions Contract (ACC): The written contract between HUD and a housing authority under which HUD agrees to provide funding for a program under the 1937 Act, and the housing authority agrees to comply with HUD requirements for the program. (24 CFR 5.403)

Annual Income: All amounts, monetary or not, that:

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

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

C. Are not specifically excluded from annual income.

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Annual Income also includes amounts derived (during the 12-month period) from assets to which any member of the family has access.(1937 Housing Act; 24 CFR 5.609*)*

Applicant (applicant family): A person or family that has applied for admission to a program but is not yet a participant in the program. (24 CFR 5.403)

As-Paid States: States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs. Currently, the four as-paid States are New Hampshire, New York, Oregon, and Vermont.

Assets: The value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds, and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles are not counted as assets. (Also see "net family assets.")

Asset Income: Income received from assets held by family members. If assets total more than $5,000, income from the assets is "imputed" and the greater of actual asset income and imputed asset income is counted in annual income. (See "imputed asset income" below.)

Ceiling Rent: Maximum rent allowed for some units in public housing projects.

Certification: The examination of a household's income, allowable expenses, and family composition to determine the family's eligibility for program participation and to calculate the family's share of rent.

Child: For purposes of citizenship regulations, a member of the family other than the family head or spouse who is under 18 years of age. (24 CFR 5.504(b))

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

Citizen: A citizen or national of the United States. (24 CFR 5.504(b))

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Consent Form: Any consent form approved by HUD to be signed by assistance applicants and participants for the purpose of obtaining income information from employers and SWICAs, return information from the Social Security Administration, and return information for unearned income from the Internal Revenue Service. The consent forms may authorize the collection of other information from assistance applicants or participant to determine eligibility or level of benefits. (24 CFR 5.214)

Decent, Safe, and Sanitary: Housing is decent, safe, and sanitary if it satisfies the applicable Uniform Physical Conditions Standard inspection criteria.

Department: The Department of Housing and Urban Development. (24 CFR 5.100)

Dependent: A member of the family (except foster children and foster adults), other than the family head or spouse, who is under 18 years of age or is a person with a disability or is a full-time student. (24 CFR 5.603(d))

Dependent Allowance: An amount, equal to $480 multiplied by the number of dependents, that is deducted from the household's annual income in determining adjusted annual income.

Disability Assistance Expenses: Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source. (24 CFR 5.603(d))

Disability Assistance Expense Allowance: In determining adjusted annual income, the amount of disability assistance expenses deducted from annual income for families with a disabled household member.

Disabled Family: A family whose head, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides. (24 CFR 5.403(b)) (Also see "person with disabilities.")

Disabled Person: See "person with disabilities."

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Displaced Family: A family in which each member, or whose sole member, is a person displaced by governmental action (such as urban renewal), or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. (24 CFR 5.403(b))

Displaced Person: A person displaced by governmental action or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. *[1937 Act]*

Drug-Related Criminal Activity: Drug trafficking or the illegal use, or possession for personal use, of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802.

Elderly Family: A family whose head, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides. (24 CFR 5.403)

Elderly Family Allowance: For elderly families, an allowance of $400 is deducted from the household's annual income in determining adjusted annual income.

Elderly Person: A person who is at least 62 years of age. (1937 Housing Act)

Extremely low-income families: Those families whose incomes do not exceed 30% of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

Fair Housing Act: Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.). (24 CFR 5.100)

Family includes but is not limited to**:**

A. A family with or without children;

B. An elderly family;

C. A near-elderly family;

D. A disabled family;

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E. A displaced family;

F. The remaining member of a tenant family; and

G. A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a tenant family. (24 CFR 5.403)

Family Members: All members of the household other than live-in aides, foster children, and foster adults. All family members permanently reside in the unit, though they may be temporarily absent. All family members are listed on the lease.

Family Self-Sufficiency Program (FSS Program): The program established by a housing authority to promote self-sufficiency among participating families, including the coordination of supportive services. (24 CFR 984.103(b))

Flat Rent: A rent amount the family may choose to pay in lieu of having their rent determined under the formula method. The flat rent is established by the housing authority set at the lesser of the market value for the unit or the cost to operate the unit. Families selecting the flat rent option have their income evaluated once every three years, rather than annually.

Formula Method: A means of calculating a family's rent based on 10% of their monthly income, 30% of their adjusted monthly income, the welfare rent, or the minimum rent. Under the formula method, rents may be capped by a ceiling rent. Under this method, the family's income is evaluated at least annually.

Full-Time Student: A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree. (24 CFR 5.603(d))

Head of Household: The adult member of the family who is the head of the household for purposes of determining income eligibility and rent. (24 CFR 5.504(b))

Household Members: All members of the household including members of the family, live-in aides, foster children, and foster adults. All household members are listed on the lease, and no one other than household members are listed on the lease.

Housing Assistance Plan: A housing plan that is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR 570.

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Imputed Income: For households with net family assets of more than $5,000, the amount calculated by multiplying net family assets by a HUD-specified percentage. If imputed income is more than actual income from assets, the imputed amount is used as income from assets in determining annual income.

In-Kind Payments: Contributions other than cash made to the family or to a family member in exchange for services provided or for the general support of the family (e.g., groceries provided on a weekly basis, baby sitting provided on a regular basis).

Interim (examination): A reexamination of a family income, expenses, and household composition conducted between the regular annual recertifications when a change in a household's circumstances warrants such a reexamination.

Live-In Aide: A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities and who:

A. Is determined to be essential to the care and well- being of the persons;

B. Is not obligated for the support of the persons; and

C. Would not be living in the unit except to provide the necessary supportive services. (24 CFR 5.403(b))

Low-Income Families: Those families whose incomes do not exceed 80% of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80% of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. (1937Act)

Medical Expenses: Medical expenses (of all family members of an elderly or disabled family), including medical insurance premiums, that are anticipated during the period for which annual income is computed and that are not covered by insurance. (24 CFR 5.603(d)). These expenses include, but are not limited to, prescription and non-prescription drugs, costs for doctors, dentists, therapists, medical facilities, care for a service animals, transportation for medical purposes.

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Mixed Family: A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. (24 CFR 5.504(b))

Monthly Adjusted Income: One twelfth of adjusted income. (24 CFR 5.603(d))

Monthly Income: One twelfth of annual income. (24 CFR 5.603(d))

National: A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession. (24 CFR 5.504(b))

Near-Elderly Family: A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides. (24 CFR 5.403(b))

Net Family Assets:

A. 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.

B. 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.

C. In determining net family assets, housing authorities 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. (24 CFR 5.603(d))

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Non-Citizen: A person who is neither a citizen nor national of the United States. (24 CFR 5.504(b))

Occupancy Standards: The standards that a housing authority establishes for determining the appropriate number of bedrooms needed to house families of different sizes or composition.

Person with Disabilities: A person who:

A. Has a disability as defined in Section 223 of the Social Security Act, which states:

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

In the case of an individual who attained the age of 55 and is blind and unable 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."

B. Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;
2. Substantially impedes his or her ability to live independently; and
3. Is of such a nature that such ability could be improved by more suitable housing conditions, or

C. Has a developmental disability as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act, which states:

"Severe chronic disability that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the person attains age 22;

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3. Is likely to continue indefinitely;

4. Results in substantial functional limitation in three or more of the following areas of major life activity: (1) self care, (2) receptive and responsive language, (3) learning, (4) mobility, (e) self-direction, (6) capacity for independent living, and (7) economic self-sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated."

This definition does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.(1937 Act)

No individual shall be considered to be a person with disabilities for purposes of eligibility solely based on any drug or alcohol dependence.

Proration of Assistance: The reduction in a family's housing assistance payment to reflect the proportion of family members in a mixed family who are eligible for assistance. (24 CFR5.520)

Public Housing Agency (PHA): Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing under the 1937 Housing Act. (24 CFR 5.100)

Recertification: The annual reexamination of a family's income, expenses, and composition to determine the family's rent.

Remaining Member of a Tenant Family: A member of the family listed on the lease who continues to live in the public housing dwelling after all other family members have left. (Handbook 7565.1 REV-2, 3-5b.)

Self-Declaration: A type of verification statement by the tenant as to the amount and source of income, expenses, or family composition. Self-declaration is acceptable verification only when third-party verification or documentation cannot be obtained.

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Shelter Allowance: That portion of a welfare benefit (e.g., TANF) that the welfare agency designates to be used for rent and utilities.

Single Person: Someone living alone or intending to live alone who does not qualify as an elderly family, a person with disabilities, a displaced person, or the remaining member of a tenant family. (Public Housing: Handbook 7465.1 REV-2, 3-5)

State Wage Information Collection Agency (SWICA): The State agency receiving quarterly wage reports from employers in the State or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information. (24 CFR 5.214)

Temporary Assistance to Needy Families (TANF): The program that replaced the Assistance to Families with Dependent Children (AFDC) that provides financial assistance to needy families who meet program eligibility criteria. Benefits are limited to a specified time period.

Tenant: The person or family renting or occupying an assisted dwelling unit. (24 CFR 5.504(b))

Tenant Rent: The amount payable monthly by the family as rent to the housing authority. Where all utilities (except telephone) and other essential housing services are supplied by the housing authority or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the housing authority and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance. (24 CFR 5.603(d))

Third-Party (verification): Written or oral confirmation of a family's income, expenses, or household composition provided by a source outside the household.

Total Tenant Payment (TTP):

A. Total tenant payment for families whose initial lease is effective on or after August 1, 1982:

1. Total tenant payment is the amount calculated under Section 3(a)(1) of the 1937 Act which is the higher of :

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a. 30% of the family's monthly adjusted income;

b. 10% of the family's monthly income; or

c. If the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under section 3(a)(1) shall be the amount resulting from one application of the percentage.

2. Total tenant payment for families residing in public housing does not include charges for excess utility consumption or other miscellaneous charges.

B. Total tenant payment for families residing in public housing whose initial lease was effective before August 1, 1982: Paragraphs (b) and (c) of 24 CFR 913.107, as it existed immediately before November 18, 1996), will continue to govern the total tenant payment of families, under a public housing program, whose initial lease was effective before August 1, 1982.

Utility Allowance: If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made by a housing authority of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. (24 CFR 5.603)

Utility Reimbursement: The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.(24 CFR 5.603)

Very Low-Income Families: Low-income families whose incomes do not exceed 50% of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than

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50% of the median for the areas on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in Section 520 of the Housing Act of 1949, taking into account the subsidy characteristics and types of programs to which such ceilings apply. (1937 Act)

Welfare Assistance: Welfare or other payments to families or individuals, based on need, that are made under programs funded by Federal, State or local governments. (24 CFR 5.603(d))

Welfare Rent: In "as-paid" welfare programs, the amount of the welfare benefit designated for shelter and utilities.

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APPENDIX 3 - ACRONYMS

ACC	Annual Contributions Contract
ACOP	Admissions and Continued occupancy Policy
BMHA	Buffalo Municipal Housing Authority
CFR	Code of Federal Regulations
FSS	Family Self Sufficiency (program)
HCDA	Housing and Community Development Act
HQS	Housing Quality Standards
HUD	Department of Housing and Urban Development
INS	(U.S.) Immigration and Naturalization Service
NAHA	(Cranston-Gonzalez) National Affordable Housing Act
NOFA	Notice of Funding Availability
OMB	(U.S.) Office of Management and Budget
PHA	Public Housing Agency
QHWRA	Quality Housing and Work Responsibility Act of 1998
SSA	Social Security Administration
TANF	Temporary Assistance to Needy Families
TTP	Total Tenant Payment

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FY 2014 Income Limits Documentation System

HUD.gov HUD User Home Data Sets Fair Market Rents Section 8 Income Limits MTSP Income Limits HUD LIHTC Database

FY 2014 Income Limits Summary

FY 2014 Income Limit Area	Median Income Click Here	FY 2014 Income Limit Category	Persons in Household 1	2	3	4	5	6	7	8
Buffalo-Niagara Falls, NY MSA	$63,900	Very Low (50%) Income Limits ($) Click Here	22,400	25,600	28,800	**31,950**	34,550	37,100	39,650	42,200
		Extremely Low (30%) Income Limits ($) Click Here	13,450	15,350	17,250	**19,150**	20,700	22,250	23,750	25,300
		Low (80%) Income Limits ($) Click Here	35,800	40,900	46,000	**51,100**	55,200	59,300	63,400	67,500

The **Buffalo-Niagara Falls, NY MSA** contains the following areas: Erie County, NY; and Niagara County, NY.

FY 2014 Multifamily Tax Subsidy Project Income Limits Summary

The following table depicts the 50 percent and 60 percent income limits for family sizes 1 through 8 for Multifamily Tax Subsidized Projects

Erie County, New York										
FY 2014 MTS Income Limit Area	Median Income	FY 2014 MTS Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
Erie County	$63,900	50 Percent Income Limits	$22,400	$25,600	$28,800	***$31,950***	$34,550	$37,100	$39,650	$42,200
		60 Percent Income Limits	$26,880	$30,720	$34,560	***$38,340***	$41,460	$44,520	$47,580	$50,640

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APPENDIX 6 - SAMPLE SITE BASED OFFER LETTER

BUFFALO MUNICIPAL HOUSING AUTHORITY

Housing Assistance Department

245 Elmwood Avenue

Buffalo, New York 14222

Phone: (716) 855-6774 Fax: (716) 881-2343

One Bedroom Elderly/Near-Elderly/Mixed Date:

Dear Applicant:

A review of your application shows that you qualify to place your name onto the One Bedroom Elderly waitlist at the BMHA Development of your choice. BMHA Developments that have One Bedroom Elderly/Mixed waitlists are:

Development	Current estimated wait as 01/2014
KellyGardens	Over 5 years **please indicate whether you can climb stairs below**
LBJ Apartments	12 to 18 months
F.A. Sedita Apartments (1 BR units)	Over 4 years
F.A. Sedita Apartments (Studios)	Over 4 years
Holling Homes	12 to 18 months **please indicate whether you can climb stairs below**
Commodore Perry Ext	Over 4 years
Stuyvesant Apartments (1 BR units)	Over 4 years
Stuyvesant Apartments (Studios)	Over 2 years
Monsignor Geary	Over 4 years
Mullen Manor	Over 4 years
Schwab Terrace	Over 4 years

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Development	Current estimated wait as 01/2014
Elmhurst Apartments	Over 5 years
F. Douglass Tower (515 Clinton only)	Over 4years
AD Price Phase II (age 55+ only)	Over 4 years
Slater Courts	Over 4 years
ShafferVillage	Over 2 years (M)
Kenfield Homes **(1st, 2nd& 3rd Floor Apts.)**	Over 3 years (M)

Attached to this letter for your review is a description sheet for the above listed developments. Please select one development waitlist that you wish to have your name entered onto and mark your choice below.

Please return this before:

DURING YOUR ESTIMATE WAITING PERIOD YOU MUST REPORT ANY HOUSEHOLD CHANGES

Your failure to respond by this date will result in the withdrawal of your application.

MAIL OR BRING IN YOUR RESPONSE TO:

BMHA HOUSING ASSISTANCE DEPARTMENT

245 ELMWOOD AVENUE

BUFFALO, NY 14222

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If you have any questions, please call 855-6774.

***** <u>Please do not give notice to your present landlord. Entering your name onto a BMHA waitlist is not to be considered the approval of your application. As apartments become available (or are expected to become available) you will be contacted for an interview. This interview will continue the evaluation of your application. Your application may be approved or denied following your interview.</u> *****

Site selection Agreement

I request the Buffalo Municipal Housing Authority to place my name on the wait list for_____. I understand that the waiting period for placement in the development is estimated to be _____or longer. **<u>Stairs yes or no (circle)</u>**

I understand that I may place my name on only one site list. I understand that I may change my site selection at any time. I acknowledge that if I change my selection my name will be placed onto my new site list as of the date/time of my new selection, and my name will be removed from the waitlist that I had previously chosen.

Signed:_____ **Date**:_____

Social Security #_____Phone #_____

Received by BMHA staff :_____ Date:_____

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Shaffer Village (Elderly)

Management phone # to view apartment: 873-1214
Located on Isabelle Street near Ontario and Skillen Streets.
Close to the Grant (#3), Niagara (#5) and Kenmore (#30) bus lines.
Utilities included, heat regulated by tenant. Stove provided.

Kelly Gardens

Management phone # to view apartment: 853-2726
Located on Cornwall Avenue near E. Ferry.
Close to Delavan (#26) and Utica (#12) bus lines.
Utilities included.
Gas heat and electric cooking. Laundry hook-ups in basement.

Schwab Terrace

Management phone # to view apartment: 883-0040
Located on Best Street between Myers and Fillmore Avenue.
Close to the Genesee (#24), Fillmore (#23) and Porter-Best (#22) bus lines.
Utilities included and stove provided.
Laundry facilities available in the community building.

Sedita Apartments

Management phone # to view apartment: 881-1785
Located on Summer Street on the corner of Richmond Avenue.
Close to the Elmwood (#20) and Porter-Best (#22) bus lines.
Utilities included and stoves provided.
Laundry facilities located on first floor. Noon day meal, social and recreational programs available.

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Holling Homes

Management phone # to view apartment: 876-3553
Located on Holling off Virgil near Delaware and Hertel Avenues.
Close to Delaware (#25), Fillmore-Hertel (#23) and Colvin (#11) bus lines.
Utilities included.
Electric heat and cooking. Laundry facilities in Community Room. Senior program on-site.

Elmhurst Apartments

Management phone # to view apartment: 873-1214
Located on Elmhurst and Amherst near Lincoln Parkway.
Close to Elmwood (#20), Delaware (#25) and Amherst (#32) bus lines.
Utilities included.
Electric heat and cooking. Laundry hook-ups in basement.

Slater Courts

Management phone # to view apartment: 853-2726
Located on Seneca St. between Southside Ave. and Vanduzer.
Close to the Seneca (#15) and Bailey (#19) bus lines.
Central heat included, regulated by tenant. Stove included.
Laundry facilities available. Emergency call buttons in bedroom and bath area.

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LBJ Apartments

Management phone # to view apartment: 886-2525
Located on Main Street and Humboldt Parkway.
Steps from Rapid Transit Station close to Main (#8) bus lines.
Heat included, controlled by tenant. Stove provided.
Laundry facilities available. Spacious community room.

Stuyvesant Apartments

Management phone # to view apartment: 883-0040
Located on Elmwood Avenue between North and Summer Streets.
Close to the Elmwood (#20) and Porter-Best (#22) bus lines.
Utilities included. Stove provided.
Air conditioning provided for minimal payment. Laundry facilities available.

Msgr. Geary Apartments

Management phone # to view apartment: 895-1775
Located on Bailey near William and Lovejoy.
Close to Bailey (#19) and William (#1) bus lines.
Stove and refrigerator provided.
Key-only entry. "Shared aid" service available for eligible tenants. Laundry facility and community room. Emergency buttons in each bathroom.

Mullen Manor

Management phone # to view apartment: 853-2726
Located on Mineral Springs between Seneca and S. Ogden Streets.
Close to Seneca (#15) bus line.
Heat included and utility allowance for electric. Stove and refrigerator provided.

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Laundry facility available in the community building. Emergency call buttons in bedroom and bath area.

A.D. Price Phase II

Management phone # to view apartment: 853-2726
Located on Peckham Street at Jefferson Avenue .
Close to Jefferson (#18), Broadway (#4) and William (#1) bus lines.
Tax Credit low income limits apply. Electric service in residents name; utility allowance is credited.

Commodore Perry Extension (Elderly)

Management phone # to view apartment: 852-0258
Boardered by South Park, Lousiana and Chicago Streets.
Close to South Park (#16), Abbott (#14) and Jefferson (#18) bus lines.
Utilities included.
Gas heat. Gas cooking. Laundry facilities in building.

Kenfield Homes

Management phone # to view apartment: 883-3300
Located on Tower Street behind Kensington High School.
Close to Bailey (#19) and Utica (#12) bus lines.
Utilities included.
Central heating and electric cooking. Laundry hook-ups in basement.

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Frederick Douglass Tower (515 Clinton Street)

Management phone # to view apartment: 853-8378
Located at 515 Clinton Street, near Jefferson Avenue

On Clinton Street (#2) bus line, Near Jefferson (#18) bus line
Utilities included.
Central boiler heating. Gas cooking. Laundry facilities in building.

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BUFFALO MUNICIPAL HOUSING AUTHORITY

HOUSING ASSISTANCE DEPARTMENT

245 Elmwood Avenue – Buffalo, New York 14222

Telephone (716) 855-6774

February 7, 2014

NOTICE OF INTENT TO REVISE BMHA ALLOCATION PLAN

The BMHA currently follows a HUD approved allocation Plan that is in effect through July 17, 2015. A chart showing the currently approved designations included as a part of the plan is attached.

BMHA has been advised that due to additions to our public housing inventory and recent partnerships that have brought additional elderly units into our portfolio that our current Allocation plan is now subject to revision. HUD advises that the current plan in effect will remain in effect until it is replaced with a new revised plan.

BMHA is currently in the process of drafting a revision to the BMHA Allocation Plan that will ask to add into our plan elderly designated units at:

A.D. Price Phase II (82 one bedroom units and 12 two bedroom units)

Walden Park Senior Housing (34 one bedroom units)

Hertel Park Senior Housing (30 one bedroom units)

No other changes to the plan are anticipated at this time. A copy of the revised allocation plan submittal will be added into this ACOP document as a revised Attachment # 7 when it is completed and submitted to HUD for review and approval.

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APPENDIX 7 - BMHA ALLOCATION PLAN CHART

Attachment B --Allocation Plan Unit Designations approved 7/17/2013 through 7/17/2015

Development	Dev #	Units Approved for Elderly Only Designation by Bedroom Size			Units Approved for Disabled Only Designation by Bedroom Size			Total units affected	Percentage of development affected
		0 BR	1 BR	2 BR	0 BR	1 BR	2 BR		
C. Perry Ext.	2005		108					108	27.1
Shaffer Village	2008					5	13	18	7.7
Kenfield Homes	2010					24		24	3.7
LaSalle Courts	2011					18		18	8.7
Kelly Gardens	2013		24	4		2		30	100.0
Schwab Terrace	2014		30	2		2		34	100.0
F. A. SeditaApts	2016	9	83	9				101	100.0
Holling Homes	2018		125			7		132	100.0
Kowal Apartments	2019					24		24	100.0
Elmhurst Apartments	2020		23			1		24	100.0
Slater Courts	2021		23			1		24	100.0
L. B. Johnson Apts	2022		205	1				206	100.0
Camden Apartments	2026			11			1	12	100.0
Stuyvesant Apts	2027	60	88					148	100.0

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Development	Dev #	Units Approved for Elderly Only Designation by Bedroom Size			Units Approved for Disabled Only Designation by Bedroom Size			Total units affected	Percentage of development affected
		0 BR	1 BR	2 BR	0 BR	1 BR	2 BR		
Msgr Geary Apts	2031		84	16				100	100.0
Mullen Manor	2034		33	5		2		40	100.0
F. Douglass Tower	2046		44					44	74.6
Totals		69	870	48	0	86	14	1087	
		Total Elderly Only 987			**Total Disabled Only 100**				

Note: unit count at C. Perry Ext reduced by 4 units due to removal of units for elevator modernization

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BUFFALO MUNICIPAL HOUSING AUTHORITY
DWELLING LEASE

This Agreement, made this _____ day of _____, 20___, is executed between the Buffalo Municipal Housing Authority (hereinafter referred to as "Authority") and _____ (hereinafter referred to as "Tenant").

1. Unit

The Authority, relying upon the representations of the Tenant as to the Tenant's income, household composition and housing need, hereby leases the premises known as:

_____

located in: _____ (hereinafter referred to as the "Unit") to be occupied exclusively as a private residence by Tenant and household.

2. Term

The term of this lease shall be for one calendar year, beginning on _____ and ending on _____. Upon the expiration of the lease term, the lease shall run from month-to-month, until a written twelve (12) month term extension is executed between the Tenant and the Authority.

3. Household Composition and Income

Tenant is required by federal and state law to accurately report all household members and family income to the Authority. The Unit is supported by Federal and New York State tax dollars, allocated by the U.S. Department of Housing and Urban Development and the New York State Division of Housing and Community Renewal, to provide low-income rental housing. Rent is adjusted to each tenant's total family income, as required by Federal and State regulations. If the information that Tenant furnishes on his/her application or to the Authority is false, misrepresented, or incomplete, the Tenant's lease is void and Tenant is subject to eviction

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and prosecution for both retroactive rent and fraud under State and Federal civil and criminal law.

Tenant can be evicted for failing to immediately report and provide documentation as to all persons living in or moving out of the household. Tenant shall report any deletions of household members named in this Agreement to the Authority in writing within 10 days of the occurrence. Any additions to the Tenant's household members require the advance screening and written approval of the Authority before any additional household members are allowed to move into the Unit. Tenant agrees to wait for the Authority's written approval before allowing additional persons to move into the Unit. Tenant's failure to comply with this provision is a material breach of this Agreement. The Tenant verifies that the list of everyone who will live in the premises supplied in the table of this section of this Agreement is true and accurate. This Agreement shall not be revised to permit a change of family composition resulting from a request to allow adult children to move back into the Unit unless it is determined the move is essential for the mental or physical health of Tenant and it does not disqualify the family for size of unit it is currently occupying.

Name	Relation	M/F	DOB	Source of Income	Social Security #
1.	Head				
2.					
3.					
4.					
5.					
6.					
7.					

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FEDERAL PROGRAM ONLY: Tenant must report all changes in income to the Authority's Management office at the time of the income change. The failure of the Tenant to report all income changes is grounds for immediate eviction.

STATE PROGRAM ONLY: Tenant must report all changes in income to the Management office at the time of the Annual Recertification, EXCEPT the Tenant is required to report all changes in public assistance immediately. If the Tenant receives income other than public assistance, s/he may document income decreases at the time that such changes occur; however, s/he is required to document income increases at the time of the annual survey. NOTE: Income increases that occur after Tenant receives his or her annual recertification, but prior to his or her receipt of a rent change notice, must be reported to the Authority's Management office. The failure of the Tenant to report changes with respect to public assistance income immediately or all other income changes at the time of the annual recertification is grounds for immediate eviction.

4. Rent

a. *Rent Payment*

Rent in the amount of $_____ per month shall be payable by personal or cashier check or money order in advance of or on the first day of each month, and shall be delinquent after the seventh (7th) day of said month. All tenants receiving Erie County Department of Social Services (ECDSS) rental assistance shall use the ECDSS two-party check system for payment of rent. All legal fees, service fees, warrant fees, or late fees imposed on Tenant shall be payable by Tenant by way of additional rent. Any funds paid by Tenant to BMHA shall first be applied toward the longest outstanding dues, fees, charges, and rent owed by Tenant. The Authority shall not accept cash for rent payments. If Tenant submits a check that is returned for insufficient funds, Tenant may be required to make all future rental payments by cashier's check or money order. Initial rent and any applicable utility reimbursement shall be prorated for partial month on a per day calculation.

b. *Payment Location*

Rent and any other charges or fees imposed on Tenant shall be paid by way of personal check or money order mailed to the Authority's Central Cashiering office located at 124 Fulton Street, Buffalo, NY 14204.

c. *Redetermination of Rent*

The rent amount as described in Section 4(a) of this Agreement is due each month until changed as described below:

i. The status of each tenant is to be re-examined at least once a year. Tenants paying Flat Rent shall have their incomes examined every three years. If residing within a housing development receiving federal funding, Tenant shall certify to compliance with the 8 hour per month community service requirement at the annual recertification.

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ii. Tenant shall supply the Authority, when requested with accurate information about: family composition, age of family members, income and source of income of all family members, assets, community service activities, and related information deemed necessary by the Authority to determine eligibility, annual income, adjusted income, and rent. Tenant shall supply such information to the Authority's Management Office located at _____ (hereinafter referred to as "Management Office"). Failure to supply such information when requested is a serious violation of the terms of the lease and the Authority may terminate the lease. All information reported by Tenant must be verified. Tenant agrees to comply with the Authority's requests for verification by signing releases for third-party sources, presenting documents for review, or providing other suitable forms of verification. The Authority actions shall comply with the Admissions and Continued Occupancy Policy, which is publicly posted in the Management Office, and may be obtained on request at the expense of the person making the request.

iii. Rent will not change during the period between regular re-examination, unless during such period:

a) Tenant can verify a change in his/her circumstances (such as decline in or loss of income) that would justify a reduction in rent, except that rent shall not be reduced because a tenant's TANF grant is reduced because Tenant committed welfare fraud or failed to comply with a welfare department economic self-sufficiency requirement. If a reduction is granted, Tenant must report subsequent increases in income within 10 days of occurrence, until the next scheduled re-examination. Failure to report within the 10 days may result in a retroactive rent change.

b) If it is found that Tenant has misrepresented the facts upon which the rent is based so that the rent Tenant is paying is less than the rent that he/she should have been charged. The Authority may apply an increase in rent retroactive to the first of the month following the month in which the misrepresentation occurred.

c) Rent formulas or procedures are changed by federal or state law or regulation.

iv. Failure to report any changes in family composition within 10 days of the occurrence may result in a retroactive rent increase.

d. *Late Charges*

The Authority shall impose a charge for rent or other incurred charges or fees paid after the seventh (7th) calendar day of the month in which the rent, charges or fees are due in accordance with the Schedule of Charges and Fees. The Authority shall provide Tenant with written notice of the imposition of any late charges, which shall be payable by way of additional rent.

e. *Maintenance Costs*

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Tenant shall be charged all costs for service or repairs due to intentional or negligent damage to the Unit, common areas or grounds beyond normal wear and tear, caused by Tenant, household members or guests. The cost for such service shall be the greater of the Schedule of Maintenance Charges or the actual cost to the Authority for the labor and materials needed to complete the work. The Authority shall provide Tenant with written notice of the imposition of any maintenance costs, which shall be payable by way of additional rent.

5. Utilities and Appliances

a. *Utility Allowance*

A utility reimbursement in the amount of $_____ per month, if applicable, shall be paid to the Tenant for the following utilities:

( ) Electricity ( ) Gas ( ) Heat ( ) Water

b. *Appliances Provided by the Authority*: The Authority shall provide during the term of this Agreement the usage in the Unit of the following appliances:

( ) Refrigerator ( ) Stove

( ) Other:_____

c. *Charges for Excess Appliances*

Charges for excess appliances are due per the following:

i. Air conditioners: Tenant agrees that the Tenant must be provided prior written approval by the Authority to utilize an air conditioner in the Unit. An additional charge of $_____ per month will payable by way of additional rent for each air conditioner in the Unit for each month of occupancy. All units will be installed by the Authority and an installation fee will be assessed.

6. Security Deposit

a. Tenant agrees to pay an amount equal to the greater of $_____ or one month's gross total tenant rent payment. The Authority shall use the Security Deposit at the termination of this Agreement to pay the cost of any rent or any other charges owed by Tenant at the termination of this Agreement, or to reimburse the cost of repairing any damages to the dwelling unit caused by Tenant, household members, or guests.

b. The security deposit may not be used to pay rent or other charges while Tenant occupies the unit. No refund of the security deposit will be made until Tenant has vacated the Unit and the Authority has inspected the Unit.

c. The Authority may substitute a security deposit payment with an appropriate security agreement for the nonpayment of rent or damages with the Erie County Department of Social Services for recipients of public assistance as defined in New York State Social Service Law § 300.

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d. The return of a security deposit shall occur within 30 days after Tenant moves out of the Unit. The Authority agrees to return the security deposit to Tenant when he/she vacates, less any deductions for any costs indicated in this section of this Agreement, so long as Tenant provides the Authority with a forwarding address.

7. Lead Safety

The Authority shall provide the Tenant with a Lead Hazard Information Pamphlet, and a Lead Disclosure Addendum, which shall be included as attachments to this Agreement.

8. Conditions of Occupancy

a. *Use and Occupancy of Dwelling*. Failure to comply with the following requirements and responsibilities may result in eviction.

i. Tenant shall have the right to exclusive use and occupancy of the Unit for Tenant and other household members listed on the lease, aside from the exceptions listed in this Agreement. This provision permits reasonable accommodation of Tenant's guests or visitors for a period not cumulatively exceeding fourteen (14) days per year. Tenant must notify BMHA representative when overnight guests will be residing in Tenant's unit for more than three (3) days.

ii. The Tenant shall use the unit solely as a private dwelling for Tenant and Tenant's household as identified in Section 3 of this Agreement, and not use or permit its use for any other purpose.

iii. The Tenant shall keep the Unit and other such areas as may be assigned to the Tenant for exclusive use in a clean and safe condition and abide by the Housekeeping Standards, incorporated herein by reference as if fully set forth herein. This includes refraining from overstocking items, materials, or possessions in the Unit and keeping front and rear entrances and walkways for the exclusive use of the Tenant, free from hazards and trash and keeping the yard free of debris and litter.

iv. The Tenant and members of his/her household, guests, visitors and employees shall comply with all federal and New York State laws and local codes, rules and ordinances affecting the use or occupation of the Unit and with all reasonable rules or regulations now or hereafter adopted by the Authority for the safety, comfort and welfare of the tenants and Authority's employees.

v. The Tenant shall respect the rights and privileges of other tenants and are subject to action by Authority upon written complaints and petitions from two or more Tenants.

vi. The Tenant shall use only in a reasonable manner and for the use they were intended all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other equipment and facilities including elevators.

vii. The Tenant shall place household waste in containers provided by the Authority in designated areas on days and times designated by the

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Authority. All waste must be properly contained or bagged, therefore no loose garbage or paper bags are allowed. It will be the responsibility of the Tenant to properly dispose of any garbage, trash, or waste that is not of the type or size that may be collected by the Authority's garbage collection service. Tenant shall be charged as additional rent according to the Schedule of Maintenance Charges for any trash removal or cleanup done by the Authority due to Tenant's failure to comply with this provision. Tenant shall comply with all recycling requirements imposed by the BMHA, local and state ordinances.

viii. The Tenant, Tenant's household members, guests, or visitors shall not park any vehicles on Authority property that do not possess valid registration or inspection stickers. Tenant is responsible for the prevention of the accumulation of oil and/or grease on parking areas, and must refrain from the storage or accumulation of unsightly items including inoperable automobiles, other vehicles and machinery or appliances on the premises of the Development. Any inoperable or unlicensed vehicle as described above will be towed from the Authority's property at Tenant's expense.

ix. The Tenant will be held strictly responsible for any loss or damage to the Authority's property resulting from overflow from toilets, sinks, washers, bathtubs, or basins due to the Tenant's negligence. Tenant shall also be responsible for loss or damage to other tenants' property, due to negligent acts or omissions of Tenant, Tenant's household members, guests, or visitors. All damage, accidents, or necessary repairs to the Unit, or common areas or grounds of the Development must be reported immediately by the Tenant to the BMHA Central Call Center (716) 836-4954. Tenant's failure to report the need for repairs in a timely manner shall be considered to contribute to any damage that occurs.

x. The Tenant shall not make any additions, alterations, repairs or redecoration to the Unit, nor install additional equipment, machinery, or major appliances without the prior written consent of the Authority. Tenant shall not make any changes to locks or install new locks on exterior doors of the Unit without the prior written consent of the Authority. Any repairs made with the Authority's written consent must conform to all building codes. The Authority, by giving prior written consent for any additions, alterations, repairs, or redecoration, assumes no responsibility or liability for such additions, alterations, repairs, and/or redecoration. No part of the Tenant's rent shall be payable in repairs or alterations of any kind. All additions, alterations, and repairs of any kind shall become the property of the Authority at the termination of the term of this Agreement.

xi. The Tenant shall take reasonable precautions to prevent fires and to refrain from storing highly volatile or flammable materials in the Unit, and using any method of heating or cooking other than that supplied by the Authority. Use of stoves for heating is a fire and health hazard and is strictly forbidden.

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xii. The Tenant, and Tenant's household members or guests shall not throw anything out of the windows or the doors of the dwelling.

xiii. The Tenant, Tenant's household members, guests, or visitors shall refrain from erecting or hanging radio or television antennas on or from any part of the Unit.

xiv. In those units that have balconies, the Tenant is advised of the following rules for their own safety, and that of their neighbors:

a) There shall be no cooking of any kind on the balconies;
b) The balconies are not play areas for children, and may not be used as such;
c) The balconies are not storage areas for household items, trash, garbage or debris, and may not be used as such; and
d) Tenants, their families and guests must refrain from throwing anything off of the balconies.

xv. The Tenant, Tenant's household members, guests, or visitors shall refrain from placing signs of any type in or about the Development without prior written permission from the Authority.

xvi. The Tenant shall not permit his/her household members, guests, or visitors to engage in any horseplay in the Tenant's neighbors' yards or in public areas (hallways, elevators, streets, parking areas, etc.), except in those areas designated for this purpose.

xvii. The Tenant, Tenant's household members, guests, or visitors shall not obstruct sidewalks, passages, public halls, stairways, fire escapes, or vestibules or use them for any purpose other than to exit or enter dwellings.

xviii. If the Tenant resides within a housing development receiving federal funding, Tenant must complete eight (8) hours per month of community service or an economic self-sufficiency program in accordance with 24 C.F.R. Part 960, unless provided a written exemption by the Authority from this service requirement based on the exceptions outlined in 24 C.F.R. § 960.601.

xix. The maintenance of lawns and snow removal within five (5) feet of the entrance(s) of the Unit shall be the responsibility of the Tenant in Developments where walkways, stairs, lawns, and parking areas are used only by one or two households. Tenants who fail to maintain such lawns and snow removal shall be subject to maintenance charges. The Tenant is required to clean and maintain the public halls and stairways adjacent to his dwelling in accordance with the Authority's policy and rules, posted or distributed to the Tenant and incorporated herein by reference.

xx. Tacks, nails, bolts, screws, or other wall fasteners, or cement used to lay carpets, rugs, or floor coverings are strictly prohibited. Costs of damages shall be charged to the Tenant by way of additional rent.

xxi. The Tenant, Tenant's household members, visitors, and guests, shall not destroy, deface, damage or remove any property, materials, or equipment of the Authority.

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xxii. The Tenant, Tenant's household members, visitors, and guests shall conduct themselves in a manner which will not disturb his/her neighbors' peaceful enjoyment of their premises and will be conducive to maintaining the Development in a decent, safe and sanitary condition.

xxiii. The Tenant, Tenant's household members, visitors, and guests shall refrain from any activity, illegal or otherwise, which disturbs the physical or social environment of the Development.

xxiv. The Tenant, Tenant's household members, visitors, and guests shall act in a cooperative manner with neighbors and Authority employees and refrain from verbally abusing, threatening, or menacing the Authority's employees or other tenants and/or their guests.

xxv. The Tenant shall not display, use, possess, or allow members of the Tenant's household or guests to display, use, or possess any illegal firearms (operable or inoperable) or other illegal weapon as defined by the laws and courts of New York State, anywhere on the Authority's property.

xxvi. Absent negligence on the part of the Authority or one of its employees or agents, the Authority shall have no liability for any personal property of the Tenant, Tenant's household members, visitors, and guests.

b. *Pet Policy*: Tenant is subject to the Authority's Pet Policy and the Development's Tenant Council's Pet Policy, which are incorporated into this Agreement by references, as if set forth fully herein. Under no circumstances may Tenant keep a pet that is vicious, dangerous or non-domesticated, including but not limited to snakes, alligators, monkeys, chickens, pigs, feral cats, and goats.

c. *Conflict Resolution Mediation:* Tenant and/or Tenant's household members must attend and participate in any mediation arranged by the Authority to resolve any tenant issues that may involve Tenant and/or Tenant's household members. The failure to attend or meaningfully participate in the mediation or failure to implement the mediator's recommended resolution may result in eviction.

d. *Bedbug Treatment*: Tenant agrees to report any bedbug infestation to the Authority and cooperate with all pest control efforts. In the event of a bedbug treatment, Tenant agrees to execute the Tenant Roles and Responsibilities Form, which is attached. Tenant must comply with all recommendations and requests from the Authority's extermination contractor and the Authority's staff regarding extermination, remediation, and prevention of bedbug infestation. Failure to fulfill all duties and responsibilities listed in this lease and the Tenant Roles and Responsibilities Form may result in eviction and/or maintenance charges. These duties and responsibilities include, but are not limited to:

i. Removal of all sheets, blankets, mattress covers, pillowcases, and other bedding from beds and wash in hot water (120° F. recommended) and dry on the highest heat setting for at least 30 minutes. Fold them and place them in the plastic bags provided by the Authority and ensure the bags are properly closed. Do not place them back on the bed until after the extermination treatment.

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ii. Removal of all clothing, towels, linens, etc. from the closets, dressers, and drawers and wash all clothing, towels, linens, etc. in hot water (120° F. recommended) and dry on the highest heat setting for at least 30 minutes. Fold them and place them in the plastic bags provided by the Authority and ensure the bags are properly closed. Do not place them back in the closets until after the extermination treatment.

iii. Vacuum all furniture, dresser drawers, night stand drawers, mattresses and box springs. Empty vacuum contents in outdoor trash receptacle.

iv. Discard all cardboard hangers, boxes, etc.

v. Place plastic encasements over mattress and box spring and keep plastic encasements on both the mattress and box spring for one year. If the mattress encasement becomes torn or damaged, it is Tenant's responsibility to replace.

e. *Ability to Comply With Lease Terms*: If during the term of this Agreement, Tenant, by reason of physical or mental impairment is no longer able to comply with the terms and conditions of this Agreement, cannot make arrangements for proper aid to ensure compliance with this Agreement, and the Authority cannot make any reasonable accommodation that would enable the Tenant to comply with this Agreement; then the Authority shall work with appropriate agencies to locate suitable housing for the Tenant and will terminate this Agreement. At the time of admission, Tenant shall identify individuals and their contact information to be contacted if the Tenant becomes unable to comply with the terms and conditions of this Agreement.

9. Prohibition Against Subletting

Tenant shall not assign this Agreement, nor sublease or sublet the Unit. Tenant agrees not to give accommodation to boarders, lodgers, or long term guests (in excess of 14 cumulative days) without the advance written consent of the Authority.

10. Entry by Management

a. *Move-In and Move-Out Inspections*: The Authority and the Tenant or designated representative shall inspect the Unit prior to occupancy by Tenant. The Authority shall provide the Tenant with a written statement describing the condition of the Unit and the equipment or appliances provided with the Unit. Prior to the expiration of the term of this Agreement, the Authority and the Tenant shall inspect the Unit and thereafter Tenant shall be provided a written statement of charges, if any, for which Tenant is responsible to pay.

b. *Entry of Premises During Tenancy*

i. Tenant agrees that the duly authorized agent, employee, or contractor of the Authority with BMHA issued identification will be permitted to enter the Unit during reasonable hours (8:30 a.m. to 4:30 p.m.) for the purpose of performing maintenance, making improvements, repairs, alterations,

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utility meter readings, installations or removals, inspecting the Unit, or showing the Unit for releasing. The Authority shall provide the Tenant with twenty-four (24) hours written notice that the Authority intends to enter the Unit, unless there is reasonable cause to believe that an emergency exists or that the Unit has been vacated.

ii. When Tenant or a Tenant's household member requests maintenance on the Unit, the Authority shall attempt to provide such maintenance at a convenient time for the Tenant.

If the Tenant or a member of Tenant's household is absent from the Unit at the time of entry, the Authority's duly authorized agent, employee, or contractor that entered the Unit shall leave a written statement in the Unit specifying the date, time and purpose of entry in the Unit prior to leaving the Unit.

11. Transfers

a. *Involuntary Transfers*

i. Tenant agrees that if the Authority determines that the size or design of the Unit is no longer appropriate to the Tenant's needs based on a change of circumstances, the Authority shall send Tenant written notice of such determination. Tenant further agrees to accept a new lease for a different dwelling unit of the appropriate size and design.

ii. The Authority may move Tenant into another available unit if it is determined necessary to rehabilitate or demolish the Unit.

iii. Involuntary transfers are subject to the Grievance Procedure contained within the Authority's Admissions and Continuing Occupancy Policy. No involuntary transfers may be made until either the time to request a grievance has expired or the grievance procedure has been completed

iv. In the case of involuntary transfers, Tenant shall be required to move into the assigned dwelling unit made available by the Authority within fifteen (15) days of expiration of the time to request a grievance or the completion of the grievance procedure. If Tenant refuses to move, the Authority may terminate this Agreement.

b. *Voluntary Transfers*: The Authority will consider any voluntary transfer requests from the Tenant in accordance with transfer priorities established in the Authority's Admissions and Continuing Occupancy Policy.

c. *The Uniform Relocation Act will be implemented when applicable*

12. Authority Obligations

a. *General Obligations*: Throughout the term of this lease, unless otherwise terminated, the Authority is obligated to:

i. Maintain the Unit and the Development in decent, safe and sanitary condition;

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ii. Comply with the requirements of applicable building codes, housing codes, and federal and New York State regulations affecting health and safety;
iii. Make necessary repairs to the Unit in a timely manner;
iv. Keep the Development building, facilities, and common area, not otherwise assigned to Tenant for maintenance and upkeep, in a clean and safe condition;
v. Maintain in good and safe working order and condition electrical, plumbing, heating, ventilation, and other facilities and appliances supplied or required to be supplied by the Authority;
vi. To provide and maintain appropriate receptacles and facilities for deposit of household waste; and
vii. To supply running water and reasonable amounts of hot water and reasonable amount of heat at appropriate times of the year according to local custom and usage, except where heat or hot water is generated by an installation within the exclusive control of the Tenant and supplied by a direct utility connection;

b. *Defects Hazardous to Life, Health or Safety*:
i. The Authority shall offer Tenant a replacement dwelling unit, if available, if necessary repairs cannot be made within a reasonable time. The Tenant must accept any replacement dwelling unit offered by the Authority.
ii. The Authority is not required to offer Tenant a replacement unit if Tenant, Tenant's household members or guests caused the hazardous condition that necessitates the repairs.
iii. If the Authority determines that the Unit is uninhabitable because of imminent danger to the life, health, and safety of Tenant, and Tenant refuses alternative accommodations, this Agreement shall be terminated and any rent paid by the Tenant for the month in which the Agreement is terminated shall be refunded on a prorated basis dependent upon the date this Agreement is terminated.

c. *Violence Against Women Act (VAWA) Obligations*
i. The Authority may not consider incidents of domestic violence, dating violence, sexual assault or stalking as serious or repeated violations of the lease or other "good cause" for termination of assistance, tenancy or occupancy rights of the victim of abuse.
ii. The Authority may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.
iii. The Authority may request in writing that the victim, or a family member on the victim's behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as noted on the certification

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form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

13. Non-Waiver

The failure or omission of the Authority to strictly enforce any term or condition of this Agreement shall not act or be deemed as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the Authority from enforcing each and every term and condition of this Agreement thereafter.

14. Lease Modifications

Any amendments to this Agreement must be made through a written addendum executed by both the Tenant and a duly authorized representative of the Authority with the exception of rent redeterminations as described in Section 4(c) of this Agreement and changes to the Schedule of Maintenance Charges incorporated into this Agreement by reference. Any changes to the Schedule of Maintenance Charges will be publicly posted in any housing developments receiving federal funding.

15. Termination of Agreement

a. *Voluntary Termination of Agreement*
   i. The Tenant and the Authority may mutually agree in a written addendum to this Agreement to terminate this Agreement prior to the end of the term of this Agreement.
   ii. Tenant may terminate this Agreement during the term of this Agreement by providing thirty (30) days prior written notice to the Management Office, which states the termination date of the Agreement.
   iii. Tenant's termination notice shall be non-revocable unless Tenant receives written approval to revoke the termination notice from the Authority.
   iv. Tenant must remove all belonging, furniture, possessions and vacate the unit prior to the termination date stated in the Agreement.

b. *Involuntary Termination of Agreement*
   i. This Agreement may be terminated for serious or repeated violations of terms or conditions of this Agreement. Such serious or repeated violation of terms or conditions shall include but not be limited to:
      a) Failure to Pay Rent: The failure to pay rent or any additional charges or fees imposed by the Authority when due;
      b) Repeated Late Payment: Failure to pay the amount of rent or other charges or fees due by the seventh (7th) day of the month;
      c) Criminal Activity*:* Any criminal activity by Tenant, Tenant's household members, or Tenant's guests on the Authority's public

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housing premises or if Tenant or Tenant's household members have been convicted of a felony;

d) Drug Use or Alcohol Abuse: Use of illegal substances and/or abuse or a pattern of abuse of alcohol.

e) Misrepresentation of Information: Any misrepresentation or inaccurate information provided by Tenant to the Authority, including but not limited to household income, assets, or composition, or information pertaining to illegal drug use, alcohol abuse or rehabilitation.

f) Exceeding the Income Limit: If it is determined that Tenant and/or Tenant's household members exceed the applicable income limit of the Development.

g) Failure to Supply Requested Information: Any failure to supply in a timely fashion, any information requested by the Authority to process an audit, a reexamination, or redeterminations;

h) Fire or Water Damage: Any fire or water damage on Authority's premises caused by Tenant, Tenant's household members or guests or visitors; and

i) Violation of Conditions of Occupancy: Any violation of the Conditions of Occupancy as described in Section 8 of this Agreement and the Authority's Admissions and Continuing Occupancy Policy.

ii. Notice of Termination: The Authority shall provide written notice of the proposed termination of this Agreement within a reasonable period of time.

a) A reasonable period of time shall not exceed fourteen (14) days in the case of the failure to pay rent.

b) In all other circumstances, a reasonable period of time shall not exceed thirty (30) calendar days.

c) The notice of termination shall state the grounds for the termination and shall inform the Tenant of the Tenant's right to make a reply to the notice of termination and examine Authority documents directly relevant to the termination or eviction.

d) An eviction notice which is required by New York State law may be combined with or run concurrently with a notice of termination.

e) If the Tenant is entitled to a grievance hearing under the Authority's Tenant Grievance Procedure, the termination notice shall inform the Tenant of the Tenant's right to request a grievance hearing.

f) If the Authority seeks to terminate the tenancy of the Tenant for criminal activity, as shown on a criminal record, the Authority must notify the Tenant and/or Tenant's household members of the proposed action based on the information received and provide the subject of the record with a copy of the criminal record and the opportunity to dispute the accuracy and relevance of the criminal record.

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iii. Eviction Procedures: The Authority shall abide by all New York State statutes and regulations in conducting an eviction procedure. If the Authority evicts Tenant by judicial action for criminal activity, the Authority shall notify the local post office serving the dwelling unit that the Tenant and Tenant's household members that they are no longer residing in the Unit.

By signing below, Tenant acknowledges that he/she has reviewed this Agreement, understands all terms of this Agreement, and agrees to be bound by all terms and conditions of this Agreement.

Tenant (Head of Household)

_____ _____

Signature Date

Co-Tenant

_____ _____

Signature Date

Co-Tenant

_____ _____

Signature Date

Buffalo Municipal Housing Authority

Housing Manager

_____ _____

Signature Date

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ATTACHMENTS

If indicated by an (X) below, Authority has provided the tenant with the following attachments and information:

( ) Pet Policy

( ) Lead Hazard Information Pamphlet

( ) Lead Disclosure Addendum

( ) Schedule of Charges And Fees

( ) Housekeeping Standards

( ) Other:_____

TENANT CERTIFICATION

I _____, hereby certify that I, and other members of my Household, have not committed any fraud in connection with any federal housing assistance program, unless such fraud was fully disclosed to the Buffalo Municipal Housing Authority before execution of the lease, or before the Buffalo Municipal Housing Authority approval for occupancy of the unit by the Household member.

I further certify that all information or documentation submitted by myself or other Household members to the Buffalo Municipal Housing Authority in connection with any federal housing assistance program (before and during the lease term) are true and accurate.

APPROVED
AS TO FORM
Legal Counsel

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APPENDIX 9 – WELFARE RENT SCHEDULE

Bedroom Size	# of Persons	Welfare Rent
0	1	$169
1	1	$169
	2	$201
2	1	$169
	2	$201
	3	$215
	4	$234
3	1	$169
	2	$201
	3	$215
	4	$234
	5	$254
	6	$262
4	4	$234
	5	$254
	6	$262
	7	$273
5	5	$254
	6	$262
	7	$273
	8+	$299
6	6	$262
	7	$273
	8+	$299

This schedule is subject to change and may be updated at any time.

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APPENDIX 10 - SCHEDULE OF CHARGES AND FEES

Tenants are not charged for services or materials used in the repair of the dwelling units in which they reside unless the work to be done is determined by Management to be beyond the scope of normal use and wear and tear. Charges under the schedule listed shall apply equally to all tenants living in housing operated by the Authority. Unanticipated, miscellaneous and non-recurring services and materials chargeable to the tenant shall be at a cost necessary to reimburse project expense.

The amount listed herein for charges based on costs are those which are current or anticipated as of July 1, 2014. The actual dollar amounts provided in this schedule are the estimated costs that a tenant may be charged for these items. These charges are subject to change based on costs for material, labor or court charge changes.

Late Payment Notice	**$25.00**
Petition (Legal Notice for Eviction Establishing Court Date)	
One adult leaseholder	**$50.00**
Warrant For Eviction	**Cost**
Actual costs subject to change based on amounts by	
City Court. Current costs are:	
Warrant:	
One adult leaseholder	**$125.00**
Each additional adult leaseholder	**$10.00**
Returned Checks	**$10.00**
Apartment door, mail or breaker box key replacement	**$8.00 each**
Lock Changes:	
One door	**$25.00**
Two doors	**$50.00**
Walk Up or High Rise Buildings:	
Entrance door Key/Fob	**$15.00**
Lock change for entrance door and apartments within the building	**Material plus Labor**

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Ranges

Costs depend or range size, which varies by apartment size and whether the range is gas or electric. Costs to be assessed are less depreciation based on 10 year life expectancy.

Refrigerators

Refrigerators are not provided in all developments. Where they are provided, refrigerator sizes vary by apartment size. Costs to be assessed are less depreciation based on 10 year life expectancy.

Garbage (Failure to take or return to assigned location on designated day/time)

Per Bag	**$25.00**
Per Tote	**$10.00**

Poor Housekeeping or Refusal to Prepare for Extermination:

Pest/Rodents	**$100.00**
Bedbug	**$250.00**

Air Conditioner Use **$10.00 per month on annual basis**

The repair or replacement of items not specifically listed, or which are regular to a particular development, when damaged by abuse or neglect shall be charged at actual cost of materials plus labor.

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APPENDIX 11 - UTILITY ALLOWANCES for 2013

Scattered Sites C

Utility Allowance Schedule

ELECTRIC				
Bedroom Size	**Current**		**Proposed Effective 7/1/13**	
	Average Monthly KWH	Net Monthly Bill	Average Monthly KWH	Net Monthly Bill
2	1169	$173	1091	$130
3	1245	$183	1064	$127
4	1673	$240	1636	$186
5	1526	$221	1369	$159

GAS				
Bedroom Size	**Current**		**Proposed Effective 7/1/13**	
	Average Monthly CCF	Net Monthly Bill	Average Monthly CCF	Net Monthly Bill
2	23	$41	23	$38
3	24	$42	24	$37
4	29	$47	29	$43
5	26	$44	25	$40

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Villa Carolina

Utility Allowance Schedule

ELECTRIC				
Bedroom Size	**Current**		**Proposed Effective 7/1/13**	
	Average Monthly KWH	Net Monthly Bill	Average Monthly KWH	Net Monthly Bill
2	285	$56	329	$52
3	411	$73	443	$63
4	533	$89	557	$75
5	617	$100	630	$83
6	644	$103	655	$85

GAS				
Bedroom Size	**Current**		**Proposed Effective 7/1/13**	
	Average Monthly CCF	Net Monthly Bill	Average Monthly CCF	Net Monthly Bill
2	45	$65	40	$55
3	59	$76	53	$66
4	69	$84	66	$74
5	80	$93	70	$77
6	109	$115	106	$99

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A.D. Price I, LP

Utility Allowance Schedule

ELECTRIC				
Bedroom Size	**Current**		**Proposed Effective 7/1/13**	
	Average Monthly KWH	Net Monthly Bill	Average Monthly KWH	Net Monthly Bill
1	385	$51	358	$55
2	459	$58	448	$64
3	676	$76	617	$81

GAS				
Bedroom Size	**Current**		**Proposed Effective 7/1/13**	
	Average Monthly CCF	Net Monthly Bill	Average Monthly CCF	Net Monthly Bill
1	38	$56	36	$50
2	61	$76	57	$68
3	60	$75	59	$70

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A.D. Price Phase II

Utility Allowance Schedule

ELECTRIC				
Bedroom Size	**Current**		**Proposed Effective 7/1/13**	
	Average Monthly KWH	Net Monthly Bill	Average Monthly KWH	Net Monthly Bill
1	HUD Allow	$56	268	$45
2	HUD Allow	$69	298	$48

MSGR. GEARY

Utility Allowance Schedule

ELECTRIC				
Bedroom Size	**Current**		**Proposed Effective 5/1/13**	
	Average Monthly KWH	Net Monthly Bill	Average Monthly KWH	Net Monthly Bill
1	171	$41	180	$36
2	229	$48	222	$41

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MULLEN MANOR

Utility Allowance Schedule

ELECTRIC				
Bedroom Size	**Current**		**Proposed Effective 5/1/13**	
	Average Monthly KWH	Net Monthly Bill	Average Monthly KWH	Net Monthly Bill
1	164	$40	154	$35
2	311	$59	322	$51

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APPENDIX 12 - 2014 FAIR MARKET RENTS

Bedroom Size	Market Rent
0	$537
1	$570
2	$710
3	$908
4	$1,027
5	$1,181
6	$1,335
7	$1,489

Source: **www.huduser.org/datasets/fmr/fmrs/FY2014**

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