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Chapter 3

ELIGIBILITY

INTRODUCTION

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

To be eligible for the public housing program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the PHA.
  - 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 the PHA's collection and use of family information as provided for in PHA-provided consent forms.
  - Not currently be receiving a duplicative subsidy.
- The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

This chapter contains three parts:

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

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

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

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PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.105(a)(2), 24 CFR 5.403, FR Notice 02/03/12, and Notice PIH 2014-20]

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

Family

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

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

PHA Policy

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

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

Household

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

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

Family Breakup

Except under the following conditions, the PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking, see section 16-VII.D of this ACOP.)
- If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court's determination of which family members continue to receive assistance.

PHA Policy

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may 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, the PHA will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, the PHA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the PHA 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, sexual assault, stalking, or human trafficking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, 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.

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."

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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.

PHA Policy

The family may designate any qualified family member as the head of household. Typically, the person who applied (the applicant) is designated 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.

PHA Policy

A *marriage partner* includes the partner in a marriage, but does not include the partner in a "common law" marriage. This is because the laws of the State of Wisconsin do not recognize "common law" marriages for partnerships formed within Wisconsin state boundaries. The term "spouse" also does not apply to friends, roommates, or significant others who are not marriage partners.

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, p. 14].

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

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

Joint Custody of Dependents

PHA Policy

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

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the PHA 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.

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.

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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 as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR Notice 02/03/12]

Persons with Disabilities

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

As discussed in Chapter 2, the PHA 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 the PHA'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.

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

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

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

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

PHA Policy

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

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

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

Former residents who have been evicted are not permitted as overnight guests. Also, persons that have been "no-trespassed" on HACM property are not permitted as guests.

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 a violation of the lease.

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3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

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

PHA Policy

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

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

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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

PHA Policy

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

Absent Students

PHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the PHA 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.

PHA Policy

If a child has been placed in foster care, the PHA 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.

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Absent Head, Spouse, or Cohead

PHA Policy

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

Individuals Confined for Medical Reasons

PHA Policy

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

If there is a question about the status of a family member, the PHA 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

PHA Policy

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

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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.

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.

PHA Policy

A family's request for a live-in aide may be made either orally or in writing. The PHA will verify the need for a live-in aide, if necessary, with a reliable, knowledgeable professional as provided by the family, such as a doctor, social worker, or case worker. For continued approval, the family may be required to submit a new, written request—subject to PHA 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) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.

The PHA 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 the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

Within 30 business days of receiving a request for a live-in aide, including all required documentation related to the request, the PHA will notify the family of its decision in writing.

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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.

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. 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.

HUD also publishes over-income limits annually, but these are not used at admission. Over-income limits will be discussed in Chapter 13.

Using Income Limits for Eligibility [24 CFR 960.201]

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

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

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

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

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

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

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

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

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

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

Declaration [24 CFR 5.508]

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

U.S. Citizens and Nationals

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

PHA Policy

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 PHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

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Ineligible Noncitizens

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

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

Mixed Families

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

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

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

PHA Policy

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

When a PHA 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 30 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 grievance hearing with the PHA. The grievance hearing with the PHA 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 grievance hearing process.

Grievance hearing procedures are contained in Chapter 14.

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

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

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

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

PHA Policy

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2018-24]

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. If a child under age six has been added to an applicant family within the six months prior to program admission, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of admission. A detailed discussion of acceptable documentation is provided in Chapter 7.

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

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.

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

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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, the form HUD-52675, Debts Owed to Public Housing Agencies and Terminations, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

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

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3-II.E. EIV SYSTEM SEARCHES [Notice PIH 2018-18; EIV FAQs; EIV System Training 9/30/20]

Existing Tenant Search

Prior to admission to the program, the PHA must search for all household members using the EIV Existing Tenant Search module. The PHA must review the reports for any SSA matches involving another PHA or a multifamily entity and follow up on any issues identified. The PHA must provide the family with a copy of the Existing Tenant Search results if requested. At no time may any family member receive duplicative assistance.

If the tenant is a new admission to the PHA, and a match is identified at a multifamily property, the PHA must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

PHA Policy

The PHA will contact the PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation. The PHA will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

Debts Owed to PHAs and Terminations

All adult household members must sign the form HUD-52675, Debts Owed to Public Housing and Terminations. Prior to admission to the program, the PHA must search for each adult family member in the Debts Owed to PHAs and Terminations module.

If a current or former tenant disputes the information in the module, the tenant should contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

PHA Policy

The PHA will require each adult household member to sign the form HUD-52675 once at the eligibility determination. Any new members added to the household after admission will be required to sign the form HUD-52675 prior to being added to the household.

The PHA will search the Debts Owed to PHAs and Terminations module as part of the eligibility determination for new households and as part of the screening process for any household members added after the household is admitted to the program. If any information on debts or terminations is returned by the search, the PHA will determine if this information warrants a denial in accordance with the policies in Part III of this chapter.

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Income and Income Validation Tool (IVT) Reports

For each new admission, the PHA is required to review the EIV Income and IVT Reports to confirm and validate family reported income within 120 days of the IMS/PIC submission date of the new admission. The PHA must print and maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 days of the EIV Income or IVT report dates.

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PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

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

In addition, HUD requires or permits the PHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The PHA's authority in this area is limited by the Violence against Women Act of 2013 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)].

While the regulations state that the PHA must prohibit admission for certain types of criminal activity and give the PHA the option to deny for other types of previous criminal history, more recent HUD rules and OGC guidance must also be taken into consideration when determining whether a particular individual's criminal history merits denial of admission.

When considering any denial of admission, PHAs may not use arrest records as the basis for the denial. Further, HUD does not require the adoption of "One Strike" policies and reminds PHAs of their obligation to safeguard the due process rights of applicants and tenants [Notice PIH 2015-19].

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16].

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not.

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This part covers the following topics:

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

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

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

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

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

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

  PHA Policy

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

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

  PHA Policy

  Currently engaged in is defined as any use of illegal drugs during the previous one year.

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

  PHA Policy

  In determining reasonable cause, the PHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. A record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity. The PHA 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 in any location, not just federally assisted housing, the family will be denied assistance.

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

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

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

Criminal Activity [24 CFR 960.203(c)]

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

PHA Policy

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

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

Drug use: The PHA treats the timeframe for drug use differently than that for drug manufacture, sale or distribution. If any household member is currently engaged in or has engaged in illegal drug use or possession of a drug with intent to use within the past one year, the family will be denied assistance.

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past three years. A conviction for such activity will be given more weight than an arrest or an eviction. A record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

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

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

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

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

PHA Policy

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

Has a pattern of unsuitable past performance in meeting financial obligations, especially rent within the past ~~one~~ three years

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

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

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

Owes rent or other amounts to any PHA in connection with Section 8, public housing, or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

When denying admission due to family debts as shown in HUD's EIV system, the PHA will provide the family with a copy of the EIV Debt Owed to PHA and Termination report.

If the family wishes to dispute the information in the report, the family must contact the PHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter and all applicable verification to the PHA to support the family's claim. The PHA will consider the information provided by the family prior to issuing a notice of denial.

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

The PHA will consider the existence of mitigating factors, such as loss of employment or other financial difficulties as well as whether the applicant was paying more than 50% of their income as rent, before denying admission to an applicant based on the failure to meet prior financial obligations.

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3-III.D. SCREENING

Screening for Eligibility

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

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

PHA Policy

The PHA will perform criminal background checks through local law enforcement for all adult household members.

If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, the PHA will request a fingerprint card and will request information from the National Crime Information Center (NCIC).

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

PHA Policy

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

Additionally, PHAs must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

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

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Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]

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

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

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

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

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

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

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

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

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

PHA Policy

The PHA will obtain information from drug abuse treatment facilities to determine whether any applicant family's household members are currently engaging in illegal drug activity only when the PHA 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.

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

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

PHA Policy

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

Payment of rent and utilities

Caring for a unit and premises

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

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

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

Compliance with any other essential conditions of tenancy

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

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

PHA Policy

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

Past Performance in Meeting Financial Obligations, Especially Rent

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

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

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

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

Police and court records within the past one year 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 record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying activity.

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

Evidence

PHA Policy

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

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

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PHA Policy

The PHA will consider the following facts and circumstances prior to making its decision:

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.F) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

While a record or records of arrest will not be used as the sole basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:

Any statements made by witnesses or the applicant not included in the police report

Whether criminal charges were filed

Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

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

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

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

The PHA 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 the PHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the PHA 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, the PHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

PHA Policy

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

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

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

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

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

VAWA requires PHAs to include the obligation for PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

PHA Policy

The PHA acknowledges that a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the PHA's policies.

While the PHA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the applicant may inform the PHA that their status as a victim is directly related to the grounds for the denial. The PHA will request that the applicant provide enough information to the PHA to allow the PHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The PHA 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, a notice of VAWA rights, and a copy of the form HUD-5382. The PHA will request in writing that an applicant wishing to claim this protection notify the PHA within 14 business days.

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Documentation

Victim Documentation [24 CFR 5.2007]

PHA Policy

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

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Perpetrator Documentation

PHA Policy

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

A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit

Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

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3-III.G. NOTICE OF ELIGIBILITY OR DENIAL

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

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

PHA Policy

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 15 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 15 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.

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

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

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EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

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

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

  In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

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

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

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

  (iii) is likely to continue indefinitely;

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

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

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

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

(1) Physical or mental impairment includes:

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

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

(2) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means:

   (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation

   (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment

   (c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

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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 the PHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD regulations.

HUD regulations require the PHA to inspect each dwelling unit prior to move-in, at move-out, and annually during the period of occupancy. In addition, the 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 the PHA's policies pertaining to lease execution, lease modification, and payments under the lease.

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

PART I: LEASING

8-I.A. OVERVIEW

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

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

PHAs must adopt smoke-free policies, which HUD required to be implemented no later than July 30, 2018. The policy is attached as Exhibit 8-1.

PHAs must include in the ACOP residential minimum heating standards policies [Notice PIH 2018-19]. The policy is included in Part I of this chapter.

Part I of this chapter contains regulatory information on leasing, where applicable, as well as the PHA's leasing policies.

For policies on lease requirements for families whose incomes have exceeded the over-income limit for 24 consecutive months, see 13-III.C., Over-Income Families.

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8-I.B. LEASE ORIENTATION

PHA Policy

After unit acceptance but prior to occupancy, a PHA representative will conduct a lease orientation with the family. At least one adult in the household (head of household, spouse, co-head, or any other adult) is required to attend.

Orientation Agenda

PHA Policy

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

- A copy of the lease
- A copy of the PHA's grievance procedure
- A copy of the house rules (Public Housing Resident Handbook)
- A copy of the PHA's schedule of maintenance charges
- 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 2017-12
- A copy of the form HUD-5380, VAWA Notice of Occupancy Rights
- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- A copy of the PHA's smoke free policy
- A notice that includes the procedures for requesting relief and the PHA's criteria for granting requests for relief for excess utility surcharges

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
- The PHA's interim reporting requirements
- Review and explanation of occupancy forms
- Community service requirements
- Family choice of rent
- VAWA protections
- Smoke-free policies

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8-I.C. EXECUTION OF LEASE

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

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

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

PHA Policy

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

8-I.D. MODIFICATIONS TO THE LEASE

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

Modifications to the Lease Form

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

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

PHA Policy

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

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

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

PHA Policy

When the PHA proposes to modify or revise schedules of special charges or rules and regulations, the PHA will post a copy of the notice in the central office, and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

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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 or if a new household member is approved by the PHA to reside in the unit, a new lease will be drawn up to reflect the changes. If the new member of the household is an adult, s/he will also be required to sign and date the lease.

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

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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.

PHA Policy

Residents must pay a security deposit to the PHA at the time of admission. The amount of the security deposit will be equal to the greater of the family's total tenant payment at the time of move-in or $150, and must be paid in full prior to occupancy.

In exceptional circumstances, the PHA reserves the right to allow a new resident to pay their security deposit in installments to be negotiated by the property manager.

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

Within 21 days of move-out, the PHA will refund to the resident the amount of the security deposit,less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear, and other charges due under the lease.

The PHA will provide the resident with a written list of any charges against the security deposit within 21 business days of the move-out. If the resident disagrees with the amount charged, the PHA will provide a meeting to discuss the charges.

If the resident transfers to another public housing unit, the PHA 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.

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8-I.F. PAYMENTS UNDER THE LEASE

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

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

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

PHA Policy

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

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

All rents for residents of public housing developments must be paid via the mail, via electronic automatic bank withdrawal if requested by the resident, or dropped off in HACM's rent drop slot at the Community Services building at 650 W. Reservoir Avenue.

As a safety measure, cash is not accepted as a method to pay rent. It must be paid via check, money order or automatic withdrawal.

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Late Fees and Nonpayment

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

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

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

PHA Policy

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

In addition, if the resident fails to make payment by the end of office hours on the fifth day of the month, a late fee of $30.00 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 $35.00 will be charged to the family. The fee will be due and payable 14 days after billing.

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Excess Utility Charges

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

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

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

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

PHA Policy

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

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

The PHA may grant requests for relief from surcharges from excess utility consumption of PHA-furnished utilities as a reasonable accommodation where the PHA deems an exception is appropriate to meet the needs of elderly, ill, or disabled residents. In determining whether to grant this request, the PHA will consider special factors affecting utility usage that are not within the control of the resident, such as the need for medical equipment. Residents may request relief in accordance with Section 2-II.C. of this ACOP. The PHA will process such requests in accordance with Section 2-II.E. of this ACOP.

Notice of the availability of procedures for requesting relief (including the PHA representative with whom initial contact may be made by the resident) and the PHA's criteria for granting requests, will be included in each notice to residents of changes in utility allowances or surcharges as well as to new residents as part of the lease orientation.

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Maintenance and Damage Charges

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

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

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

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8-I.G. MINIMUM HEATING STANDARDS [Notice PIH 2018-19]

PHAs in states, territories, or localities with existing minimum heating standards must use their respective local standards for public housing dwelling units. For PHAs where state or local minimum heating standards do not exist, PHAs must use the HUD-prescribed heating standards specified in Notice PIH 2018-19.

PHA Policy

The PHA is located in an area where state or local residential heating standards do not exist. Therefore, the PHA will use the HUD-prescribed minimum heating standards for public housing units:

Minimum temperature:

If the PHA controls the temperature, the minimum temperature in each unit must be at least 68 degrees Fahrenheit. If the resident controls the temperature, the heating equipment must have the capability of heating to at least 68 degrees Fahrenheit.

Minimum temperature capability:

PHAs are allowed flexibility maintaining the indoor temperature when the outdoor temperature approaches the design day temperature. The design day temperature refers to the lowest expected outdoor temperature a heating system was designed to accommodate. This flexibility applies when either the outside temperature reaches or drops below the design day temperature, or when the outside temperature is within five degrees Fahrenheit of the design day temperature for more than two continuous days. At no point should indoor temperatures drop below 55 degrees.

Measurement:

Temperature measurements must be taken three feet above the floor and two feet from an exterior wall in a habitable room.

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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 PHA Policy. This part contains the PHA's policies governing inspections, notification of unit entry, and inspection results.~~

The PHA is obligated to maintain safe and habitable dwelling units and to make necessary repairs to dwelling units [24 CFR 966.4(e)]. The National Standards for the Inspection Physical Inspection of Real Estate (NSPIRE) are the standard under which HUD housing units, including those under the public housing program, are inspected. NSPIRE ensures that residents of public housing live in safe, habitable dwellings, and the items and components located inside, outside, and within the units are functionally adequate, operable, and free of health and safety hazards [24 CFR 5.703(a)]. Further, units must comply with state and local code requirements (such as fire, mechanical, plumbing, carbon monoxide, property maintenance, and residential code) [24 CFR 5.703(f)] as well as with all requirements related to the evaluation and control of lead-based paint hazards [24 CFR 5.703(e)(2)].

Under NSPIRE, public housing units are subject to three types of inspections: annual self-inspections, NSPIRE Inspections (which are used to assess and score the PHA under the Public Housing Assessment System (PHAS)), and NSPIRE Plus Inspections (which are triggered by poor property conditions). HUD regulations also require the PHA to inspect each public housing unit prior to move-in and at move-out. The PHA may require additional inspections, in accordance with PHA policy. This part contains the PHA's policies governing inspections by the PHA and HUD, notification of unit entry, and inspection repair timelines. This section discusses inspections conducted by the PHA (including annual self-inspections) and inspections conducted by HUD REAC.

8-II.B. ~~TYPES OF~~PHA-CONDUCTED INSPECTIONS

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

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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.

PHA Policy

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

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

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

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

PHA Policy

When applicable, the PHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 21 days of the move-out.

~~**Annual Inspections [24 CFR 5.705]**~~

~~Section 6(f)(3) of the United States Housing Act of 1937 requires that PHAs inspect each public housing project annually to ensure that the project's units are maintained in decent, safe, and sanitary condition. The PHA shall continue using the Uniform Physical Condition Standards (UPCS) in 24 CFR 5, Subpart G, Physical Condition Standards and Inspection Requirements, to conduct annual project inspections. These standards address the inspection of the site area, building systems and components, and dwelling units.~~

~~PHA Policy~~

~~The PHA will inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS).~~

Self-Inspections [24 CFR 5.707]

Annually all PHAs are required to self-inspect their properties, including all units, to ensure units are maintained in accordance with NSPIRE standards in 24 CFR 5.703. As part of the self-inspection process, PHAs must ensure that deficiencies previously cited and repaired as a result of an NSPIRE inspection have not subsequently failed.

The PHA must maintain the results of self-inspections for three years and must provide the results to HUD upon request.

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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

PHA Policy

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

Special Inspections

PHA Policy

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

Housekeeping

Unit condition

Suspected lease violation

Preventive maintenance

Routine maintenance

There is reasonable cause to believe an emergency exists

Other Inspections

PHA Policy

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

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~~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 self-inspections, the PHA will attempt to provide the family with one week written notice of the inspection to allow the family to prepare the unit for the inspection.

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

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

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

Scheduling of PHA-Conducted Inspections

PHA Policy

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

Attendance at Inspections

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

PHA Policy

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~~Except at~~While the resident is required to be present for 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~~they wish.

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.

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~~8-II.D. INSPECTION RESULTS~~Repairs

~~The PHA is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].~~Correction timeframes differ depending on whether repairs are considered emergency or non-emergency repairs.

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. Under NSPIRE, the PHA must correct all Life-Threatening and Severe deficiencies within 24 hours.

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

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

~~PHA Policy~~

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

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

- ~~Any condition that jeopardizes the security of the unit~~
- ~~Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling~~
- ~~Natural or LP gas or fuel oil leaks~~
- ~~Any electrical problem or condition that could result in shock or fire~~
- ~~Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit~~
- ~~Utilities not in service, including no running hot water~~
- ~~Conditions that present the imminent possibility of injury~~
- ~~Obstacles that prevent safe entrance or exit from the unit~~
- ~~Absence of a functioning toilet in the unit~~
- ~~Inoperable smoke detectors~~

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~~In situations where the unit or building has a fuel burning appliance or an attached garage, missing or inoperable carbon monoxide detectors~~

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Non-emergency Repairs

PHA Policy

The PHA will correct ~~non-life-threatening health and safety defects~~deficiencies resulting in a non-emergency work order identified during a PHA-conducted inspection within 25 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, staffing issues, etc.) the PHA will notify the family ~~that the repair will be delayed.~~ of an estimated completion date.

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

Resident-Caused Damages

PHA Policy

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

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

Housekeeping

PHA Policy

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

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

Notices of lease violation 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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8-II.C. NSPIRE INSPECTIONS [24 CFR 5.705(c); Notice PIH 2023-16]

During an NSPIRE inspection, REAC inspectors will inspect areas and associated items or components that are listed in the regulations as affirmative requirements and those included within the NSPIRE standards. For most properties, the frequency of NSPIRE inspections is determined by the date of the prior inspection and the score received.

Notice to Residents [Notice PIH 2023-16]

The PHA must provide notice to all residents as described in 24 CFR 5.711(h) and the lease.

PHA Policy

The PHA will provide all residents with at least seven days' notice of an NSPIRE inspection. Notice will be provided through multiple communication methods, including by posted notice on each resident's door and through email where applicable. All materials, notices, and communications to families regarding the inspection will be clearly communicated and provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act (Section 504) and HUD's Section 504 regulation, and Titles II or III of the Americans with Disabilities Act (ADA) and implementing regulations.

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24-Hour Corrections [24 CFR 5.711(c); Notice PIH 2023-16]

At the conclusion of the NSPIRE inspection, or at the end of the day on multi-day inspections, HUD provides the PHA with a list of Life-Threatening and Severe deficiencies. The PHA must correct all Life-Threatening and Severe deficiencies within 24 hours, with certification of correction submitted to HUD within two business days of receipt of notification of the deficiency.

If permanent repair will take longer than the allowable time in the relevant standard for the deficiency, the PHA must provide HUD with a timeframe for completing permanent repairs and submit evidence that the repair is in progress. Any extension to the allowable time for rectifying the deficiency is allowed only upon HUD approval for good cause.

PHA Policy

The PHA will correct all Life-Threatening and Severe deficiencies within 24 hours. Correcting the deficiency means the PHA will resolve or sufficiently address the deficiency in a manner that it no longer poses a severe health or safety risk to residents or the hazard is blocked until permanent repairs can be completed. A correction could include controlling or blocking access to the hazard by performing a temporary relocation of the resident while repairs are made.

While the PHA will complete all repairs expeditiously, if a permanent repair is not possible within 24-hours, the PHA will correct the deficiency by performing an interim repair to remove the health and safety hazard. If the correction is temporary or professional services or materials are unavailable within 24 hours, the PHA will provide a target date for permanent correction. Such interim repairs will be fully completed within a reasonable timeframe approved by HUD.

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

Non-emergency Repairs

Under NSPIRE, the PHA must correct Moderate deficiencies within 30 days and Low deficiencies within 60 days, or as otherwise provided in the NSPIRE standards. Repairs should be permanent fixes, unless otherwise approved by HUD in writing. HUD may also prescribe timelines in Corrective Action Plans as defined in 24 CFR 902.3 or Corrective Action Agreements as described in 24 CFR 902.105.

PHA Policy

If the PHA is unable to make repairs within the periods identified in the NSPIRE standards due to circumstances beyond the PHA's control (e.g., required parts or services are not available, weather conditions, etc.), the PHA will provide HUD with a timeframe for completing permanent repairs and obtain HUD approval. The PHA will also notify the family of an estimated date of completion.

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

Except for emergencies, management will not enter the dwelling unit to perform repairs where a pet resides unless accompanied for the entire duration of the repair by the pet owner or responsible person designated by the pet owner in accordance with the pet policies in Section 10-II.D.

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EXHIBIT 8-1: SMOKE-FREE POLICY

Smoke-Free Housing Policy of the Housing Authority of the City of Milwaukee

Background: On December 5, 2016, the U.S. Department of Housing and Urban Development (HUD) adopted regulations that require all public housing authorities to implement a smoke-free housing policy by July 2018.

Purpose of Non-Smoking Policy: The purpose of this policy is to help fulfill HACM's obligation to provide a safe and healthy living quarter to all residents, staff and visitors. HACM would like to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance and cleaning costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smoke-free building.

Policy: Due to the increased risk of fire, increased maintenance costs, and the known health effects of secondhand smoke, smoking is prohibited in any area of the property, both private and common, indoors and within 25 feet of the building(s) including entryways, balconies, windows and patios. This policy applies to all owners, residents, guests and service persons. Residents are responsible for ensuring that family members, roommates and guests comply with this rule.

Rationale: According to the CDC, "secondhand smoke harms children and adults, and the only way to fully protect nonsmokers is to eliminate smoking in all homes, worksites, and public places. There is no risk-free level of secondhand smoke exposure; even brief exposure can be harmful to health."

Effective Date of Policy: This policy will be effective as of July 1, 2018 for all residents, their guests, and all employees, contractors, business invitees who provide services to any HACM properties.

Definition of Smoking: Smoking is defined as inhaling, exhaling, breathing or carrying any lit cigar, cigarette, pipe, waterpipe or hookah, other tobacco products or any form of lighted object or device that contains tobacco and/or marijuana, including but not limited to medical marijuana. Additionally, "smoking" also includes but is not limited to the use an electronic cigarette (e-cig or e-cigarette), a personal vaporizer (PV) or an electronic nicotine delivery system (ENDS). 2

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Non-smoking Area: Smoking is prohibited in any area of the property, both private and common. Indoor areas where smoking is prohibited include, but are not limited to: resident apartments, hallways, stairways, public bathrooms, rental and administrative offices, community rooms and areas, electrical closets, storage areas, laundry rooms, and lobbies. Smoking is prohibited outdoors within 25 feet of any building, including doorways, entryways, balconies, windows, and patios.

Management to Promote Non-Smoking Policy: Management shall post no-smoking signs at entrances and exits and in common areas. Staff will promote policy as appropriate in meetings and discussions with residents and enforce compliance with the policy.

Properties Included: All housing developments and scattered site properties owned by HACM that are public housing and/or mixed finance/tax credit developments will follow the smoke-free policy. Other HACM housing developments that are not currently impacted by this smoke-free policy include Berryland, Northlawn and Southlawn.

Resident Responsibility: Residents are responsible for the actions of their household, their guests and their visitors, and residents are responsible for informing their guests and visitors that their apartment is smoke-free and that their housing may be affected by violators. Residents are encouraged to promptly notify HACM staff of any incident where smoke is noticeable in prohibited areas on HACM property. Repeated violations to the policy may be cause for lease enforcement actions and even evictions.

Enforcement Provisions: Failure of any resident, resident's guests or visitors to follow the smoke-free policy will result in a lease violation. Multiple violations could lead to an eviction.

- 1st warning: Verbal notice from management
- 2nd warning: Written notice from management
- 3rd warning: Written notice and mandatory meeting with management
- 4th warning: Begin eviction proceedings

Smoke-Free Resources: If you or a loved one would like to quit smoking, call the Wisconsin Tobacco Quit Line at 1-800-QUIT NOW, for free assistance and a customized quit plan. The Quit Line provides free one-on-one phone counseling and information, local cessation program referrals, and starter packs of quit smoking medications like nicotine gum, patches, and lozenges.

Policy Distribution: After adoption of this policy, all current residents of properties covered by this policy will be given a copy of the policy and will be requested to meet with their property manager for the head of household and all adults to sign a Smoke-Free Housing Lease Addendum prior to July 1, 2018. The signed copy of the lease addendum will be placed in the resident's file. New residents will be given a copy of the policy at the time they execute their lease, and will immediately sign a Smoke-Free Housing Lease Addendum.

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Chapter 9

REEXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

INTRODUCTION

With the exception of non-public housing over income families, the 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 the PHA must reexamine the income and composition of a family depends on whether the family pays income-based rent or flat rent. HUD requires the PHA to offer all families the choice of paying income-based rent or flat rent at least annually. The PHA's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

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

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

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

9-I.A. OVERVIEW

For those families who choose to pay income-based rent, the PHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years [24 CFR 960.257(a)(2)]. For any non-public housing over income families, the PHA may not conduct an annual reexamination of family income. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

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

The 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 the PHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

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

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9-I.B STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 960.257]

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources. If at least 90 percent of the family's income is from fixed sources, the PHA may streamline the verification of fixed income but is not required to verify non-fixed income amounts. If the family receives less than 90 percent of its income from fixed sources, the PHA may streamline the verification of fixed income and must verify non-fixed income annually.

PHA Policy

The PHA may streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. The PHA will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, the PHA will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, the PHA will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

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9-I.C. SCHEDULING ANNUAL REEXAMINATIONS

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

PHA Policy

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

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

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

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

Notification of and Participation in the Annual Reexamination Process

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

Families generally are required to participate in an annual reexamination, in which the PHA will request information that the family will be required to provide. Recertification may be conducted in-person or virtually, or electronically via the resident portal.

Notification of annual reexamination will be sent by first-class mail or email and will contain therequired information and documentation that must be provided as well as the deadline to provide it to the PHA. If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview the PHA will send a second notification with a new interview appointment time.

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

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

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9-I.D. 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 provide all required information (as described in the reexamination notice) to the PHA for the reexamination. 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 15 business days.. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

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

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

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

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Change in Unit Size

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

Criminal Background Checks

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

PHA Policy

Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

PHA Policy

At the annual reexamination, the PHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The PHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the PHA proposes to terminate assistance based on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 13.)

Compliance with Community Service

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

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

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9-I.E. EFFECTIVE DATES

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

PHA Policy

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

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

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

If the family causes a delay in processing the annual reexamination, *increases* in the tenant rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

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

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

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

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

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

9-II.A. OVERVIEW

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

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

As it does for families that pay income-based rent, the 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

PHA Policy

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

Reexamination Policies

PHA Policy

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

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

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

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

Scheduling

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

PHA Policy

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

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

Conducting Annual Updates

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

PHA Policy

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

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

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

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

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Change in Unit Size

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

Criminal Background Checks

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

PHA Policy

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

Compliance with Community Service

For families who include nonexempt individuals, the 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.

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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 the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time.

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

This part includes HUD and PHA policies 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

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

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

New Family Members Not Requiring Approval

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

PHA Policy

The family must inform the PHA of the birth, adoption, or court-awarded custody of a child within 15 business days.

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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.

PHA Policy

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or a total of 30 cumulative calendar days during any 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the PHA prior to the individual moving into the unit.

If adding a person to a household (other than a child by birth, adoption, or court-awarded custody) will require a transfer to a larger size unit (under the transfer policy in Chapter 12), the PHA will approve the addition only if the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by the PHA. Exceptions will be made on a case-by-case basis.

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

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

The PHA will make its determination within 30 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

PHA Policy

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

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the PHA within 15 business days.

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9-III.C. CHANGES AFFECTING INCOME OR EXPENSES

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

PHA Policy

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

PHA-initiated Interim Reexaminations

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

PHA Policy

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

For families receiving the Earned Income Disallowance (EID), the PHA will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the 24-month eligibility period.

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

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

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

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

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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 15 business days of the date the change takes effect.~~

~~The 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, the 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.~~

Families are required to report all increases in household income of more than $200 a month within 15 business days of the change occurring. The PHA will conduct an interim reexamination for increases of more than $200 per month.

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If a family reports an increase in household income of less than $200 a month, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a decrease in household income which would result in a decrease in the family share of the rent, the PHA will conduct an interim reexamination to recalculate the new family share of rent and the new subsidy amount.

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.

PHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.

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If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, the 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

PHA Policy

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

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

Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 15 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by email, 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 tenant rent is to *increase*:

The increase generally will be effective on the first day of the third month following the month of the increase in income, as long as the resident has been given a 30 day notice of rent adjustment prior to the effective date. For example, if the resident has an increase in income that occurs on February 1st or any other day in February, the increase in tenant rent will become effective on April 1st.

The exception to this is if the rent increase results from misrepresentation or concealment. 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 tenants 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.

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PART IV: RECALCULATING TENANT RENT

9-IV.A. OVERVIEW

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

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

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

PHA Policy

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

9-IV.C. NOTIFICATION OF NEW TENANT RENT

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

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

PHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

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9-IV.D. DISCREPANCIES

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

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